

General Conditions of Contract for Procurement of Goods or Services

The Contractor agrees to the following conditions:

1. SCOPE AND APPLICABILITY:

1.1 These General Conditions of Contract for Procurement of Services apply to all deliveries of goods or services made to Human Relief Foundation (HRF) notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from the Contractor. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by us unless and until we expressly confirm our acceptance in writing.

2. LEGAL STATUS:

2.1 The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis HRF. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of HRF.

3. SOURCE OF INSTRUCTIONS:

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

4. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:

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

5. OBSERVANCE OF THE LAW:

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

5.2 The Contractor shall respect and abide by all local laws and regulations in force in the beneficiary country and shall ensure that its personnel, their dependents and local employees also respect and abide by all such laws and regulations.

6. SUB-CONTRACTING:

6.1 In the event the Contractor requires the services of subcontractors, the Contractor shall obtain the prior written approval and clearance of HRF for all sub-contractors. The approval of HRF of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

7. INDEMNIFICATION:

7.1 The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, HRF, its officials, agents, servants and employees from and against any and all suits, claims, losses, damages, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or subcontractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products 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, or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8. INSURANCE:

8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

8.2 The Contractor shall provide and thereafter maintain 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.

8.3 The Contractor shall also provide and thereafter maintain 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 provision of services under this Contract.

9. ENCUMBRANCES/LIENS:

9.1 The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with HRF against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

10. TITLE TO EQUIPMENT:

10.1 Title to any equipment and supplies that may be furnished by HRF shall rest with HRF and any such equipment shall be returned to HRF at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to HRF, 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 HRF for equipment determined to be damaged or degraded beyond normal wear and tear.

11. INTELLECTUAL PROPERTY:

11.1 HRF shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At HRF's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to HRF in compliance with the requirements of the applicable law.

12. ADVERTISING:

12.1 The Supplier shall not advertise or otherwise make public the fact that he is a Supplier to HRF without specific approval from HRF. Nor shall the Supplier in any manner whatsoever use the name of HRF, or any abbreviation thereof, in connection with his business or otherwise. Non-observance of these conditions shall entitle HRF to cancel the Contract, or any part thereof, and to hold the Supplier liable for any damages which HRF has sustained as a result thereof.

13. ASSIGNMENT AND INSOLVENCY:

13.1 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 HRF.

13.2 Should the Contractor become insolvent or should control of the Contractor change by virtue of insolvency, HRF may without prejudice to any other rights or remedies, terminate this Contract by giving the Contractor written notice of termination.

14. CONFIDENTIALITY:

14.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of HRF, and shall be treated as confidential and shall be delivered only to HRF authorized officials on completion of work under this Contract.

14.2 The Contractor may not communicate at any time to any other person, Government or authority external to HRF, any information known to it by reason of its association with HRF which has not been made public except with the authorization of HRF; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

15. AMENDMENTS:

15.1 No changes in or modifications to this Contract shall be valid unless confirmed in writing by both parties.

16. TERMINATION:

16.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 24 "Settlement of Disputes" below shall not be deemed a termination of this Contract.

16.2 HRF may terminate forthwith this Contract at any time should the mandate or the funding of HRF be curtailed or terminated, in which case the Contractor shall be reimbursed by HRF for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

16.3 HRF may at any time with immediate effect, terminate the Contract if the Contractor fails to satisfy the guarantees set forth in any Article from this memorandum.

16.4 In the event of any termination by HRF under this Article, no payment shall be due from HRF to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimize losses and further expenditures.

17. FORCE MAJEURE:

17.1 Force Majeure, as used in this Article means acts of God, strikes, lockout or other industrial disturbances, acts of the public enemy, wars (whether declared or not), blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the parties' control and cannot be overcome by due diligence.

17.2 In the event of and as soon as possible and no later than one (1) week after the occurrence of any cause constituting Force Majeure, the Contractor shall give notice and full particulars in writing to HRF, 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 HRF of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, HRF shall take such action as, at 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.

17.3 If the Contractor is rendered permanently unable, wholly, or in part, by reason of Force Majeure to perform its obligations and meet its responsibilities under this Contract, HRF shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 16, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

17.4 Notwithstanding anything to the contrary in this Contract, the Contractor recognizes that the work and services may be performed under harsh or hostile conditions caused by civil unrest. Consequently, delays or failure to perform caused by events arising out of, or in connection with, such civil unrest shall not, in itself, constitute Force Majeure under this Contract.

18. BRIBERY AND GIFTS:

18.1 The Contractor warrants that no official of the Human Relief Foundation has been or shall be admitted to or 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.

19. CHECKS AND AUDIT:

19.1 The Contractor shall allow any external auditor authorized by HRF to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks of original documents, the implementation of the Contract and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. The Contractor shall ensure that on-the spot access is available at all reasonable times. The Contractor shall ensure that the information is readily available at the moment of the audit and if so requested, that the data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

19.2 Furthermore, the Contractor shall allow any external auditor authorized by HRF carrying out verifications as required to carry out checks and verification on the spot in accordance with the procedures set out by the donor or European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

19.3 To this end, the Contractor undertakes to give appropriate access to any external auditor authorized by HRF carrying out verifications as required to the sites and locations at which the project is implemented, including its information systems, as well as all documents and databases concerning the technical and financial management of the action and to take all steps to facilitate their work. Access given to agents of any external auditor authorized by HRF carrying out verifications shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Contractor must inform HRF of their precise location.

19.4 The Contractor guarantees that the rights of any external auditor authorized by HRF carrying out verifications as required to carry out audits, checks and verification shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to the Contractor's partners, and subcontractors. Where a partner or subcontractor is an international organization, any verification agreement concluded between such organization and the donor applies.

20. RULE OF ORIGIN AND NATIONALITY:

20.1 If any rules regarding the origin and/or nationality of goods, services or personnel are applicable due to donor requirements, the Contractor must adhere to these rules and be able to document and certify the origin of goods and nationality of legal and natural persons as required.

20.2 Failure to comply with this obligation shall lead, after formal notice, to termination of the Contract, and HRF is entitled to recover any loss from the Contractor, and is not obliged to make any further payments to the Contractor.

21. DISQUALIFICATION CLAUSE:

21.1 The Contractor guarantees not to be in one of the situations listed below:

- (a) bankrupt or in the process of being wound up, having their affairs administered by the courts, having entered into an arrangement with creditors, having suspended business activities, the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations.
- (b) to be convicted of an offence concerning professional conduct by a judgment which has the force of res judicata.
- (c) to be guilty of grave professional misconduct proven by any means which the Contractor can justify.
- (d) not having fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which the Contractor is established or with those of the country of the Contractor or those of the country where the Contract is to be performed.

(e) to have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the Communities' financial interests.

(f) currently subject to an administrative penalty referred to in Section 2.3.5 of the Practical Guide to contract procedures for EC external actions.

21.2 Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

(a) are subject to a conflict of interests.

(b) are guilty of misrepresentation in supplying the information required by the Contractor as a condition of participation in the Contract procedure or fail to supply this information.

22. SEVERABILITY:

22.1 Should any provision of these conditions held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the parties and enforced as modified. All other terms and conditions of these conditions shall remain in full force and effect and shall be construed in accordance with the modified provision.

23. APPLICABLE LAW:

23.1 All contracts entered into between the parties shall be governed by and construed in accordance with the laws of Iraq without giving effect to any choice of law or conflict of law provisions.

24. SETTLEMENT OF DISPUTES:

24.1 The parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with this Contract including any disputes regarding its existence, validity or termination. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

24.2 Unless, any such dispute, controversy or claim between the parties arising out of or relating to this Contract or the breach, existence, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one party of the other party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration rules as at present in force, including its provision on applicable law. The place of arbitration shall be Erbil Iraq and the language to be used in the proceedings shall be English. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall also have no authority to award interest. The parties shall be bound by any arbitration award rendered as a result of such arbitration and as being the final adjudication of any such dispute, controversy or claim.

Approved and respected by supplier:

- Company name:
- Representative name:
- Date:
- Signature:
- Official stamp: