

ICAO

Terms and Conditions for Services (Corporate Procurement)

1. Abbreviations and Definitions

In this document, the following words shall have the meaning indicated in the table below:

| Word | Meaning |
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| ICAO | The International Civil Aviation Organization with Headquarters at 999 Robert-Bourassa Boulevard, Montréal, Quebec, Canada, H3C 5H7. |
| Contractor's Appointed Representative | An officer notified to ICAO as being authorized to act on behalf of the Contractor. |
| ICAO's Appointed Representative | An officer notified to the Contractor by ICAO management as being authorized to act on behalf of ICAO. |
| Turn-Key Contract | The Contractor is fully responsible for the provision of the services identified in the Terms of Reference presented in the Solicitation Documents and agreed during the contractual negotiations. |
| Contract/Purchase Order | The words Contract and Purchase Order shall be interchangeable and shall refer to the Contract/Purchase Order together with all attachments. |
| Day | Unless otherwise specified, a calendar day. |

Words in the singular person shall also include the plural and vice versa where the context requires or admits.

2. Status of ICAO

- 2.1 Neither the Contractor nor its personnel shall be considered as an employee or an agent of ICAO.
- 2.2 Unless otherwise provided for in this Contract, ICAO shall not be liable for claims of any kind arising in connection with the performance of this Contract.

3. Language of Correspondence and Standards

- 3.1 All reports, correspondence and other information shall be in English and in the metric system of weights and measures and in other internationally accepted units.

4. Contractors' 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 the Contract, respect the local customs and conform to a high standard of moral and ethical conduct.
- 4.2 The Contractor, its director(s), officer(s), employees and servants shall conform to all applicable laws, regulations and ordinances.
- 4.3 The Contractor expressly acknowledges that the minimum supplier eligibility criteria contained in the supplier eligibility declaration is maintained and is applicable throughout the duration of the Contract.
- 4.4 Not less than one (1) working day after learning that any of the Contractor's personnel who have access to any ICAO premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform ICAO about the particulars of the charges then known. The foregoing shall not prejudice ICAO's rights under Article 6 of this Contract.

5. Assignment of Personnel

5.1 The Contractor shall not assign any personnel other than those referred to in this Contract for the performance of work without the prior written approval of ICAO. Prior to assigning any other personnel for the performance of work, the Contractor shall submit to ICAO for its consideration the curriculum vitae of any person the Contractor proposes to assign for such service.

6. Removal of Personnel

6.1 Upon written request from ICAO, the Contractor shall withdraw any personnel provided under this Contract and shall replace such personnel by others acceptable to ICAO, if ICAO so requests.

6.2 Such request for withdrawal or replacement shall not be considered as termination in part or in whole of this Contract under the provisions of Article 21 (Termination).

6.3 All costs and additional expenses resulting from any withdrawal or replacement for whatever reason of any of the Contractor's personnel shall be at the Contractor's expense.

7. Workmen's Compensation and Other Insurance

7.1 The Contractor shall provide and thereafter maintain appropriate workman's compensation and liability insurance, with respect to employment under this Contract and shall, upon request, provide ICAO with satisfactory evidence of the insurance required under this article.

7.2 The Contractor shall comply with the labour laws of *Quebec and Canada* providing for benefits covering injury or death in the course of employment.

8. Indemnification

8.1 The Contractor shall indemnify, save and hold harmless, and defend, at its own expense, ICAO, its officials, agents, servants and employees, from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of the acts or omissions of the Contractor or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation claims, 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, or sub-Contractors. The obligations under this Clause do not lapse upon termination of 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 in any public office or on file with ICAO against any monies due or to become due for any work done or material furnished under this Contract, or by reason of any other claim or demand against the Contractor.

10. Confidential Nature of Documents and Information / Public Disclosure

10.1 All technical, financial or other documentation and data compiled by or received by the Contractor under this Contract shall be the property of ICAO, and as such, shall be treated as confidential, and shall be delivered only to ICAO authorized officials upon completion of work under this Contract.

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

10.3 Unless authorized in writing by ICAO, the Contractor shall not disclose the particulars of the Contract, advertise or make otherwise public the fact that it is performing, or has performed, services for ICAO.

11. Copyrights, Patents and Other Proprietary Rights

11.1 Except as is otherwise expressly provided in writing in the Contract, ICAO shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for ICAO under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for ICAO.

11.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, ICAO does not and shall not claim any ownership interest thereto, and the Contractor grants to ICAO a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

11.3 At the request of ICAO, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to ICAO in compliance with the requirements of the applicable law and of the Contract.

11.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of ICAO, shall be made available for use or inspection by ICAO at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to ICAO authorized officials on completion of work under the Contract.

12. Officials not to benefit

12.1 The Contractor warrants that no official of ICAO has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this Contract or the award thereof.

13. Source of Instructions

13.1 The Contractor shall neither seek nor accept instructions from any authority external to ICAO in connection with the performance of the work under this Contract. The Contractor shall refrain from any action which may adversely affect and shall fulfil its commitments with fullest regard for the interest of ICAO.

14. Assignment

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

15. Subcontracting

15.1 In the event the Contractor requires the services of sub-Contractors, the Contractor shall obtain the prior written approval and clearance of ICAO for all sub-Contractors. The approval by ICAO of a sub-Contractor shall not relieve the Contractor of any of its obligations under this Contract,

and the terms of any sub-Contract shall be subject to and be in conformity with the provisions of this Contract.

16. Contract Amendments

- 16.1 This Contract including the attachments may, by agreement between the parties, be amended at any time during the execution of the project.
- 16.2 Contract amendments shall be effective only when executed and delivered on behalf of ICAO and the Contractor, by persons duly authorized in writing to do so.

17. Direction of Contract and Interpretation of Specifications

- 17.1 The Contractor shall perform the work in accordance with the decisions and directions of ICAO given under this Article and any further consequential decisions and directions given by ICAO in the performance of this Contract. Upon notification by ICAO of the details of any failure by the Contractor to meet its obligations, the Contractor shall take corrective action as soon as possible but in any event within two (2) weeks, failing which ICAO reserves the right to terminate the Contract in accordance with Article 21.1. Such directions shall be given in writing. If verbal instructions must be given, such shall be confirmed in writing within seven (7) days. In case of any decisions and/or directions of ICAO in the performance of the Contract constituting a deviation, change or amendment to the original terms of reference and which may give rise to additional expenses, the Contractor may submit to ICAO for its consideration a statement detailing the cost consequences of such deviation, change or amendment. Any such deviation, change or amendment in order to be effective shall be executed by way of the Contract amendment in accordance with Article 16.2, prior to its implementation.
- 17.2 ICAO reserves the right of adjudication should any question arise at any time regarding the interpretation of any provision of the specifications, terms of reference and any other documentation incorporated in this Contract.
- 17.3 ICAO may order the Contractor in writing to suspend all or any part of the work for a period of time deemed appropriate by ICAO. In this case, the Contract shall be amended in accordance with Article 16.2 and the Contractor may submit to ICAO for its consideration a statement detailing the reasonable costs of such amendment.

18. Regulatory Requirements

- 18.1 It shall be the Contractor's responsibility to ensure that it is fully in compliance with all applicable laws, enactments, rules, regulations, patents and procedures of their industry which have been established by any regulatory body with jurisdiction over any aspect of the scope of works of the Contract.

19. Licences

- 19.1 If any licence or permit is required for the performance of the Contract, the Contractor shall obtain any such licence or permit.

20. Force Majeure

- 20.1 *Force Majeure* as used herein shall mean acts of God, laws or regulations, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar cause of equivalent force not caused by nor within the control of either party and which neither party is able to overcome. As soon as possible after the occurrence of any cause constituting *force majeure*, the Contractor shall give notice and full particulars in writing to ICAO of such *force majeure* if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. In this event, the following provisions shall apply:

- a) The obligations and responsibilities of the Contractor under this Contract shall be suspended to the extent of its inability to perform them and for as long as such inability continues.
- b) The term of this Contract shall be extended for a period equal to the period of suspension taking into account however, any special conditions which may cause the time for completion of the work to be different from the period of suspension;
- c) 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, ICAO shall have the right to terminate this Contract on the same terms and conditions as are provided for in Article 21 (Termination);
- d) For the purpose of the preceding subsection, ICAO may consider the Contractor permanently unable to perform in case of any period of suspension in excess of ninety (90) days. Any such period of ninety (90) days or less shall be deemed temporary inability to perform.

21. Termination

- 21.1 ICAO may terminate this Contract for cause or default in whole or in part at any time, upon giving written notice to the Contractor. The termination notice shall be sent by certified mail, return receipt requested. Upon receipt of notice of termination, the Contractor shall take immediate steps to bring the work and services to a close in a prompt and orderly manner, shall reduce expenses to a minimum and shall not undertake any forward commitment from the date of receipt of notice of termination.
- 21.2 ICAO shall pay the Contractor for work and service satisfactorily performed and accepted by ICAO, for expenses necessary for the prompt and orderly termination of the work as agreed to by ICAO, and for such urgent and essential work as the Contractor is asked by ICAO to complete. In the event such termination is caused by the Contractor's negligence or fault, no payment shall be due from ICAO to the Contractor except for work and services completed to ICAO's satisfaction and accepted by ICAO.
- 21.3 ICAO may also terminate the Contract for convenience. In such case, the Contractor shall be reimbursed by ICAO for all reasonable costs incurred by the Contractor as per Article 21.2. The recovery of lost profits is expressly excluded.

22. Bankruptcy

- 22.1 Should bankruptcy or winding-up procedures be initiated against the Contractor, or should the Contractor be adjudged bankrupt, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, ICAO may, without prejudice to any other right or remedy it may have under the terms of this Contract, terminate this Contract forthwith by giving the Contractor written notice of such termination in accordance with the provisions of Article 21.
- 22.2 The Contractor must advise ICAO within 24 hours of the occurrence of any event described in this Article.

23. Change in Ownership

- 23.1 The Contractor shall inform ICAO as early as possible of any change or anticipated change in the status of the Contractor or its ownership that may affect its ability to render the services mentioned herein, as soon as such information is known to the Contractor.

24. Settlement of Disputes

- 24.1 **Amicable Settlement: Negotiations**

The parties shall use their best efforts to settle amicably through negotiation any dispute, controversy or claim arising out of, or relating to, this Contract or the breach, termination or invalidity thereof, within a time period of ninety (90) days.

24.2 **Arbitration**

Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within ninety (90) days, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then prevailing. The parties agree that the arbitration be conducted by an arbitral tribunal consisting of a sole arbitrator. If the parties cannot agree on a sole arbitrator within sixty (60) days, the appointment of the arbitrator shall be made in accordance with Article 8 of the UNCITRAL Arbitration Rules. The place of arbitration shall be Montreal, Quebec, Canada, and it shall be conducted in the English language. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

25. **Applicable Law**

25.1 This Contract shall be governed by the laws of the Province of Quebec, Canada, and the federal laws of Canada applicable therein without regard to its conflict of laws rules.

26. **ICAO Privileges and Immunities**

26.1 Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any immunity from suit or legal process or any privilege, exemption or other immunity enjoyed or which may be enjoyed by ICAO, its officers and staff, either pursuant to the Convention on the *Privileges and Immunities of the Specialized Agencies* or other conventions, agreements, laws or decrees of an international character.

27. **Complete Nature of Agreement**

27.1 This Contract constitutes the complete and exclusive statement of the Contract between the parties and supersedes all proposals or all other communications, verbal and/or written arrangements or agreements between the parties relating to the subject matter of this Contract unless this Contract is changed, amended or modified in accordance with Article 16.

28. **Use of Name, Emblem, or Official Seal of ICAO**

28.1 Unless authorized in writing by ICAO, the Contractor shall not advertise or otherwise make public the fact that it is performing, or has performed services for ICAO, or use the name, emblem or official seal of ICAO or any abbreviation of the name of ICAO for advertising purposes or for any other purpose.

29. **Partial Invalidity**

29.1 If any provision of this Contract is or becomes invalid, illegal or unenforceable by force of law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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