

GENERAL CONDITIONS- APWs

1. **Relationship of the Parties.** It is understood that the execution of the work does not create any employer/employee relationship. In this respect, the Contractor shall be solely responsible for the manner in which the work is carried out. Thus, UNAIDS shall not be responsible for any loss, accident, damage or injury suffered by any person whatsoever arising in or out of the execution of this work, including travel. Insurance coverage for any such loss, accident, damage or injury will be the Contractor's responsibility, including, where appropriate, insurance coverage for persons used by the Contractor to carry out the work.

Without prejudice to the foregoing, UNAIDS may in certain cases provide insurance coverage for the Contractor for travel in UNAIDS vehicles. UNAIDS declines all responsibility for non-payment by the insurance company of all or part of a claim submitted by or for the Contractor for any accident. In case of such non-payment, the Contractor shall be obliged to immediately reimburse all or part of an advance which UNAIDS may have paid to the Contractor.

2. **Rights.** All rights in the work, including ownership of the original work and copyright thereof, shall be vested in UNAIDS, which reserves the right (a) to revise the work, (b) to use the work in a different way from that originally envisaged, or (c) not to publish or use the work.
3. **Warranties.** The contractor warrants and represents to UNAIDS as follows:
- (i) the deliverables shall meet the specifications called for in the agreement and shall be fully adequate to meet their intended purpose;
 - (ii) the deliverables shall be error-free. 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 one year 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;
 - (iii) the deliverables shall, to the extent they are 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 the 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 without any obligation on UNAIDS's part to make any additional payments whatsoever to any party;
 - (iv) the deliverables shall not violate any copyright, patent right, or other proprietary right of any third party and shall be delivered to UNAIDS free and clear of any and all liens, claims, charges, security interests and any other encumbrances of any nature whatsoever; and
 - (v) if artificial intelligence has been used in the development of the work/deliverables, all sources have been documented, and the necessary permissions have been obtained from owners of any copyrighted materials used.

4. **Indemnification.**

- (i) 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, breach by the contractor of any of its representations or warranties under the agreement, including but not limited to the representations and warranties made under general condition 3 above, regardless of whether such representations and warranties are explicitly incorporated herein or are referred to in any attached Annexes.
- (ii) 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 agreement. 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.

5. **Payment and use of funds.** If the option, on the face of this agreement, for payment of a fixed sum applies, that sum is payable in the manner provided, subject to proper performance of the work.

If the option for payment of a maximum amount applies:

- (i) the funds shall be used exclusively for the work specified in this agreement and any unspent balance shall be refunded to UNAIDS. In this latter case, any financial statement required shall reflect expenditures according to the relevant main categories of expenditure; and
- (ii) to the extent the Contractor is required to purchase any goods and/or services in connection with its performance of this agreement, the Contractor shall ensure that such goods and/or services shall be procured in accordance with the principle of best value for money. "Best value for money" means the responsive offer that is the best combination of technical specifications, quality, and price.

Contractors who are legal entities (hereinafter referred to as "Company Contractors") must submit an invoice to UNAIDS in order to receive payment. Invoices are not required from Contractors who are individuals (hereinafter referred to as "Individual Contractors") who can be paid upon receipt by UNAIDS of the required deliverables (including any required technical reports and financial statements) in a satisfactory manner.

The invoice from Company Contractors shall reflect any tax exemption to which UNAIDS and/or WHO may be entitled by reason of the immunity it enjoys. UNAIDS and WHO, which provides administrative services to UNAIDS, are, as a general rule, exempt from all direct taxes, custom duties and the like, and the Company Contractor will consult with UNAIDS so as to avoid the imposition of such charges with respect to this agreement and the work performed hereunder. As regards excise duties and other taxes imposed on the provision of goods and services (e.g., value added tax), the Company Contractor agrees to verify in consultation with UNAIDS whether in the country where the tax would be payable, UNAIDS and/or WHO are exempt from such tax at the source or entitled to claim reimbursement thereof. If UNAIDS and/or WHO are exempt from value added tax, this shall be indicated on the invoice, whereas if UNAIDS and/or WHO can claim reimbursement thereof, the Company Contractor agrees to list such charges on its invoices as a separate item and, to the extent required, cooperate with UNAIDS and/or WHO to enable reimbursement thereof.

UNAIDS and/or WHO shall have no responsibility whatsoever for any taxes, duties or other contributions payable by Contractors. Payment of any taxes, duties and other contributions which a Contractor may be required to pay shall be the sole responsibility of the Contractor who shall not be entitled to any reimbursement thereof by UNAIDS and/or WHO.

6. **Satisfactory performance.** If the work is not satisfactorily completed (and, where applicable, delivered) by the date fixed in this agreement and/or if any financial statement required is not satisfactorily submitted to UNAIDS in accordance with general condition 7 below, UNAIDS may specify an additional period within which this agreement must be satisfactorily performed. Normally such additional period should be of at least one week's duration, unless it is clear from the agreement that it was particularly important that the performance be completed on the date specified, in which case UNAIDS may specify a shorter period or refuse to grant any additional period at all. In the event that the work is not satisfactorily completed and delivered on the date fixed, or any additional period granted by UNAIDS and/or if any financial statement required is not satisfactorily submitted to UNAIDS in accordance with general condition 7 below, UNAIDS may immediately terminate this agreement (in addition to the other remedies), in accordance with general condition 15 below (without being held to grant the Contractor an additional period of thirty (30) days to perform, complete and deliver the work).
7. **Completion and delivery.** The Contractor shall complete and deliver the work to UNAIDS (including any technical report that may be required) by the date fixed in this agreement or any additional period that may be granted by UNAIDS under general condition 6 above. Any financial statement required shall be submitted within thirty (30) days thereafter at the latest. If the payment schedule on the face of this agreement provides for a final payment upon completion of the work, this final payment shall be made only after satisfactory receipt of all deliverables called for under this agreement, including any technical report and financial statement.
8. **Certification of status of individual Contractors.** Each Individual Contractor certifies that he/she does not presently, and will not during the term of this agreement, hold any form of contractual relationship with UNAIDS and/or WHO (including any UNAIDS and/or WHO regional, country or project office, as well as any programme. Center or other entity where staff is subject to WHO Staff Regulations and Rules) that confers upon the Individual Contractor the status of a UNAIDS and/or WHO staff member. The Individual Contractor understands that a false statement may result in the cancellation of any or all contracts, and/or the withdrawal of any offer of a contract with UNAIDS and/or WHO.

The contractor certifies that former UNAIDS staff members who accepted a separation by mutual agreement (SMA) are not assigned to projects involving UNAIDS for a period of five (5) years following their separation from the Organization.

9. **Research involving human participants.** If and to the extent the work to be performed under this agreement includes surveys or interviews involving human participants (hereinafter referred to as "research"), the following shall apply:

9.1 Ethical Aspects

It is the responsibility of the Contractor to safeguard the rights and welfare of human subjects involved in research performed under this agreement, in accordance with the appropriate national code of ethics or legislation, if any, and in the absence thereof, the Helsinki Declaration and any subsequent amendments. Prior to commencing any such research, the Contractor shall ensure that (a) the rights and welfare of the subjects involved in the research are adequately protected, (b) freely given informed consent has been obtained for all participants, (c) the balance between risk and potential benefits involved has been assessed and deemed acceptable by a panel of independent experts appointed by the Contractor, and (d) any special national requirements have been met.

9.2 Regulatory Requirements

It is the responsibility of the Contractor to comply with the relevant national regulations pertaining to research involving human subjects.

9.3 Protection of Subjects

Without prejudice to obligations under applicable laws, the Contractor shall make appropriate arrangements to eliminate or mitigate any negative consequences to subjects or their families resulting from the conduct of the research under this agreement. Such arrangements shall to the extent feasible include appropriate counselling, medical treatment, and financial relief. The Contractor furthermore undertakes to protect the confidentiality of the information relating to the possible identification of subjects involved in the research.

10. **Compliance with WHO/UNAIDS Policies.** By entering into this agreement, the Contractual Partner acknowledges that it has read, and hereby accepts and agrees to comply with the WHO/UNAIDS Policies (as defined below). In connection with the foregoing:

- the Company Contractual Partners shall take appropriate measures to prevent and respond to any violations of the standards of conduct, as described in the WHO/UNAIDS Policies, by their employees and any other persons engaged by them to perform the work under the agreement; and
- Individual Contractual Partners shall not engage in any conduct that would constitute a violation of the standards of conduct, as described in the WHO/UNAIDS Policies.

Without limiting the foregoing, the Contractual Partner shall promptly report to UNAIDS, in accordance with the terms of the applicable WHO/UNAIDS Policies, any actual or suspected violations of the WHO/UNAIDS Policies of which the Contractual Partner becomes aware. For purposes of this agreement, the term "WHO/UNAIDS Policies" means collectively: (i) the WHO Code of Ethics and Professional Conduct; (ii) Policy on the Preventing and Addressing Sexual Misconduct (PASM) (iii) the WHO Policy on Preventing and Addressing Abusive Conduct; (iv) the WHO Code of Conduct for responsible Research; (v) the WHO Policy on Whistleblowing and Protection Against Retaliation; (vi) the UNAIDS Secretariat Ethics Guide; (vii) the UN Standards of Conduct for International Civil Service; and (viii) the UN Supplier Code of Conduct, in each case, as amended from time to time and which are publicly available on the WHO website at the following links: <http://www.who.int/about/finances-accountability/procurement/en/> for the UN Supplier Code of Conduct and at <http://www.who.int/about/ethics/en/> for the other WHO Policies.

11. **Zero tolerance for sexual exploitation and abuse.** WHO/UNAIDS has zero tolerance towards sexual exploitation and abuse. In this regard, and without limiting any other provisions contained herein:

- each Company Contractual Partner warrants that he/she will: (i) take all reasonable and appropriate measures to prevent sexual exploitation or abuse as described in the WHO Policy on Sexual Exploitation and Abuse Prevention and Response by any of its employees and any other persons engaged by it to perform the work under the agreement; and (ii) promptly report to UNAIDS and respond to, in accordance with the terms of the Policy, any actual or suspected violations of the Policy of which the Company Contractual Partner becomes aware; and
- each Individual Contractual Partner warrants that he/she will: (i) promptly complete all online training required by UNAIDS; (ii) not engage in any conduct that would constitute sexual exploitation or abuse as described in the WHO Policy on Sexual Exploitation and Abuse Prevention and Response, and/or sexual harassment and other types of abusive conduct as described in the WHO Policy on Preventing and Addressing Abusive Conduct; and (iii) promptly report to UNAIDS, in accordance with the terms of the respective Policies, any actual or suspected violations of either Policy of which the individual Contractor becomes aware.

12. **Tobacco/Arms Related Disclosure Statement.** (Company) Contractors may be required to disclose relationships they may have with the tobacco and/or arms industry through completion of the WHO Tobacco/Arms Disclosure Statement. In the event WHO/UNAIDS requires completion of this Statement, the (Company) Contractor undertakes not to permit work on the agreement to commence, until UNAIDS has assessed the disclosed information and confirmed to the (Company) Contractor in writing that the work can commence.

13. **Anti-terrorism and UN sanctions; Fraud and Corruption.** The Contractor warrants for the entire duration of the agreement that:

- (i) it is not and will not be involved in, or associated with, any person or entity associated with terrorism, as designated by a UN Security Council sanctions regime, that it will not make any payment or provide any other support to any such person or entity and that it will not enter into any employment or subcontracting relationship with any such person or entity;
- (ii) it shall not engage in any illegal, corrupt, fraudulent, collusive or coercive practices (including bribery, theft and other misuse of funds) in connection with the execution of the agreement; and
- (iii) the Contractor shall take all necessary precautions to prevent the financing of terrorism and/or any illegal corrupt, fraudulent, collusive, or coercive practices (including bribery, theft, and other misuse of funds) in connection with the execution of the agreement.

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.

14. **Breach of essential terms.** The Contractor acknowledges and agrees that each of the provisions of general conditions 8, 9, 10 and 11 above constitutes an essential term of this agreement, and that in case of breach of any of these provisions, UNAIDS may, in its sole discretion, decide to:

- (i) terminate this agreement, and/or any other contract concluded by UNAIDS with the Contractor, immediately upon written notice to the Contractor, without any liability for termination charges or any other liability of any kind; and/or
- (ii) exclude the Contractor from participating in any ongoing or future tenders and/or entering into any future contractual or collaborative relationships with UNAIDS.

UNAIDS shall be entitled to report any violation of such provisions to UNAIDS's governing board, other UN agencies, and/or donors.

15. **Termination.**

- (i) UNAIDS may terminate this agreement or any part thereof with immediate effect (in addition to any other rights or remedies to which UNAIDS may be entitled, including the right to claim damages), on written notice to the Contractor if the Contractor is:
 - (i) in breach of any material obligation(s) under this agreement and, to the extent such breach is capable of being remedied, fails to correct such breach within a period of thirty (30) days after having received a written notification to that effect from UNAIDS; or
 - (ii) adjudicated bankrupt or formally seeks relief of its financial obligations.
- (ii) UNAIDS may terminate this agreement at any time by providing written notice to the contractor in any case in which the mandate of UNAIDS applicable to the performance of this agreement or the funding of UNAIDS applicable to the agreement is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by this agreement, upon sixty (60) days' advance written notice to the contractor, UNAIDS may terminate this agreement without having to provide any justification thereof. The contractor shall be entitled to be paid for the work satisfactorily performed by the contractor in accordance with this agreement prior to the effective date of termination.

16. **Use of UNAIDS name and emblem.** Without UNAIDS' prior written approval, the Contractor shall not, in any statement or material of an advertising or promotional nature, refer to this agreement or the Contractor's relationship with UNAIDS, or otherwise use the name (or any abbreviation thereof) and/or emblem of the **Joint United Nations Programme on HIV/AIDS (UNAIDS)**.

17. **Publication of agreement.** Subject to considerations of confidentiality, UNAIDS may acknowledge the existence of this agreement to the public and publish and/or otherwise publicly disclose the Contractor's name and for Company Contractors, the country of incorporation, general information with respect to the work described herein and the agreement's value. Such disclosure will be made in accordance with UNAIDS' Information Disclosure Policy and shall be consistent with the terms of this agreement.

- 18. Audit.** UNAIDS may request a financial and operational review or audit of the work performed by Company Contractors under this agreement, to be conducted by UNAIDS and/or parties authorized by UNAIDS, and the Company Contractor undertakes to facilitate such review or audit. This review or audit may be carried out at any time during the implementation of the work performed under this agreement, or within five years of completion of the work. In order to facilitate such financial and operational review or audit, the Company Contractor shall keep accurate and systematic accounts and records in respect of the work performed under this agreement. Similarly, UNAIDS may initiate an investigation, to be conducted by UNAIDS and/or parties authorized by UNAIDS, into credible allegations of fraudulent and corrupt practices and other forms of misconduct (including, but not limited to, sexual exploitation, harassment and other types of abusive conduct) based on information received in accordance with its respective policies, procedures and rules.

In this context, the Company Contractor shall make available, without restriction, to UNAIDS and/or parties authorized by UNAIDS: (i) the Company Contractor's books, records and systems (including all relevant financial and operational information) relating to this agreement; and (ii) reasonable access to the Company Contractor's premises and personnel.

The Company Contractor shall provide satisfactory explanations to all queries arising in connection with the afore-mentioned audit and access rights. UNAIDS may request the Company Contractor to provide complementary information about the work performed under this agreement that is reasonably available, including the findings and results of an audit (internal or external) conducted by the Company Contractor and related to the work performed under this agreement.

19. Confidentiality.

- (i) Except as explicitly provided in the agreement, the contractor shall keep confidential all information which comes to its knowledge during, or as a result of, the performance of work under the agreement. Accordingly, the contractor shall not use or disclose such information for any purpose other than the performance of its obligations under the agreement. 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 general condition. However, there shall be no obligation of confidentiality or restriction on use, where: (a) the information is publicly available, or becomes publicly available, otherwise than by any action or omission of the contractor, or (b) 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 the agreement; or (c) the information was received by the contractor from a third party not in breach of an obligation of confidentiality.
- (ii) 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 the agreement.
- (iii) 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, benefit or gain, including but not limited to trading or having others trading in securities on the contractor's behalf, giving trading advice or providing information to third parties for trade in securities.

- 20. Surviving provisions.** Those provisions of this agreement that are intended by their nature to survive its expiration or earlier termination shall continue to apply.

- 21. Settlement of disputes.** Any matter relating to the interpretation or application of this agreement which is not covered by its terms shall be resolved by reference to Swiss law. Any dispute arising from or relating to the agreement, including its validity, interpretation or application, shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, within thirty (30) days, 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, within thirty (30) days of written communication of the intent to commence arbitration, with the Rules of Arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

- 22. Privileges and immunities.** Nothing contained in or relating to this agreement shall constitute or be deemed to constitute a waiver of any of the privileges and immunities enjoyed by UNAIDS and/or WHO and/or as submitting UNAIDS and/or WHO to any national court jurisdiction.