



Invitation to Bid (ITB)
ITB-2012-16
For
UNAIDS Audio Conferencing

Table of Contents

1.	INTRODUCTION	4
2.	ITB DETAILS	4
2.1	Background.....	4
2.2	ITB Objectives.....	4
2.3	Scope	4
3.	RESPONSE FROM BIDDER.....	8
3.1	Bidding process.....	8
3.2	Selection criteria.....	9
3.3	Content of the proposal.....	10
4.	GENERAL AND CONTRACTUAL CONDITIONS.....	12
4.1	Conditions of Contract	12
4.2	Responsibility	12
4.3	Source of Instructions	13
4.4	Warranties	13
4.5	Legal Status	13
4.6	Relation Between the Parties	14
4.7	Waiver of Breach.....	14
4.8	Liability.....	14
4.9	Assignment	14
4.10	Officials not to Benefit.....	14
4.11	Indemnification	14
4.12	Contractor's Responsibility for Employees.....	15
4.13	Subcontracting	15
4.14	Place of Performance	15
4.15	Language	15
4.16	Confidentiality.....	15
4.17	Title Rights.....	16
4.18	Termination and Cancellation	16
4.19	Force Majeure	16
4.20	Surviving Provisions	17
4.21	Use of UNAIDS and WHO name and emblem	17



UNAIDS
JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS

UNHCR
UNICEF
WFP
UNDP
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4.22	Successors and Assignees	17
4.23	Payment	17
4.24	Title to Equipment	17
4.25	Insurance and Liabilities to Third Parties	18
4.26	Settlement of Disputes	18
4.27	Observance of the Law	18
4.28	Authority to Modify	18
4.29	Privileges and Immunities	18
4.30	No Terrorism or Corruption	19
4.31	Personnel	19
4.31.1	Approval of Contractor Personnel.....	19
4.31.2	Project Managers.....	19
4.31.3	Foreign Nationals.....	20
4.31.4	Compliance with UNAIDS Policies.....	20
4.31.5	Ethical Behaviour	20
4.31.6	Engagement of Third Parties and use of In-house Resources.....	20

1. INTRODUCTION

UNAIDS, the Joint United Nations Programme on HIV/AIDS, is an innovative joint venture of the United Nations system, bringing together the efforts and resources of ten UN system organizations in the AIDS response to help the world prevent new HIV infections, care for people living with HIV, and mitigate the impact of the epidemic. These organizations, called “UNAIDS Cosponsors” are UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank.

For further information on UNAIDS, please refer to the UNAIDS web site at www.unaids.org.

2. ITB DETAILS

2.1 Background

The current audio conferencing service is being provided by a third party – an outsourced local provider in Switzerland having a global point-of-presence, ubiquitous local and international toll-free access numbers, and offices worldwide offering audio conferencing services.

UNAIDS current subscription has three accounts with permanent access for each account (no reservation required), usage basis (call per minute per attendee depending on the calling party country of origin), the service can accommodate up to a maximum of 50 participants per account connected simultaneously in one conference, no monthly set-up/service fee, and with an advanced audio conferencing functionalities available on-demand (additional charges may apply per activation). Estimated conference call organized by UNAIDS HQ alone for year 2011 is about 10,000 minutes per year. As the service will be expanded throughout UNAIDS/Partners offices globally, the conference call volume may increase depending on the needs.

Additionally, UNAIDS has a contract with Cisco WebEx conferencing system with WebEx Enterprise Edition and Connect services with 50 hosts for each of the service, paying a monthly fee per host excluding telephone charges depending on the calling party country of origin.

UNAIDS Audio and WebEx services mentioned are running as a standalone systems (not integrated), depending on the needs, UNAIDS users have an option to choose between the audio or WebEx services depending on their requirements.

2.2 ITB Objectives

The purpose of this Invitation to Bid (ITB) is to enter into a contractual agreement with a successful bidder to provide audio conferencing services. The contract would be for a minimum period of 1 year starting 1 January 2013 with an option to extend the contract for additional two years for a maximum of three years.

2.3 Scope

The scope of the requirement is to provide audio conferencing services, particular to the level of subscription, capacity, charging/payment scheme, training/support and features/functions as described in this document. The bidders are reminded that the proposal should not deviate from the requirements as explained unless a modification is made by UNAIDS for the benefits and interest of the organization. Any deviation outside the requirement should be clearly stated and cost-out separately.

UNAIDS would like to seamlessly transition to the chosen provider's service. The provider is required to exhaust all their efforts to make sure the 50 UNAIDS end users are properly trained and able to use the service efficiently before 1 January 2013.

The following describes the specifications of UNAIDS audio conferencing requirements in order for the bidders to present the proposal and pricing.

Table 1: Mandatory Requirements

General Requirements	
Name	Description
Experience	Five (5) years or more experience in providing audio conferencing services
	During the time period stated above, achieved a satisfactory performance on at least three (3) services of similar to that of this request.
	Multi-lingual support, minimum English with French and Spanish optional languages.
	Has presence in Africa, Americas, Asia and Europe
Mode of Access	Provide audio conferencing service on a per request basis that supports dial-in, operator/host assisted (dial-out calls) based and caller-paid capabilities.
	Usage base charging per conference and no monthly
Capacity	A minimum of 5 simultaneous conferences at any given time with up to 30 participants per conference without the need of prior reservation (Reservationless).
	On-demand conference call in a per request basis available within 24 hrs, in case the assigned reservationless are occupied.
Reliability/Availability	Guaranteed 99.99% service availability to UNAIDS end-users, this covers the conference meetings and the system for scheduling and making the reservation.
	24x7x365 customer support (minimum English and French/Spanish optional) providing single point of contact for conference scheduling, reservation and customer service assistance before or during the conference meetings
	Highly reliable, available anytime/anywhere and accessible from UNAIDS Country / Partner Offices as listed in Table 3 of the ProposalSubmission Form document.
	Guaranteed no circuit busy problem when dialing the conference access numbers.



Access Numbers	The service should provide conference and customer service access numbers.
Security	Secured access and lines (with access passcode).
	Provide multiple accounts (minimum of 15 accounts) to be used for scheduling, requests and accounting.
Ease of Management	Audio conferencing management web portal must be available with user friendly interface.
	Self-service conference scheduling/request for both the Reservationless and On-Demand
	Ability to schedule conference calls anytime/anywhere and obtain confirmation number at any given time
On-Site Training	End users / host training for 30 staff, classroom type training with 15 attendees each class covering all features/functions
Reporting/Billing/Accounting	Provide monthly invoicing in a per account basis
	Provide detailed reporting/history per account of conference calls made including time of the day, calling /called parties telephone numbers, start/end of calls, etc.

Base Requirements

Audio Conferencing	A voice call that support more than one calling/called parties in one instance.
On-demand Reservation	Support schedule and per request conference call
Reservationless	Access to pre-defined conference by dialing the number followed by a PIN code.
Integrated Conference Toolbar for Outlook	Create/modify/cancel/send a conference invitation via an email.
Conference Management	Ability to join, end, cancel or modify the conference
Dial-in Call	Self-service dial in using toll and/or toll-free numbers
Dial-out Call	Dial out (Operator/host assisted call) and bring participants into the conference
Password Screening	Participants are required to provide a valid PIN/Password in order to join the conference.
Access Controlled Call	The host can lock/unlock the conference to prevent late/new participants to join the conference
Mute/Un-mute	Participants can mute/un-mute their own line. While the host can mute/un-mute all the participant lines.

Identification/Announcement	Participants will be asked for identification/name before joining the conference. The system will announce the participant entry and exit with their name, a tone, or not at all.
Operator Access	Host can speak to an operator while conference is on-going.
Conference Menu	Access to conference menu or help to know the conference options.
Music On-hold	Before the conference starts, participants will be waiting with music on-hold for the host to arrive.
Automatic conference start	As soon as the host joined the conference, the conference will automatically start.
Reporting	Call detail records with an option to export in CSV format
Advanced Requirements	
Operator Assisted Audio Conference	Dial-out participants, handle technical issues and monitor call quality in a per conference call basis upon request activated within 24 hrs.
Call Recording	Record a conference and playback the entire or portion of the conference call and keep the history of call recordings for a minimum of 1 month upon request

Table 2: Options

Name	Description
Event Conference Call	Supports 50 attendees in one conference upon request
Multi-lingual Support	Support French and Spanish languages
Refresher Training	End users / host training for UNAIDS staff who require familiarization, refresher, etc. on the system covering all features/functions described in Base/Advanced Requirements . The refresher training should be valid within the contractual period. Mode of training is either via on-site, web/video or any audio materials.

3. RESPONSE FROM BIDDER

3.1 Bidding process

Please acknowledge receipt of this ITB by returning the **Acknowledgement Form** latest on **19 September 2012**, to the email address: bids@unaids.org, indicating whether or not you intend to submit a bid. If you are declining to bid, please state the reasons on the form in order for UNAIDS to improve its effectiveness in future invitations. Not submitting your intention to bid does not disqualify companies from submitting a final bid.

The Proposal must be sent by e-mail and in English to the following address:

TechnicalBids@unaids.org

Proposals must be received no **later than 05-October-2012 at 17:00 hours**.

Late submissions will not be accepted.

The Proposal prepared by the bidder, and all correspondence and documents relating to the Proposal exchanged by the bidder and UNAIDS shall be written in the English language.

The bidder shall bear all costs associated with the preparation and submission of the Proposal including but not limited to the possible cost of discussing the proposal with UNAIDS, negotiating a contract and any related travel. UNAIDS will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

Proposals must offer services for the total requirement. Proposals offering only part of the requirement may be rejected. The bidder is expected to examine all instructions, forms, terms and specifications contained in this ITB. Failure to comply with these instructions, forms, terms and specifications, will be at the bidder's risk and may affect the evaluation of the Proposal.

No Proposal may be modified after the closing date for submission of Proposals, unless UNAIDS has issued an amendment to the ITB allowing such modifications.

UNAIDS may, at its discretion, extend the deadline for the submission of proposals or revise the terms of reference, by issuing a modification to this solicitation.

UNAIDS may award one or more contracts resulting from this ITB to the responsible bidders(s) whose proposal(s) conforming to this ITB offers the greatest value in terms of the selection criteria. UNAIDS may (a) reject any or all proposals, (b) accept other than the lowest cost proposal, (c) accept more than one proposal, (d) accept an alternate proposal, and/or (e) waive informalities and minor irregularities in proposals received.

UNAIDS may award one or more contracts on the basis of initial proposals received, without discussions or negotiations. Therefore, each initial proposal should contain the bidder's best terms from a cost and technical standpoint.

Bidders are requested to hold their proposal valid for 90 days from the deadline for submission. UNAIDS will make its best effort to select a firm/institution within this period. In exceptional circumstances, UNAIDS may solicit the bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. Any bidder granting such an extension will not, however, be permitted to otherwise modify its Proposal

This document and any annexes shall not be construed as a contract or a commitment of any kind. This request for quote in no way obligates UNAIDS to award a contract, nor does it commit UNAIDS to pay any cost incurred in the preparation of the proposal.

A prospective bidder requiring any clarification on technical or contractual matters may notify UNAIDS via email at the following address no later than 1 week before closing of deadline.

- Email for submissions of all queries: Bids@unaids.org

UNAIDS will respond in writing to any request for clarification of the ITB that it receives prior to the **24-September-2012** a consolidated document of UNAIDS response to all questions (including an explanation of the query but without identifying the source of enquiry) which will be posted in UNAIDS website and will be sent to all prospective bidders who have received the ITB

UNAIDS may - at its sole discretion - invite selected bidders to make a presentation to or discuss aspects of their proposal with UNAIDS. There shall be no individual presentation by or meeting with bidders until after the closing date. There should be no contact with UNAIDS officials concerning the ITB process for the project, from the date of issue of this ITB to the final selection, (other than through the above-mentioned submission of queries and/or through a possible presentation or meeting called for by UNAIDS).

UNAIDS may, at any time before or after the closing date, for any reason, whether on its own initiative or in response to a clarification requested by a (prospective) bidder, modify the ITB by written amendment. Amendments could inter alia include modification of project scope or requirements, or project timeline expectations.

All prospective bidders that have received the ITB and those that announce their intention to bid will be notified in writing of all amendments to the ITB and will, where applicable, be invited to amend their proposal accordingly.

3.2 Selection criteria

UNAIDS attaches particular importance to the following criteria:

- Demonstrated ability of the bidder to perform the services
- Demonstrated ability to comply with critical provisions such as execution of the contract by honouring the tax-free status of the UN.
- Completeness of the proposal
- Pricing conditions

UNAIDS will examine the Proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the Proposals are generally in order

Please note that UNAIDS may use information other than that provided by the bidder in its evaluation, including, but not limited to, experience gained in other UN organizations. UNAIDS is not obliged to disclose such information to bidders.

Please note that UNAIDS is not bound to select any of the firms / institutions submitting proposals. Furthermore, since a contract would be awarded in respect of the proposal which is considered most responsive to the needs of the project concerned, due consideration being given to UNAIDS' general principles, including economy and efficiency. UNAIDS does not bind itself in any way to select the firm / institution offering the lowest price. Also see sections below.

UNAIDS reserves the right to

- Award the Contract to a Vendor of its choice, even if its bid is not the lowest
- Award separate Contracts for parts of the work, components or items, to one or more Vendors of its choice, even if their bids are not the lowest
- Accept or reject any Proposal, and to annul the solicitation process and reject all Proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidders and without any obligation to inform the affected bidder or bidders of the grounds for UNAIDS' action.
- Award the Contract on the basis of the Organization's particular objectives
- Not award any Contract at all

UNAIDS also reserves the right to enter into negotiations with one or more bidders of its choice, including but not limited to negotiation of the terms of the Proposal(s), the price quoted in such Proposal(s) and/or the deletion of certain parts of the work, components or items called for under this ITB.

UNAIDS has the right to eliminate bids for technical or other reasons throughout the evaluation process. There is no obligation by UNAIDS to reveal, or discuss with any Vendor, how a Proposal was assessed, or to provide any other information relative to the evaluation process or to state the reasons for elimination to the bidder.

UNAIDS reserves the right at the time of award of contract to modify the scope of services and goods specified in the ITB without any change in base

NOTE: UNAIDS is **acting in good faith** by issuing this ITB. However, this document does not obligate UNAIDS to contract for the supply of any products or services.

3.3 Content of the proposal

The contents of the bidder's Proposal should include, but not necessarily be limited to, the following information listed below:

- a) Fully completed and signed Proposal Submission form.
- b) Documentary evidence that the Bidder is capable of providing the requested services including the following:
 - A brief historical description of the company's involvement in the business and audio conferencing services
 - Information that demonstrate compliance with the requirements listed above in the tables (Table 1 and Table 2).
 - Bidder's schedule and commitment in providing requested service
 - Three (3) references that have been formed for providing similar audio conferencing service

- Information that demonstrate the ability to provide multi-lingual support, minimum to have English, French and Spanish languages.
- Information that demonstrate presence in Africa, Americas, Asia and Europe.

Information which the bidder considers confidential, if any, should be clearly marked confidential.

In order to facilitate the response analysis and evaluation tasks, the financial offer must be made on the format provided in the Proposal Submission form.

Please note the following with regards to your offer:

- o UNAIDS will contract for a **fixed price only**.
- o UNAIDS is exempt from paying VAT.
- o The quote must cover all aspects of the costs.

UNAIDS may, at its discretion, ask any bidder for clarification of any part of its Proposal to assist in the examination, evaluation and comparison of Proposals. The request for clarification and the response shall be in writing. The response shall be construed as an integral part of the original proposal.

4. GENERAL AND CONTRACTUAL CONDITIONS

The contract between UNAIDS and the selected bidder ("the Contract") will, unless otherwise explicitly agreed in writing, include the provisions as set forth in this section, and will otherwise inter alia address the following issues:

- Responsibilities of the selected bidder(s) ("The Contractor(s)") and UNAIDS;
- clear deliverables, timelines and acceptance procedures;
- payment terms tied to the satisfactory completion of the work;
- notices.

The prices payable by UNAIDS for the work to be performed under the Contract shall be fixed for the duration of the Contract and shall be in a UN convertible currency (preferably US Dollars), based on the UN exchange rate of the date of invoice.

The total amount payable by UNAIDS under the Contract may be either a lump sum or a maximum amount. If the option for payment of a lump sum applies, that lump sum is payable in the manner provided, subject to satisfactory performance of the work. If the option for payment of a maximum amount applies:

- the Contract shall include a detailed budget;
- the Contractor shall be held to submit a financial statement together with each invoice;
- any advance payments by UNAIDS shall be used by the Contractor exclusively for the work in accordance with the budget and any unspent balance shall be refunded to UNAIDS;
- payment by UNAIDS shall be subject to satisfactory performance and the acceptance of the Contractor's financial statements; and
- all financial reports shall be subject to audit by or on behalf of UNAIDS, including examination of supporting documentation and relevant accounting entries in the Contractor's books. In order to facilitate financial reporting and audit, the Contractor shall keep systematic and accurate accounts and records in respect of the work.

Unless otherwise specified in the Contract, UNAIDS shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNAIDS shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity as described in the Contract, from any other sources at any time.

4.1 Conditions of Contract

Any and all of the Contractor's (general and/or special) conditions of contract are hereby explicitly excluded from the Contract, i.e., regardless of whether such conditions are included in the Contractor's offer, or printed or referred to on the Contractor's letterhead, invoices and/or other material, documentation or communications.

4.2 Responsibility

The Contractor will be responsible to ensure that the work performed under the Contract meets the agreed specifications and is completed within the time prescribed. The Contractor shall facilitate the operational audit related to the execution of the work and the compliance with the obligations set forth in the Contract, by persons so designated by UNAIDS. In this regard, the Contractor shall make all relevant operational information, without restriction, available to persons so designated by WHO and provide satisfactory explanations to all queries arising in connection therewith.

4.3 Source of Instructions

The Contractor shall neither seek nor accept instructions from any authority external to UNAIDS in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect UNAIDS and shall fulfill its commitments with the fullest regard to the interests of UNAIDS.

4.4 Warranties

The Contractor will warrant and represent to UNAIDS as follows:

- 1) The deliverables shall meet the specifications and shall function in a manner which is fully adequate to meet its intended purpose. The Contractor furthermore warrants that the deliverables shall be error-free, in that the Contractor shall correct any errors in the deliverables, free of charge, within fifteen days after their notification to the Contractor, during a period of at least six months after completion of the work. It is agreed, however, that errors and other defects, which have been caused by modifications to the deliverables made by UNAIDS without agreement of the Contractor are not covered by this paragraph.
- 2) The deliverables shall, to the extent it is not original, only be derived from, or incorporate, material over which the Contractor has the full legal right and authority to use it for the proper implementation of this Contract. The Contractor shall obtain all the necessary licenses for all non-original material incorporated in the deliverables including, but not limited to, licenses for UNAIDS to use any underlying software, application, and operating deliverables included in the deliverables or on which it is based, so as to permit UNAIDS to fully exercise its rights in the deliverables and the software without any obligation on UNAIDS's part to make any additional payments whatsoever to any party.
- 3) The deliverables shall not violate any copyright, patent right, or other proprietary right of any third party and be delivered to UNAIDS free and clear of any and all liens, claims, charges, security interest and any other encumbrances of any nature whatsoever.
- 4) The Contractor, its employees and any other persons and entities used by the Contractor shall not violate any intellectual property rights, confidentiality, right of privacy or other right of any person or entity whomsoever..
- 5) Except as otherwise explicitly provided in this Contract, the Contractor shall at all times provide all the necessary on-site and off-site resources to meet its obligations hereunder. The Contractor shall only use highly qualified staff, acceptable to UNAIDS, to perform its obligations hereunder.
- 6) The Contractor shall take full and sole responsibility for the payment of all wages, benefits and monies due to all persons and entities used by it in connection with the implementation and execution of the Contract, including, but not limited to, the Contractor's employees, permitted subcontractors and suppliers.

The Contractor furthermore warrants and represent that the information provided by it to UNAIDS in response to the RFP and during the bid evaluation process is accurate and complete. The Contractor understands that in the event The Contractor has failed to disclose any relevant information which may have impacted UNAIDS' decision to award the Contract to The Contractor, or has provided false information, UNAIDS will be entitled to rescind the contract with immediate effect, in addition to any other remedies which UNAIDS may have by contract or by law

4.5 Legal Status

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis UNAIDS, and nothing contained in or relating to the Contract shall be construed as establishing or creating an employer/employee relationship between UNAIDS, on the one hand, and the Contractor or any person used by the Contractor in the performance of the work, on the other hand.

Thus the Contractor shall be solely responsible for the manner in which the work is carried out. UNAIDS shall not be responsible for any loss, accident, damage or injury, suffered by the Contractor or persons or entities claiming under the Contractor, arising during or as a result of the implementation or execution of the Contract, including travel, whether sustained on UNAIDS premises or not.

The Contractor shall obtain adequate insurance to cover such loss, accident, injury and damages, before commencing work on the Contract. The Contractor shall be solely responsible in this regard and shall handle any claims for such loss, accident, damage or injury.

4.6 Relation Between the Parties

The Contract does not constitute a partnership between the Parties or does not constitute either Party as the agent of the other.

4.7 Waiver of Breach

The waiver by either Party of any provision or breach of the contract shall not prevent subsequent enforcement of such provision or excuse further breaches.

4.8 Liability

The Contractor hereby indemnifies and holds UNAIDS harmless from and against the full amount of any and all claims and liabilities, including legal fees and costs, which are or may be made, filed or assessed against UNAIDS at any time and based on, or arising out of, breach by the Contractor of any of its representations or warranties under the Contract, regardless of whether such representations and warranties are explicitly incorporated here in or are referred to in any attached Appendices.

4.9 Assignment

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNAIDS.

4.10 Officials not to Benefit

The Contractor warrants that no official of UNAIDS has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

4.11 Indemnification

The Contractor shall indemnify and hold UNAIDS harmless, from and against the full amount of any and all claims and liabilities, including legal fees and costs, which are or may be made, filed or assessed against UNAIDS at any time and based on, or arising out of, the acts or omissions of the Contractor, or the Contractor's employees, officers, agents, partners or sub-contractors, in the performance of the Contract. This provision shall extend, inter alia, to claims and liabilities in the

nature of workmen's compensation, product liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants, partners or sub-contractors.

4.12 Contractor's Responsibility for Employees

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals UNAIDS will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

4.13 Subcontracting

Any intention to subcontract aspects of the Contract must be specified in detail in the proposal submitted. Information concerning the subcontractor, including the qualifications of the staff proposed for use must be covered with same degree of thoroughness as for the prime contractor. No subcontracting will be permitted under the Contract unless it is proposed in the initial submission or formally agreed to by UNAIDS at a later time. In any event, the total responsibility for the Contract remains with the Contractor.

The Contractor shall be responsible for ensuring that any and all subcontracts shall be fully consistent with the Contract, and shall not in any way prejudice the implementation of any of its provisions.

4.14 Place of Performance

The place of performance of the work under the Contract shall be the premises of the contractor.

4.15 Language

The communications relating to the Contract and/or performance of the work there under shall be in English.

4.16 Confidentiality

- 1) Except as explicitly provided in the Contract, the Contractor shall keep confidential all information which comes to its knowledge during, or as a result of, the implementation and execution of the Contract. Accordingly, the Contractor shall not use or disclose such information for any purpose other than the performance of its obligations under the Contract. The Contractor shall ensure that each of its employees and/or other persons and entities having access to such information shall be made aware of, and be bound by, the obligations of the Contractor under this paragraph. However, there shall be no obligation of confidentiality or restriction on use, where: (i) the information is publicly available, or becomes publicly available, otherwise than by any action or omission of the Contractor, or (ii) the information was already known to the Contractor (as evidenced by its written records) prior to becoming known to the Contractor in the implementation and execution of this Contract; or (iii) the information was received by the Contractor from a third party not in breach of an obligation of confidentiality.
- 2) The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on copyright of any document (whether machine-readable or not) to which the Contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract.
- 3) The Contractor may not communicate at any time to any other person, Government or authority external to UNAIDS, any information known to it by reason of its association with UNAIDS which

has not been made public except with the authorization of UNAIDS; nor shall the Contractor at any time use such information to private advantage.

4.17 Title Rights

- 1) All rights pertaining to any and all deliverables under the Contract and the original work product leading thereto, as well as the rights in any non-original material incorporated therein as referred in section 5.4.2 above, shall be exclusively vested in UNAIDS..
- 2) UNAIDS reserves the right to revise the work, to use the work in a different way from that originally envisaged or to not use the work at all.
- 3) At UNAIDS's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist UNAIDS in securing such proprietary rights and transferring them to UNAIDS in compliance with the requirements of applicable law.

4.18 Termination and Cancellation

UNAIDS shall have the right to cancel the Contract (in addition to other rights, such as the right to claim damages):

- 1) In the event the Contractor fails to begin work on the date agreed, or to implement the work in accordance with the terms of the Contract; or
- 2) In the event the progress of work is such that it becomes obvious that the obligations undertaken by the Contractor and, in particular, the time of fulfillment, will not be respected.

In addition, UNAIDS shall be entitled to terminate the Contract (or part thereof), in writing:

- 1) At will with the provision of thirty (30) days prior notice in writing
- 2) With immediate effect (in addition to other rights, such as the right to claim damages), if, other than as provided in the paragraph above, the Contractor is:
 - a. In breach of any of his material obligations under the Contract and fails to correct such breach within a period of thirty (30) days after having received a written notification to that effect from UNAIDS; or
 - b. Adjudicated bankrupt or formally seeks relief of his financial obligations.

4.19 Force Majeure

No party to the Contract shall be responsible for a delay caused by force majeure, that is, a delay caused by reasons outside such party's reasonable control, it being agreed, however, that UNAIDS shall be entitled to terminate the Contract (or any part of the Contract) forthwith if the implementation of the work is delayed or prevented by any such reason for an aggregate of thirty (30) days. Such termination shall be subject to payment of an equitable part of the Contract sum and/or other reasonable charges. In the event of such termination, the Contractor shall, in accordance with the ownership rights referred to in section 4.17 *Title rights*, deliver to UNAIDS all work products and other materials so far produced.

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to UNAIDS, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify UNAIDS of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure.

On receipt of the notice required under this Article, UNAIDS shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

4.20 Surviving Provisions

Those rights and obligations of the Parties as set forth in section 5 that are intended by their nature to survive the expiration or earlier termination of the Contract shall survive indefinitely. This includes, **but is expressly not limited to**, any provisions relating to UNAIDS' right to financial and operational audit, conditions of contract, warranties, legal status and relationship between the parties, breach, liability, indemnification, subcontracting, confidentiality, title rights, use of the UNAIDS and WHO name and emblem, successors and assignees, insurance and liabilities to third parties, settlement of disputes, observance of laws, privileges and immunities, no terrorism or corruption, foreign nationals and compliance with UNAIDS policies

4.21 Use of UNAIDS and WHO name and emblem

Without UNAIDS's prior written approval, the Contractor shall not, in any statement of an advertising or promotional nature, refer to the Contract or its relationship with UNAIDS and/or the World Health Organization (WHO) (which provides the administration of UNAIDS, including its secretariat). In no case shall the Contractor use the name or the emblem of UNAIDS and/or WHO, or any abbreviation thereof, in relation to its business or otherwise.

4.22 Successors and Assignees

The Contract shall be binding upon the successors and assignees of the Contractor and the Contract shall be deemed to include the Contractor's successors and assignees, provided, however, that nothing in the Contract shall permit any assignment without the prior and written approval of UNAIDS.

4.23 Payment

Payment will be made against presentation of an invoice in a UN convertible currency (preferably US Dollars) in accordance with the payment schedule contained in the Contract and subject to UNAIDS's acceptance of satisfactory performance of work. Any payments by UNAIDS to the Contractor shall reflect any tax exemptions to which UNAIDS is entitled by reason of the immunity it enjoys. UNAIDS is exempt from all direct taxes, customs duties and the like and the Contractor shall consult with UNAIDS so as to avoid the imposition of such charges. As regards duties and other indirect taxes, the Contractor shall list such charges on invoices as a separate item and, to the extent required, cooperate with UNAIDS to enable reimbursement thereof.

4.24 Title to Equipment

Title to any equipment and supplies that may be furnished by UNAIDS shall rest with UNAIDS and any such equipment shall be returned to UNAIDS at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNAIDS, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNAIDS for equipment determined to be damaged or degraded beyond normal wear and tear.

4.25 Insurance and Liabilities to Third Parties

The Contractor shall provide and thereafter maintain:

- (i) insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (ii) all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- (iii) liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the performance of work under the Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees partners or sub-contractors performing work in connection with the Contract.

Except for the workmen's compensation insurance, the insurance policies under this section shall:

- a) Name UNAIDS as additional insured;
- b) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against UNAIDS;
- c) Provide that UNAIDS shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage.

The Contractor shall, upon request, provide UNAIDS with satisfactory evidence of the insurance required under this section.

4.26 Settlement of Disputes

Any dispute relating to the interpretation or application of the contract shall, unless amicably resolved, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

4.27 Observance of the Law

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of the Contract.

4.28 Authority to Modify

No modification or change in the Contract, no waiver of any of its provisions or any additional contractual relationship of any kind shall be valid and enforceable unless signed by a duly authorized representative of both parties.

4.29 Privileges and Immunities

Nothing in or relating to this Contract shall:

- be deemed a waiver of any of the privileges and immunities of UNAIDS and/or the World Health Organization in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 or otherwise under any national or international law, convention or agreement.

- Be construed as submitting UNAIDS and/or WHO to any national jurisdiction

4.30 No Terrorism or Corruption

The Contractor warrants that:

(i) it is not and will not be involved in, or associated with, any person or entity involved in terrorism, that it will not make any payment to any such person or entity and that it will not enter into any employment or subcontracting relationship with any such person or entity; and

(ii) it shall not engage in any illegal, corrupt, fraudulent, collusive or coercive practices in connection with execution of the Contract.

The Contractor agrees that breach of this provision is a breach of an essential term of the Contract.

Any payments used by the Contractor for the promotion of any terrorist activity or any illegal, corrupt, fraudulent, collusive or coercive practice shall be repaid to UNAIDS without delay

4.31 Personnel

4.31.1 Approval of Contractor Personnel

UNAIDS reserves the right to approve any employee, subcontractor or agent furnished by the Contractor and Contractor's consortium partners for the performance of the work under the Contract (hereinafter jointly referred to as "Contractor Personnel"). All Contractor Personnel must have appropriate qualifications, skills and levels of experience and otherwise be adequately trained to perform the work. UNAIDS reserves the right to undertake an interview process as part of the approval of Contractor Personnel.

The Contractor acknowledges that the qualifications, skills and experience of the Contractor personnel proposed to be assigned to the project are material elements in UNAIDS's engaging the Contractor for the project. Therefore, in order to ensure timely and cohesive completion of the project, both parties intend that Personnel initially assigned to the project continue through to project completion. Once an individual has been approved and assigned to the project, such individual will not, in principle, thereafter be taken off the project by the Contractor to other duties. Circumstances may arise, however, which necessitate that Personnel be substituted in the course of the work e.g. in the event of promotions, termination of employment, sickness, vacation or other similar circumstances, at which time a replacement of comparable qualifications, skills and experience may be assigned to the project, subject to approval of UNAIDS.

UNAIDS may refuse access to or require replacement of any Contractor Personnel if such individual renders, in the sole judgment of UNAIDS, inadequate or unacceptable performance, or if for any other reason UNAIDS finds such individual does not meet its his/her security or responsibility requirements. The Contractor shall replace such an individual within fifteen (15) business days of receipt of written notice from UNAIDS. The replacement will have the required qualifications, skills and experience and will be billed at a rate that is equal to or less than the rate of the individual being replaced.

4.31.2 Project Managers

Each party shall appoint a qualified project manager ("Project Manager") who shall serve as such party's primary liaison throughout the course of the project. The Project Manager shall be authorized by the respective party to answer all questions posed by the other party and convey all decisions made by such party during the course of the project and the other party shall be entitled to rely on such information as conveyed by the Project Manager.

The Project Managers shall meet on regular basis in order to review the status of the project and provide UNAIDS with reports. Such reports shall include detailed time distribution, information in the form requested by UNAIDS and shall cover problems, meetings, progress and status against the implementation timetable.

4.31.3 Foreign Nationals

The Contractor shall verify that all Contractor Personnel is legally entitled to work in the country or countries where the work is to be carried out. UNAIDS reserves the right to request the Contractor to provide UNAIDS with adequate documentary evidence attesting this for each Contractor Personnel. Each party hereby represents that it does not discriminate against individuals on the basis of race, gender, creed, national origin, citizenship.

4.31.4 Compliance with UNAIDS Policies

The Contractor shall at all times comply with and ensure that the Contractor and each of its subcontractors and their employees and agents comply with any applicable laws and regulations and any UNAIDS policies and reasonable written direction and procedures relating to: (i) occupational health and safety, (ii) security and administrative requirements, including, but not limited to computer network security procedures, (iii) sexual harassment, (iv) privacy, (v) general business conduct and disclosure, (vi) conflicts of interest and (vii) business working hours and official holidays.

In the event that the Contractor becomes aware of any violation or potential violation by the Contractor, its subcontractor or any of their employees or agents, of any laws, regulations, UNAIDS policies or of other UNAIDS reasonable written directions and procedures, the Contractor shall immediately notify UNAIDS of such violation. UNAIDS, in its sole discretion, shall determine the course of action to remedy such violation or prevent such potential violation, in addition to any other remedy available to UNAIDS under the Contract or otherwise.

4.31.5 Ethical Behaviour

UNAIDS, the Contractor and each of the Contractor's partners, subcontractors and their employees and agents shall adhere to the highest ethical standards in the performance of the Contract. In this regard, the Contractor shall also ensure that neither Contractor nor its partners, subcontractors, agents or employees will engage in activities involving child labor, trafficking in arms, promotion of tobacco or other unhealthy behavior, or sexual exploitation or discrimination.

4.31.6 Engagement of Third Parties and use of In-house Resources

The Contractor acknowledges that UNAIDS may elect to engage third parties to participate in or oversee certain aspects of the project and that UNAIDS may elect to use its in-house resources for the performance of certain aspects of the project. The Contractor shall at all times cooperate with and ensure that the Contractor and each of its partners, subcontractors and their employees and agents cooperate, in good faith, with such third parties and with any UNAIDS in-house resources.