



**Invitation to Bid (ITB)**

**ITB-2012-24**

**For**

**Facilitation, Training, and OD related Writing services**

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## 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.

UNAIDS is dependent on member state funding for its activities. Vendors are requested to propose the best and most cost effective solution to meet UNAIDS requirements, while ensuring a high level of service. For more information on UNAIDS please consult our website [www.unaids.org](http://www.unaids.org).

## 2. ITB DETAILS

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### 2.1 ITB Objectives

The purpose of this **Invitation to Bid (ITB)** is to identify and establish long term agreements (LTA) for 3 years with a few suitable individuals or entities for the provision of *facilitation, training* and *writing* services that support organizational development initiatives at UNAIDS.

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### 2.2 Scope

For the above mentioned services, UNAIDS is looking to select up to 6 contractors for a commitment of up to a maximum of 60 days each year per service per supplier, which may be required at the UNAIDS Secretariat Headquarters in Geneva, or at one of UNAIDS’ liaison, regional or country offices. The above figures do not constitute a commitment by UNAIDS to days of work for the period of this LTA.

This invitation to bid is open to all qualified bidders. You may choose to apply to one or all of the following services:

**Service A: Facilitation of meetings and events**

**Service B: Training**

**Service C: OD related writing services**

#### 2.2.1 SERVICE A: FACILITATION OF MEETINGS AND EVENTS

##### *Purpose*

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Designing and running successful meetings and events that help groups to reach decisions and plan actions. The role of facilitators will be to help groups of staff and stakeholders to work together to solve problems, discuss issues, plan and implement activities, build teams, make decisions, and/or manage change.

**Deliverables and scope of work**

1. Consult with UNAIDS clients on objectives and expected outcome of the meeting/event
2. Identify participant requirements, collect information about the event, draft and submit overall outline of events and design appropriate group activities in conjunction with UNAIDS client
3. Facilitate face to face sessions
4. Report and share within one week on the outcomes of the facilitated event, with UNAIDS clients.

**Required competencies**

1. Demonstrates skills and uses diverse tools and techniques to build group trust, facilitate group work, keeping the group focused on tasks while being responsive to group needs and concerns.
2. Demonstrates understanding of the idea generation process and can design exercises to help groups think laterally.
3. Is able to juggle multiple ideas, bring them together succinctly and play them back to the group; can record group observations, ideas and summarize the group’s progress.

**Selection criteria**

Selection of potential providers of this service will be based on evidence provided and include evaluation of work experience, client references and suitable examples of recent projects (this includes the overall design and specific activities developed for events).

**Table 1**

Please review the *required* and *desirable* selection criteria and then complete the checklist in annex 3 and 4.

<b>I. Required</b>
<i>Overall experience:</i> A minimum of 10 years of professional facilitation experience in the UN or/and international organizations, governments, and NGOs.
<i>Specific experience:</i> Successfully facilitated two or more of the following events in the last <del>two</del> <b>five</b> years: <ul style="list-style-type: none"> <li>• Strategic planning meetings (management level)</li> <li>• Work planning retreats (team level)</li> <li>• Team-building sessions: new teams, merging teams, executive teams, etc.</li> <li>• Internal/external meetings with stakeholders /partners</li> </ul>
<i>Verification of satisfactory performance:</i> Successful performance of 2 facilitated events during the past <del>two-five</del> years, as supported by client testimonials (annex 4) that includes level of satisfaction with facilitation skills, project management and all other required competencies.
<i>Capacity to deliver:</i> Presence or capacity to deliver in HQ and/or Regional Support Teams (RSTs) (please refer to annex 6 for a list of RSTs)
<i>Language:</i> Advanced level of English
<b>II. Desirable</b>
<i>Capacity to implement globally:</i> Willingness and demonstrated capacity to deliver at UNAIDS

offices in the field (please refer to annex 6 for a list of UNAIDS country offices)
<i>Certified</i> in professional facilitation by the International Association of Facilitators or an equivalent body.
<i>Ability to facilitate in other UN languages</i>
<i>Knowledge of HIV/AIDS context</i>

## 2.2.2 SERVICE B: TRAINING

### *Purpose*

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Design and implement training sessions in learning areas that support UNAIDS organizational development and capacity building initiatives. The role of trainers will be to help staff members to develop themselves in core and managerial competencies. Please refer to annex 7 for the UNAIDS Secretariat *Competency Framework*.

### *Deliverables and scope of work:*

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1. Consult with UNAIDS clients on requirements and learning objectives
2. Design training session in conjunction with UNAIDS clients, including:
  - Drafting learning objectives and learning outcomes for the event
  - Drafting session outlines
3. Develop and share detailed session content and presentations that include:
  - slide presentations, videos and other visual aids
  - exercises, case studies, trainees manual and work aids for participants
4. Deliver face-to-face workshops or conduct distance learning sessions with field offices through an appropriate on line medium (Webex, Skype, etc.).
5. Report within one week on the outcome of the training session and share with UNAIDS clients.

### *Required competencies*

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1. Demonstrates understanding of how staff competencies are developed and used to define training needs, training curriculum and assess learning outcomes
2. Updates knowledge and is well informed on current concepts and training tools
3. Demonstrates understanding and applies adult learning principles for developing and delivery of training events- *engages learners; helps trainees set personal learning objectives; draws on trainees' past experiences and expertise; uses experiential and interactive training techniques; helps trainees relate learning to their job context; and creates practice opportunities during the training session.*
4. Demonstrates understanding of the impact of individual learning preferences and culturally based learning styles, and designs a variety of teaching and transfer strategies that address different styles.

## Selection criteria

Selection of potential bidders will be based on evidence provided and include evaluation of work experience, client references and a sample of a recent project (this might include design and material developed for a workshop or an on-line training event).

**Table 2**

Please review the *required* and *desirable* selection criteria and then complete the checklist in annex 3 and 4.

I. Required
<i>Overall experience:</i> A minimum of 10 years of professional training experience in the UN or/and international organizations, governments, and NGOs.
<i>Specific experience:</i> Successfully implemented <b>core and managerial competency based learning events</b> , in the last <u>2- five</u> years, either by: <ul style="list-style-type: none"> <li>• face to face workshops or/and</li> <li>• on-line training through WebEx, Skype and other web-based media.</li> </ul>
<i>Verification of satisfactory performance:</i> Client testimonials (annex 4) for two most recent and successful training events (in the past <u>two- five</u> years). Testimonials should include level of satisfaction with learning content, instructional design, trainer skills, project management and other required competencies.
<i>Capacity to deliver:</i> Presence or capacity to deliver in HQ and/or RSTs (please refer to annex 6 for a list of RSTs)
<i>Language:</i> Advanced level of English
II. Desirable
<i>Capacity to implement globally:</i> Willingness and capacity to deliver at UNAIDS offices in the field (please refer to annex 6 for a list of UNAIDS country offices).
<i>Trainer accreditations or certifications.</i>
<i>Ability to train in other UN languages</i>
<i>Knowledge of HIV/AIDS context</i>

### 2.2.3 SERVICE C: OD RELATED WRITING SERVICES

#### Purpose

Developing and writing content for *organizational development* (OD) initiatives. The role of the writer would be to develop a diverse range of innovative learning resources ranging from distance learning modules to Work-aids that communicate ideas which are clear, meaningful and memorable for staff.

### Deliverables and scope of work

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1. Consult with UNAIDS clients to establish and submit a draft of the purpose and intended readership of the material.
2. Submit a project timeline with milestones and contact points from initial client discussions to final delivery of the product
3. Submit an outline of content that meets specifications after a thorough consultation with UNAIDS clients
4. For web based content advice on the interactive and graphical components (images, illustrations, animations, simulations etc.) that will support content
5. Delivers the finished content which is easy to read, unambiguous, creative and includes current and relevant concepts.
6. Deliverables meet the following quality standards:
  - i. Correct spelling and conformity to WHO house style and to the UNAIDS Terminology Guidelines
  - ii. Grammatically correct content (verb–subject agreement, dangling participles, incorrect or unclear use of pronouns, etc.), punctuation
  - iii. Consistent formatting of chapters, sections, subsections, paragraphs, lists (e.g. with bullet points) and tables
  - iv. While editing, long complicated sentences and paragraphs are rewritten and checked for overall structure
7. For long or complex editing assignments a list of queries is sent to UNAIDS clients after editing each chapter or section, as appropriate.

### Required Competencies

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1. Demonstrates effective oral and written communication skills
2. Updates knowledge and skills for adult learning and instructional design
3. Creates content that accommodate learner requirements and learning objectives
4. Writes and edits text that are clear, concise, and grammatically correct
5. Uses a broad repertoire of techniques for presenting instructional content to increase learning impact.

### Selection criteria

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Selection of potential candidates will be based on evidence provided and include evaluation of work experience, client references and examples of recent projects.

**Table 3**

Please review the required and desirable selection and then *complete the checklist in annex 3 and 4.*

I. Required
<p><i>Overall experience:</i> A minimum of 10 years of professional experience as a writer, editor and developer of instructional material in the UN or/and international organizations, governments, and NGOs.</p>
<p><i>Specific experience:</i> Authored or/and edited training manuals, articles, work aids or e-module content on OD initiatives in the last <del>two</del> <u>five</u> years.</p>
<p><i>Verification of satisfactory performance:</i></p> <p>Client testimonials (annex 4) for two samples of work that satisfactorily demonstrates use of a variety of techniques and mediums to present instructional content based on diverse needs of the learner and corporate requirements. Testimonials must indicate the level of satisfaction linked to</p>

other required competencies.

*Language:* English as mother tongue.

**II. Desirable**

*Appropriate writing accreditation or certifications.*

*Knowledge of HIV/AIDS context.*

### 3. RESPONSE FROM BIDDERS

#### 3.1 Bidding process

Please acknowledge receipt of this ITB by returning the **Acknowledgement and Confidentiality undertaking Form (annex 1)** latest on **2 November 2012**, to the email address: [bids@unaids.org](mailto:bids@unaids.org), indicating whether or not you intend to submit a bid and clearly specifying the service to which this submission is made. 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.

No later than **30 November-2012 at 17:00 hours, Geneva time**, all interested bidders must **complete and return by e-mail to [TechnicalBids@unaids.org](mailto:TechnicalBids@unaids.org)** in English, the **4 annexes and all specified documents as listed below and indicated in detail in section 3.4.**

- a) Fully completed and signed Proposal Submission form (annex 2).
- b) Fully completed Criteria for selection of services form (annex 3)
- c) Fully completed Client testimonial form (annex 4)
- d) The Financial proposal form with the daily consultancy rates (annex 5).

**Note: Late submissions will not be accepted.**

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

The bidder shall bear all costs associated with the preparation and submission of the related documents 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.

All submissions must meet the total requirements of the proposed service. 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 submission.

No submission may be modified after the closing date for submission, 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 four to six contracts resulting from this ITB to the responsible bidders(s) for Service A, B and C. Selection for this LTA will depend on whether bidders conform to satisfactory compliance linked to a complete submission of documents reflecting the requisite experience and quality of service as indicated in the selection criteria (annex 3 & 4). 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 submissions received, without discussions or negotiations. Therefore, each initial submission 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 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 **2 November, 2012**.

- Email for submissions of all queries: [Bids@unaid.org](mailto:Bids@unaid.org)

UNAIDS will respond in writing to any request for clarification of the ITB that it receives prior to the date above by publishing 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.

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### 3.2 Evaluation of Bidders

Evaluation and selection will follow a 3 step process:

1. Bidders will be evaluated and shortlisted based on the extent to which they satisfy the '**Criteria for selection of services**' in annex 3 and **Client testimonials** in annex 4.
2. After the preliminary selection, bidders will be evaluated on their **daily consultancy rates** as submitted in the **Financial proposal**, annex 5.
3. The selection will be finalised after a brief telephone or Skype interview with up to a maximum of the top 6 bidders, to validate the information provided in the submissions and present the sample of work submitted as part of the proposal. This interview will be only to validate the requirements:
  - Excellent verbal communication
  - Consistency between what is proposed and what is said during the call
  - Consistency between what is said and is included in the testimonials

After the LTA is signed with service providers, the selection for specific projects would be based on experience of the providers, the quality of what they have produced in the past in other organizations and the overall cost to UNAIDS. For each activity UNAIDS will request a quotation requesting availability of the providers for the required activity and the total number of days needed to prepare and implement the activity (the daily fees will be taken as the rates submitted in this LTA). Providers for a specific future project will be selected based on the lowest offer from all LTA holders for the specific service.

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### 3.3 Selection criteria

UNAIDS attaches particular importance to the following criteria:

- Demonstrated ability of the bidder to perform the service/s as evident in submitted CVs and testimonials
- Demonstrated ability to comply with critical provisions such as implementation of the contract by honouring the tax-free status of the UN.
- Completeness of the proposal specifically linked to requested supporting documents
- 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. Only complete submissions as specified in annex 3 will be considered for evaluation.

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.

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### 3.4 Content of the proposal

The contents of the bidder's Proposal will include the following:

1. Complete and submit the **Proposal Submission form, annex 2**.
2. Complete and submit **annex 3, Criteria for selection of services, clearly indicating the service** for which the submission is being made and attach all specified documents in **annex 3** and Section 2.2 under '**Scope-Selection criteria**', Table/s 1,2 or/and 3 for services A, B and C respectively. This will include CVs of service providers, sample of work, client testimonials (annex 4) and certifications where needed.
3. Complete **Client testimonials (annex 4) for a specific service**.
4. **Daily rates in any currency** for either or all of the services for which bidders have shown interest and as specified in the **Financial proposal form- annex 5**. For the purpose of evaluation all rates will be converted to USD using the UN exchange rate. Please also note that all travel conducted under the LTA will follow UNAIDS travel policy for non-staff and will be reimbursed at the rate of the cheapest most direct available flight in economy class purchased at least 10 days in advance of the date of the travel. The Per Diem will be established according to the UN published rates for the destination.

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

In order to facilitate response analysis and evaluation, the financial offer must be made on the format provided.

Please note the following with regards to your offer:

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

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.

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### 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.

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## 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.

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## 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 fulfil its commitments with the fullest regard to the interests of UNAIDS.

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## 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

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **4.14 Place of Performance**

The place of performance of the work under the Contract shall be determined by the assignment and may include any one or more of the locations listed in Annex 4.

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#### **4.15 Language**

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

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#### **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.

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#### 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 sections 4.4 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.

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#### 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 fulfilment, 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.

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#### 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.

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#### 4.20 Surviving Provisions

Those rights and obligations of the Parties as set forth in section 4 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

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#### 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.

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#### 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.

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#### 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.

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#### 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.

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#### **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.

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#### **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.

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#### **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.

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#### **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.

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#### **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

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#### 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

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#### 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 timelines and 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.