

Summary of Certain Contract Terms and Conditions

The contract entered into under this RFP (the “Contract”) will include (without limitation) the provisions described in this Annex F.

1. UNHCR General Conditions of Contract for the Provision of Services

The Contract will incorporate the terms and conditions of the UNHCR General Conditions of Contract for the Provision of Services, a copy of which is attached to this RFP as Annex E.

2. UN Supplier Code of Conduct

The Contract will incorporate the terms and conditions of the UN Supplier Code of Conduct, a copy of which is attached as Annex D UN Supplier Code of Conduct to this RFP.

3. Contract Documents; Order of Priority

The Contract will include (without limitation) the following documents and in the following order of priority: (a) the main contract document; (b) the UNHCR General Conditions for the Provision of Services; (c) the Terms of Reference and other annexes to the RFP, modified as appropriate for a final contract; and (e) the UNHCR tender documents.

4. Performance of Services

The contractor will perform its obligations in accordance with the requirements of the Contract, applicable laws, the highest degree of skill, care, prudence, supervision, diligence, foresight, quality control, timeliness and quality management, as well as best generally accepted industry processes, techniques and materials. The contractor will adhere to UNHCR’s policies, mutually agreed project management and IT support practices and the contractor’s own best practices which do not conflict with the other requirements of the Contract. The contractor will perform all services, processes and/or functions that relate to, or are incidental, ancillary or necessary for, the proper performance of its obligations and will implement and maintain a continuous improvement and optimization process to ensure that UNHCR receives, at all times, high quality services and value for money. The contractor will perform its obligations in accordance with the time plan, milestones or other schedules set forth in the Contract or, in the absence of an applicable schedule, within a reasonable time. The contractor will provide, at its own expense, all personnel, equipment, supplies, materials, tools, transportation and other facilities required for the provision of the services and the performance of its obligations under the Contract.

5. Review of Performance; Acceptance

UNHCR will have the right to review all services and deliverables provided by the contractor, at all reasonable places and times. UNHCR will perform such review in a manner that will not unduly hinder the performance by the contractor of its obligations under the Contract. The contractor will cooperate with all such reviews of performance by UNHCR, at no cost or expense to UNHCR.

With respect to deliverables (including any software, software extensions or documentary deliverables) and group of deliverables constituting a milestone:

- (a) UNHCR will issue a written acceptance certificate if it determines that the deliverable(s) conform to the applicable requirements and specifications. UNHCR will also be entitled to issue partial acceptance certificates in which certain deliverables are identified as accepted and certain deliverables are identified as rejected.

- (b) If UNHCR rejects the deliverable(s), UNHCR will notify the contractor in writing together with a description of the deficiencies of the deliverable. The contractor will promptly and at no cost to UNHCR, remedy the deliverable(s) and provide the revised deliverable(s) to UNHCR for review.
- (c) UNHCR will be entitled to require a rectification plan (as per Paragraph 7 below) if, after the third time the deliverable or group of deliverables constituting a milestone is provided to UNHCR, the deliverable or group of deliverables still fails to comply with the applicable requirements and specifications.

With respect to services provided by the contractor which do not conform to the requirements under the Contract, the following will apply:

- (a) If UNHCR determines that the improper performance of the services can be remedied by way of re-performance or other corrective measures by the contractor, UNHCR may request the contractor to take, and the contractor will take, at no cost or expense to UNHCR, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed services.
- (b) If the contractor does not promptly take corrective measures or if UNHCR reasonably determines that the contractor is unable to remedy the improper performance in a timely manner, UNHCR will have the right to engage, at the cost and expense of the contractor, a substitute service provider pursuant to UNHCR's step-in rights.

The above-described procedures are without prejudice to UNHCR's other rights and remedies under the Contract.

6. Liquidated Damages

If the entire project is not completed and accepted by the completion date agreed during the initial phase of the project, UNHCR may, at its sole option, demand liquidated damages for delay. The liquidated damages will equal 1% of the total fees related to the Terms of Reference for each seven calendar days of delay. The total amount of liquidated damages will not exceed 10% of the total fees related to the Terms of Reference.

In the event of the occurrence of events outside the reasonable control and sphere of influence of the contractor and which have or are reasonably likely to cause the contractor to fail to meet the completion date, UNHCR will issue a written extension certificate to specify an extension of a completion date by the appropriate number of days.

Liquidated damages will be payable by the contractor, upon UNHCR's demand, by virtue of the sole fact of the delay without the need for any previous notice or any arbitral proceedings, or proof of damage, which will in all cases be considered as ascertained. Any termination of the Contract will have no effect on UNHCR's right to claim liquidated damages. UNHCR will have the right to deduct any liquidated damages to which it is entitled from any monies due from UNHCR to the contractor, or to recover the same as a debt due from the contractor. Any demand for liquidated damages will be without prejudice to UNHCR's other rights and remedies under the Contract.

7. Rectification Plan

In the event of (i) a delay or failure in performance of a contractual milestone or a fixed date of performance, including with respect to the provision of services or deliverables, (ii) the third rejection of a deliverable or group of deliverables constituting a milestone as described in Paragraph 5 above or (iii) any other material default or non-performance by the contractor that is capable of remedy, then the following will apply (including where the contractor disputes its responsibility for any such event):

- (a) Upon request of UNHCR, the contractor will submit a draft rectification plan to UNHCR for review. The draft rectification plan will set out:

- full details of the event, including a root cause analysis.
 - the actual or anticipated effect of the event.
 - the steps which the contractor proposes to take to rectify the event and to prevent a similar event from recurring.
 - a binding timetable for the implementation of such steps.
- (b) UNHCR may reject or require modification to the draft rectification plan by notice to the contractor if UNHCR reasonably considers that it is inadequate, including for the following reasons:
- the details provided are insufficient and do not permit a proper evaluation.
 - proposed timelines take too long to complete.
 - proposed actions not remedy the event in a manner which is acceptable to UNHCR.
 - proposed actions will not prevent reoccurrence of a similar event.
- (c) If UNHCR agrees to a rectification plan, the contractor will immediately commence performance and will implement the actions set out in the rectification plan, including in accordance with the timetables set out therein.

The above-described procedures are without prejudice to UNHCR's other rights and remedies under the Contract, except that for so long as the contractor is in compliance with its obligations under the rectification plan, UNHCR will not be entitled to terminate the Contract or to exercise its step-in rights on the grounds of the event or events giving rise to the rectification plan.

8. Step-In Rights

UNHCR will have the right to engage a substitute “step-in” service provider in the event of the contractor's failure to comply with a rectification plan which results in a material hindrance, degradation, delay or other material adverse effect upon the completion of the project in accordance with the contractual requirements.

In such event, UNHCR will not be liable for any fees or other payments to the contractor, except for deliverables provided in accordance with the requirements of the Contract and the contractor will bear and/or reimburse UNHCR for all costs relating to the engagement of a step-in service provider. The contractor will cooperate with UNHCR and the step-in service provider at no additional charge, including transferring information, documents, know-how and granting intellectual property right to the extent necessary for the performance by the step-in service provider. UNHCR's step-in rights are without prejudice to UNHCR's other rights and remedies under the Contract.

9. Early Warning Notice

Without prejudice to contractor's obligations under the Contract, the contractor will provide UNHCR with an “early warning notice” in writing immediately on becoming aware that it will not be able to perform, or has not performed, its obligations in accordance with the terms of the Contract. The early warning notice will provide as much detail as is reasonably available to the contractor so as to describe the affected elements of its obligations, the reason for the disruption and the steps the contractor will undertake to prevent the disruption and/or mitigate the effects of the disruption. The contractor will provide regular status updates and will, in any event, immediately notify UNHCR in the event of a material change in circumstances. Unless expressly permitted under the Contract or agreed in writing by UNHCR by an express written waiver, an early warning notice will not excuse the contractor of any responsibilities or release it of any obligations.

10. Relief Events

Except as expressly stated in the Contract, UNHCR will have no obligation to provide any assistance to the contractor in performing its obligations. The contractor will promptly give notice to UNHCR if a failure by UNHCR to comply with its obligations reasonably may have an adverse impact on the provision of services and deliverables under the Contract. If after receipt and acknowledgment of the validity of such notice, UNHCR does not remedy the failure within a reasonable time, then the contractor will be allowed an extension of time with respect to the performance of its obligations identified in such notice. This extension of time will constitute the contractor's sole and exclusive grounds for excuse for failure to meet the obligations identified in such notice. In no event will UNHCR be liable for breach or any fees, charges, expenses, losses, damages or any other financial liability connected with such a failure, unless expressly agreed to in writing by an authorized UNHCR representative.

11. Intellectual Property

In addition to, and without any limitation of, Article 11 ('Copyrights, Patents and Other Proprietary Rights') of the UNHCR General Conditions for the Provision of Services, the following provisions will apply:

UNHCR will own all right, title and interest (including intellectual property rights) in custom software or other custom deliverables developed under the Contract.

The contractor will grant or will procure the granting to UNHCR of all intellectual property rights or licenses necessary for UNHCR to enjoy full and unrestricted use of the deliverables. Licenses will be worldwide, perpetual, royalty-free and non-exclusive.

The contractor will provide customary representations, warranties and undertakings with respect to such software and other deliverables.

With respect to software, the contractor will provide support and maintenance at no additional cost.

The contractor will keep and maintain all computer code (in object and source code form) and other necessary records with respect to custom software and other custom deliverables developed under the Contract. Such source code and records will, at all times, be available to and remain the sole property of UNHCR and will be delivered to UNHCR upon request.

12. UNHCR Managed Services Providers

UNHCR has engaged and will have the right to engage one or more third parties as UNHCR managed services providers with ~~respect~~ respect to services that may be similar to, related to or interconnected with the provision by the contractor of the deliverables and services under the Contract. At the request of UNHCR, the contractor will enter into a cooperation agreement with UNHCR and any such managed services providers designated UNHCR in order to assure the proper and efficient delivery of service to UNHCR. The contractor will at all times work together in good faith with such managed services providers and perform its obligations under any such cooperation agreement.

13. Contractor's Representations and Warranties

The contractor will provide customary representations and warranties regarding capacity and authority, litigations, consents and authorizations, intellectual property and the accuracy of information. The contractor will also represent and warrant that it has conducted all necessary due diligence regarding the full scope and volume of the work involved in performing the services and that in submitting its bid and entering into the Contract, it has not relied on any representations or other information, except as provided by UNHCR as part of the RFP.

14. Data Security

The contractor will acknowledge and agree that UNHCR data is subject to the privileges and immunities accorded to the United Nations, including UNHCR and that, as a result, any such UNHCR data is inviolable and cannot be disclosed, provided or otherwise made available to, or searched, confiscated or otherwise be interfered with by any party, unless such immunity is expressly waived in writing by UNHCR. The contractor will ensure that UNHCR data is stored exclusively in countries that have recognized the privileges and immunities of the United Nations pursuant to the General Convention.

In the event that any third party requests access to UNHCR data, the request will be immediately transmitted to UNHCR. To the extent the contractor may be required to disclose or provide access to such data and information, the contractor will notify UNHCR of such requirement prior to disclosure, and will undertake diligent efforts to avoid and/or limit disclosure and comply with consultation and other requirements under the Contract.

The contractor will agree to warranties and undertakings regarding, inter alia, (i) its technical and organization measures with respect to information security and with respect to destruction, loss, disclosure or access to data; and (ii) actions in the event of a data breach or a request by a governmental authority for information.

The contractor will promptly notify UNHCR of any actual, threatened or suspected unauthorized access to, disclosure of, use of or acquisition of UNHCR data (a “data breach”) and immediately, at the contractor’s cost and expense, implement all actions necessary to mitigate any deleterious effect of such data breach, correct, remedy or cure such data breach, restore UNHCR’s access to the service and prevent similar data breaches from occurring in the future.

For purposes of Article 7.1 of the UNHCR General Conditions for the Provision of Services, UNHCR data will be deemed to constitute property of UNHCR and, for the avoidance of doubt, the contractor will be liable under such Article 7.1 for all loss, destruction or damages caused by an intentionally malicious act or omission of personnel of the contractor or a subcontractor.

The contractor will adhere to UNHCR’s Policy on the Protection of Personal Data of Persons of Concern to UNHCR and, if deemed necessary by UNHCR in applying this Policy, sign a Supplemental Agreement with respect to the protection of personal data of persons of concern.

15. Contractor Personnel

In addition to, and without any limitation of, Article 3 (‘Responsibility for Employees’) of the UNHCR General Conditions for the Provision of Services, the following provisions will apply:

The contractor will assign the key personnel to the performance of the Contract for the entire duration of the project and will only remove or change the key personnel with the prior written consent of UNHCR, except for serious illness, incapacity or death. The contractor will promptly notify UNHCR if any key personnel is not available for any reason. In the event UNHCR agrees to the replacement of a key personnel or in the event of a replacement of a key personnel due to serious illness, incapacity or death, the Contractor will ensure that any proposed replacement possesses equivalent or superior skills, qualifications and experience and will provide UNHCR with information (including curriculum vitae) necessary for UNHCR to evaluate the proposed replacement. If UNHCR rejects a proposed replacement, the contractor will promptly propose an alternative replacement. Key personnel refers to the individuals identified in the Contractor Technical Proposal for the roles of Project Manager, Technical Lead and Functional Lead, unless otherwise agreed by UNHCR.

The qualifications of any personnel assigned to the performance of the Contract will be substantially the same, or better, than the qualifications of those personnel specified in the Contractor Technical Proposal or in any other proposal submitted by the contractor for the provision of services or deliverables.

The contractor will take reasonable measures to safeguard its personnel, protect property and safeguard against sabotage, damage, and theft of all material, supplies, and equipment, including UNHCR-furnished equipment and supplies.

The contractor will comply with all applicable international standards and local labor laws, ordinances, rules, and regulations pertaining to the employment of local and international staff in connection with the performance of its obligations under the Contract, including regulations associated with the payment of the employer's portions of income tax, insurance, social security or other similar payments. The contractor will be responsible for obtaining, at its own cost and expense, all licenses, permits and authorizations from governmental or other authorities necessary for the performance of the contractor's obligations under the Contract, including all entry/exit visas and work permits for its personnel.

All contracts for the contractor's personnel assigned to render the services will provide that UNHCR is not liable to any such personnel under any such contract or for any reason. The contractor will ensure that all of its personnel assigned to work at UNHCR's sites for substantial periods of time to render the services are (a) medically fit to perform such work or services and (b) adequately covered by insurance for any service related illness, injury, death or disability.

The contractor will be fully responsible and liable for, and UNHCR will not be liable for (a) any action, omission, negligence or misconduct of the contractor or its personnel; (b) any insurance coverage which may be necessary or desirable for the purpose of this Contract; or (c) any costs, expenses, or claims associated with any illness, injury, death or disability of the contractor's personnel (d) any liabilities related to the termination of any contractor's personnel is hired specifically for the purpose of performing the contractor's obligations under the Contract. If requested by UNHCR, the contractor will ensure that each of its employees, consultants, subcontractor's personnel and other personnel involved in the provision of work or services will execute a standard form UNHCR confidentiality undertaking.

The contractor will procure, and be fully liable for, the compliance of any of its employees, subcontractors and any subcontractor's personnel with the terms and conditions of the Contract. The contractor will be fully responsible for all acts and omission of any employee, personnel, agent, subcontractor or other person or entity it uses for the performance of its obligations under the Contract as if they were its own acts and/or omissions

16. Records; Audits

The contractor will maintain up-to-date records necessary to verify the performance of its obligations in accordance with the Contract, including (a) all documents and records required to be maintained by applicable law, (b) copies of the Contract, any amendment, change or modification hereto, (c) any reports or other documentation that the contractor is required to produce/submit pursuant to the Contract, (d) minutes of all meetings between the parties and their representatives. The contractor will promptly, upon request from UNHCR, provide to UNHCR or its representative copies of such records.

17. Payment terms

Fees under the Contract will be payable within 30 days of receipt by UNHCR of an invoice issued by the contractor. Invoices may be issued by the contractor after certified acceptance by UNHCR of the milestones, deliverables and services to which the payment relates.

UNHCR may withhold payment if, in the reasonable opinion of UNHCR, the contractor has not satisfactorily performed its obligations in accordance with the terms of the Contract. UNHCR and the contractor will consult in good faith to promptly resolve outstanding issues with respect to a disputed invoice. If UNHCR disputes an invoice, UNHCR will notify the contractor accordingly. Upon resolution of a dispute regarding an invoice, UNHCR will pay the relevant amount (if any) within 30 days from the date of resolution.

UNHCR will have the right, without prior notice to the contractor (any such notice being waived), upon any amount becoming due and payable hereunder to the contractor, to set-off any payment, indebtedness or other claim (including any overpayment made by UNHCR or any claim for loss or damage to UNHCR property) owing by the contractor to UNHCR hereunder or under any other agreement between the parties. UNHCR will promptly notify the contractor of such set-off and the reasons therefore, provided, however, that the failure to give such notice will not affect the validity of such set-off.

The contractor will not be entitled to interest on any late payment or on any sums payable under the Contract, nor to any accrued interest on payments withheld by UNHCR that are subject to a dispute.

18. Authorizations

In addition to the contractor's obligations under Article 21 ('Observance of the Law') of the UNHCR General Conditions for the Provisions of Services, the contractor will be responsible for obtaining, at its own cost, all licenses, permits and authorizations from governmental or other authorities necessary for the performance of the Contract including all entry/exit visas and work permits for its personnel and customs clearance for equipment and material provided by the contractor. UNHCR will cooperate with the contractor as necessary and appropriate including where appropriate by liaising with relevant authorities.

Notwithstanding anything to the contrary herein, UNHCR's sole obligation with respect to customs matters will be to provide the contractor with a documentary certificate identifying the items concerned and stating that such items are for the sole use of UNHCR. If any further documentation is required by any authority, the contractor will advise UNHCR and UNHCR agrees to provide reasonable assistance to the contractor in obtaining such documents.

19. Settlement of Disputes

Article 18 ('Settlement of Disputes') of the UNHCR General Conditions for the Provision of Services will apply to any dispute, controversy or claim under the Contract and/or under any other agreements relating thereto. The arbitration proceedings will take place in Geneva. The language of the arbitration will be English.

20. Privileges and Immunities

Nothing in or relating to the Contract and/or any other agreements relating thereto will be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs or of UNHCR (as a subsidiary organ of the United Nations).