

Request for Quotations (RFQ) **RFQ No.: SPRING 15-01**

Procurement of Motorbikes for Ghana

RFQ No: SPRING 15-01
Issuance Date: November 7, 2014
Due Date and Time: November 21, 2014, at 17:00 PM Ghana Time.

The Strengthening Partnerships, Results and Innovations Project (SPRING) under JSI Research and Training Institute, Inc. (JSI) is soliciting proposals to supply the subject vehicles in accordance with the specifications listed on Appendix A for Ghana. The SPRING Project is funded by the U.S. Agency for International Development (USAID) and is subject to applicable Federal regulations and provisions, including, but not limited to the Federal Acquisition Regulation (FAR) and AID Acquisition Regulations (AIDAR).

A prospective Offeror having any questions regarding this RFQ shall contact:

Matthias Akuliga Aneinini
Tel: 00233-244107868/264107868
E-mail: maneinini@spring-nutrition.org with a copy to procurement@spring-nutrition.org

***Please note the deadline for submitting any questions: November 21, 2014 at 17:00 GMT.

Offers must be submitted by email to: maneinini@spring-nutrition.org with a copy to procurement@spring-nutrition.org

Late quotes will not be accepted or considered.

PART A: INSTRUCTIONS

CERTIFICATIONS

STANDARD GENERAL CONTRACT TERMS AND CONDITIONS

ATTACHMENTS: TECHNICAL SPECIFICATIONS

PART A: INSTRUCTIONS

Interested companies should direct any questions or potential offers regarding this RFQ to the following contact, prior to the due date for submissions.

Matthias Akuliga Aneinini

Tel: 00233-244107868/264107868

E-mail: maneinini@spring-nutrition.org with a copy to procurement@spring-nutrition.org

The project will respond to any question received no later than five (5) working days prior to the due date for the quotes, and may, at its sole discretion, not respond to requests received later than the due date. The question(s) and response(s) will be sent to all vendors who have requested the RFQ documents. JSI R&T may extend the closing date to ensure offerors have adequate time to consider answers and reply accordingly.

Quotes must be delivered on or before the due date and time to:

Matthias Akuliga Aninini

JSI Research & Training Institute, Inc.

SPRING/GHANA

C129/21, ACHIMOTA LINK,

ACCRA PHYSIOTHERAPY CLINIC BUILDING

Accra, Ghana

Or via email to: maneinini@spring-nutrition.org, with a copy to procurement@spring-nutrition.org

Late quotes **will not** be accepted or considered.

Commodity List:

ITEM DESCRIPTION	QUANTITY	COUNTRY
1. 125cc MOTORCYCLE/MOTORBIKE	20	Ghana

Number of Quotes per Offeror

Only one quote per firm will be accepted. Please send a separate quote for each line item in the commodity list.

Technical Specifications

Goods proposed on the quotes must fully comply with the technical specifications mentioned in the RFQ.

Source, Origin and Nationality Requirements

The authorized USAID Geographic Code (see AIDAR 752.225-70 Source, Origin and Nationality Requirements) is 935 for this procurement, which means products can be made in, and shipped from any country except Libya, Cuba, North Korea, Sudan, Syria, Iran, and Laos (or any other country that may be added to the list by the USG). Products may not contain any part or ingredient manufactured in the foregoing excepted countries. See JSI R&T's Standard General Contract Terms and Conditions.

Prices

Offered prices shall be DDP (Delivered Duty Paid) to the delivery address specified in the RFQ and shall be based on negotiated INCOTERMS. (Offered prices will be governed by the rules prescribed in the 2010 edition of INCOTERMS published by the International Chamber of Commerce.) Prices should also include full PDI (Pre Delivery Inspection) before delivery to the end user.

Please quote for each line item in the commodity as follows:

125cc MOTORCYCLE/MOTORBIKE for Ghana (To the address listed below), DDP basis including all applicable costs for freight, insurance, taxes, customs clearance, and delivery to Consignee indicated below.

Consignee Delivery Address:

SPRING/GHANA
JSI Research & Training Institute, Inc.
Plot Number 46
Rice City, Tamale, Ghana

Tel: +233-542934764

Quotations must also include the delivery period (i.e., days required to deliver goods to Consignee upon signature of contract), warranty period and provisions, and in-country after-sales service availability.

Currencies

Prices shall be stated in US dollars (\$).

Language

The quote, as well as all correspondence and documents relating to the offer shall be in English.

Validity

Quotes shall remain valid for 90 calendar days from the due date for receipt of quotes. In exceptional circumstances, prior to expiry of the original offer validity period, JSI R&T may request that the Offeror extend the period of validity for a specified additional period. Offeror agreeing to the request will not be required to modify their quote.

Preparation and Submission of Quotes

Quotes shall be submitted by email to: maneinini@spring-nutrition.org with a copy to procurement@spring-nutrition.org

Offeror's must include full details (e.g. name, address, and contact person information) of the official distributor in-country that will be responsible for after sales services and warranty cover.

Offers can be made for one item, for a combination of items or for the entire RFQ.
File formats should be readable by Microsoft Office 2010 or Adobe Acrobat 9.0.

Due Date and Time for Submission of Quotes

- Quotes must be received by JSI R&T no later than the due date and time as shown on the cover sheet of this RFQ. JSI R&T may, at its discretion, extend the due date and time for the submission of quotes by amending this RFQ.
- Any quote received by JSI R&T after the due date and time for submission of quotes will be rejected.

Evaluation of Quotes

Quotes will be evaluated based on the following criteria:

- Overall responsiveness of quote
- Conformance to product specifications
- Total price
- Delivery period
- Warranty provisions
- In-country after sales service availability

INFORMATION FOR OFFERORS

Clarification of Quotes

During evaluation of the quotes, JSI R&T may, at its discretion, ask the Offeror for a clarification of their quotes. Clarifications are limited exchanges with a Firm to resolve minor or clerical errors; they do not offer an opportunity for a Firm to modify or change an offer.

Confidentiality

Information submitted in response to this RFQ will be held in confidence according to Article 19 of JSI R&T's Standard General Contract Terms and Conditions.

Contract Type

The contract awarded will be on a Fixed Quantity, Fixed Price basis (see enclosed JSI R&T's Standard General Contract Terms and Conditions).

JSI R&T may award a contract in whole or in part to one or multiple offerors.

Offerors should review the complete RFQ but special attention should be given to the following areas:

1. Ordering

Instructions on order processing will be issued at contract award.

2. Invoicing

Invoices should be addressed to:

JSI Research & Training Institute, Inc. (JSI R&T)
Attn: Jacob Odentz, SPRING Project
1616 N. Ft. Myer Drive, 16th Floor
Arlington, Virginia 22209
USA

3. Payment

Payment will be made according to Article 6 of JSI R&T's Standard General Contract Terms and Conditions. Supplier must provide the following banking information:

Beneficiary Bank in US:

Full name and street address of bank branch

Payee's bank account number

Account number:

ABA number

Beneficiary Bank outside of US:

Full name and street address of bank branch

Payee's bank account number

Account number:

S.W.I.F.T Code (BIC Code)

IBAN (required for all EU countries)

Sort code (required for UK)

PRODUCT SPECIFICATIONS

The contractor will supply to the SPRING Project the quantity of twenty (20) 90-125cc Motorcycles for Ghana listed in the Commodity List in accordance with the specifications listed in this section which offer a minimum description of the supplies required.

Product Description and technical documentation

Offeror must provide the most detailed technical documentation, brochure and pictures for vehicles listed in the commodity list.

PRODUCT SPECIFICATIONS

APPENDIX A 1/1: VEHICLE SPECIFICATIONS FOR ITEM # 1 TO GHANA – QUANTITY: 20

Request For Quotes Reference: SPRING 15-01

125cc MOTORCYCLE/Motorbike for Ghana – Quantity: 20

Name of the vendor: _____

Contact information: _____

Detailed Specifications	Statement of Compliance Please enter “Comply” or “Not comply” and provide detailed specifications of the motor cycle offered - (Please complete this column)
Model Type (latest model required, i.e. 2014): <i>***please provide brand, year and model number***</i>	
Bike: On/Off Road	
Country of Manufacturing:	
Fuel Type: Gasoline (Petrol)	
Engine Type: 2/4 stroke, SOHC, air-cooled, single cylinder	
Displacement: 90-125cc	
Seating Capacity: 2	
Brakes: Front/rear: drum	
Suspension: Front Suspension: Telescopic Fork Rear Suspension: Swingarm (Monocross)	
Fuel tank capacity: 5.5 lt (minimum)	
Transmission system: 5/6 speed	
Transportation: Indicate route and mode of transportation. Transportation by container + container on truck carrier is <u>required</u>	
Service Support: Name and address of the local agent in Ghana. Please provide details of the warranty conditions that will apply to this offer.	

Authorized Signature

Company Stamp

Date

STANDARD GENERAL CONTRACT TERMS AND CONDITIONS
for
USAID-FINANCED, INTERNATIONAL SUPPLY OF GOODS
(COMMERCIAL ITEMS)

[Note: See Article 33 for Definitions of Terms]

1. THE CONTRACT

A. The Contract consists of the Order Form, these Standard General Terms and Conditions ("SGTCs), and the following Special Contract Terms and Conditions (SCTC's):

- Pharmaceutical Products (Appendix A)
- Quality Assurance Testing and Inspection (Appendix B)
- Provision of Services (Appendix C)
- Liquidated Damages for Delay (Appendix D)
- President's Malaria Initiative (Appendix E)
- Medical Equipment (Appendix F)
- Additional clauses (Appendix G)

B. In the event of conflict or inconsistency, the terms of the Order Form shall prevail over the SCTCs and the SGTCs, and the SCTCs shall prevail over the SGTCs.

2. GOODS AND RELATED SERVICES

A. Vendor agrees to sell the Goods (and perform the Related Services, if any) described on the Order Form, in accordance with the terms stated thereon.

B. The quality of the Goods and Services shall conform in all respects to the requirements of the Contract (including, but not limited to, all required warranties).

C. All Goods (including, but not limited to, materials, parts, components, and sub-assemblies thereof) shall, unless otherwise expressly approved by Buyer in writing, be new, and not used, remanufactured, refurbished or previously disposed as Government surplus; and shall be produced entirely from goods meeting all of the foregoing requirements.

D. Unless otherwise expressly approved by Buyer in writing (based on approval by the Government's Contracting Officer)—

[1] the origin of any of the Goods for which a specific "Origin" is indicated on the Order Form shall be as specified; and

[2] the Goods (including the components thereof), services, sub-vendors or subcontractors shall not be from Cuba, Iran, Laos, Libya, Sudan, Syria, or North Korea.

- E. Notwithstanding any other provision of the Contract, Buyer may do either or both of the following:
- [1] prior to shipment of the Goods and the initiation of performance of any Related Services, by written notice to Vendor, cancel in its entirety, or reduce the quantity(ies) of, any individual item(s) of the Goods without charge to Buyer; or
 - [2] in the event that the USAID Contract is terminated by the Government in whole or in pertinent part prior to shipment, return to Vendor unused items or quantities of Delivered Goods.

3. PACKING, EXPORT MARKING, PREPARATION FOR SHIPMENT AND PACKAGING

Vendor shall pack and mark the Goods for export as required by the Contract, and by all applicable transportation regulations, carrier tariffs, USFDA/SRA regulations (if any), and sound commercial practice. Without limiting the generality of the foregoing--

- A. All Goods shall be properly prepared for export to withstand exposure to the elements and rough handling during air, sea or land shipment.
- B. Packing must be sufficient to ensure safe arrival at destination, and must fully cover such hazards as extreme temperature, exposure to weather, and open storage. Where appropriate, packing size and weights shall take into consideration the remoteness of the Goods' destination and the absence of heavy handling facilities at some or all points during transit.
- C. Vendor shall be solely responsible for complying with all Cooperating Country laws and sound international practices for the packaging and labeling of the Goods (including, if applicable, hazardous materials safeguards).
- D. Unless otherwise provided on the Order Form, Vendor shall mark each unit of export packaging with the JSI R&T Contract number specified on the Order Form, and shall enclose a packing slip with that number in a secure and durable envelope.
- E. Damage resulting from improper packing, export marking and preparation for shipment shall be for Vendor's account.
- F. No extra charge shall be payable by Buyer for export packaging, crating, boxing, handling, dunnage, drayage, storage, or any other action necessary to comply with the requirements of this clause unless specifically stated in the Contract or otherwise agreed to by Buyer in writing.

4. EXPORT AND TRANSPORTATION CLEARANCES

Vendor's responsibilities in connection with export and transportation clearances depend on the applicable delivery term, as modified by the terms of the Contract.

5. GOODS AVAILABILITY AND DELIVERY

- A. Delivery of the Goods shall be affected on the basis of the Incoterm specified on the Order Form, as such term is defined in Publication No. 620 of the International Chamber of Commerce (Incoterms 2000), as modified by the specific delivery requirements set forth in the Contract. In the event of any conflict or inconsistency between a specific delivery requirement and the relevant Incoterm, the specific delivery requirement shall prevail.
- B. Vendor shall make the Goods available for sampling, testing, inspection and/or delivery on or before the Goods Available Date specified on the Order Form.
- C. Unless explicitly authorized on the Order Form or otherwise approved by Buyer in writing (under such conditions as Buyer may impose), all items and quantities of the Goods shall be made available at the same time; tender of a portion of the Goods shall not be acceptable. In the event of short/partial tender, in addition to any other rights specified in the Contract, or available in law or in equity, Buyer may, at its sole discretion, either
- [3] reject the Goods in their entirety, in which case Vendor shall promptly pay Buyer upon demand any excess costs of re-procurement;
 - [4] deem any quantity of Goods not yet tendered to be rejected, and reduce the Total Contract Price accordingly; or
 - [5] authorize Vendor to make up the shortage at a later date.
- D. If Vendor tenders any item of the Goods in excess of the quantity called for in the Order Form, such excess quantity shall be treated as being tendered for the convenience of Vendor. Buyer may retain such excess quantity without compensating Vendor therefore, and Vendor waives all right, title, or interest therein.
- E. Vendor shall notify Buyer when the Goods are available by sending a Notice of Availability by e-mail to the JSI R&T Contact identified on the Order Form. The notice shall clearly reference the JSI R&T Contract Number, and shall include:
- [1] a Commercial Invoice;
 - [2] a Packing List with weights and dimensions;
 - [3] if the Goods include pharmaceuticals, a Certificate of Analyses;
 - [4] where the delivery term is EXW or FCA, the name of the Vendor representative responsible for collecting the Goods and transferring them to Buyer's nominated carrier, and

[5] such other information and documents as are specified in the Contract (such as a Certificate of Origin or a Certificate of Pharmaceutical Product), and as Buyer may reasonably request from time to time.

F. Upon receipt of a Notice of Availability—

[1] Where the Contract delivery term is EXW or FCA, within three working days after receipt, Buyer shall endeavor to arrange for the Goods to be collected or give instructions to Vendor for transfer of the Goods to the nominated carrier.

[2] For all other Contract delivery terms, within a reasonable time after receipt, Buyer shall issue an Authorization to Deliver; provided, that if the Contract calls for pre-shipment quality assurance testing, Buyer shall promptly arrange for such testing, and shall issue an Authorization to Deliver promptly upon receipt of the results thereof for all Goods that pass.

G. Upon receipt of an Authorization to Deliver, Vendor shall immediately proceed to complete delivery of the Goods in accordance with the Contract delivery term.

H. Where Vendor is required to arrange shipment, shipments by sea shall be on an FCL/FCL (Full Container Load) basis, and via an American flag carrier, to the extent required by Cargo Preference regulations. Prior to such shipment, or immediately upon availability, Vendor shall send the following original documents by express courier, and PDF copies of those documents by e-mail, to the JSI R&T Contact identified on the Order Form:

- [1] Rated Air Waybill, or ocean Bill of Lading;
- [2] Insurance Certificate (if required by the Contract delivery term);
- [3] Packing List;
- [4] Commercial Invoice;
- [5] any other document included with the Notice of Availability; and
- [6] such other documents as Buyer may reasonably request from time to time.

The Air Waybill (for air shipment) or the Bill of Lading (for ocean shipment) shall be clean, on-board, marked "freight paid" issued by the vessel-owning common carrier, and on a through basis (covering all intermodal and/or inland transportation, if any, to destination). The Certificate of Insurance shall provide all risk marine cargo insurance on terms no less favorable than the Institute Cargo Clause (All Risks), including war risks and strike clauses. The amount of coverage shall be 110% of the delivered price of the Goods, and shall be from Vendor's facility in the country of manufacture to the final destination. Except as otherwise authorized by Buyer, the policy shall name JSI R&T as the insured, and any loss proceeds shall be payable in United States Dollars.

I. Vendor shall advise Buyer of all information concerning the Goods that is pertinent to the transportation and in-country handling and storage (including, but not limited to, any hazardous material indications and any other special handling and storage requirements), and shall be solely responsible for the consequences of any failure to do so.

- J. Buyer shall secure any necessary licenses, approvals, permits, and other authorizations, and effectuate the required customs clearance, needed for the importation of the Goods into the country of destination. Vendor shall provide all reasonable assistance toward performance of Buyer's responsibilities. For other than EXW deliveries, Vendor shall also be solely responsible for all costs and risks relating to payment of all duties, taxes, and other official charges assessed on exportation from the country of manufacture and shipment. Any import duties or other exactions assessed by the government of the country of destination, as well as container demurrage/detention and comparable charges shall be for the Buyer's account, except for [a] container demurrage/detention and comparable charges levied in those instances in which Vendor fails to comply with the shipping document delivery schedule as specified in Paragraph H above or has otherwise caused the delays giving rise to such demurrage/detention or comparable charges; and [b] the costs of duties, taxes, and similar official import charges on replacement Goods, when required due to the Goods originally supplied by Vendor having been defective.

6. PRICE

- A. The Prices (Unit Prices and extended prices) specified in the Order Form are firm, fixed, all-inclusive total prices covering performance of all of Vendor's obligations under the Contract, including, but not limited to, delivery of the Goods in accordance with the Contract delivery term and performance of all Associated and Related Services; warranty-related costs and charges; packing, packaging and marking costs; the costs of cooperating with sampling, testing, inspection and other quality assurance requirements, when applicable; and any and all other costs and charges of whatever description or amount in connection with, necessary for, or resulting from Vendor's required performance.
- B. Vendor certifies that the Price(s) in the Contract represent the lowest price(s) at which Vendor currently sells the Goods under comparable terms and conditions to any of its customers. If during the life of the Contract Vendor sells the Goods to any customer for a lower price, it will promptly inform Buyer and execute an Amendment to the Contract so that such lower price applies to any pending or subsequent Goods delivered hereunder.
- C. The Total Contract Price specified on the Order Form shall constitute the maximum ceiling for Buyer's liability to Vendor for any and all reasons whatsoever in connection with or resulting from the Contract.

7. INVOICING AND PAYMENT

- A. Invoices and payments shall be in United States Dollars, unless otherwise stated in the Order Form. Invoices shall be sent to and paid by:

John Snow, Inc (JSI R&T)
Attn. USAID | SPRING PROJECT
1616 N. Ft. Myer Drive, 16th Floor
Arlington, Virginia, 22209
USA

- B. To constitute a "proper invoice" within the meaning of this Article 7, the invoice shall provide the following information supported by such other documents as are specified in the Order Form:
- [1] Vendor name, invoice date, and delivery date (for Goods) or performance date (for Related Services), as applicable;
 - [2] Complete account and bank's SWIFT information if payment by means of electronic funds transfer is preferred;
 - [3] JSI R&T Contract number and, if applicable, Order Form number;
 - [4] Description of each type of Goods and Related Services included in the invoice, together with the applicable Contract Unit Price, quantity delivered, and extended line item price;
 - [5] The Vendor Certification, set forth below, manually signed by an authorized official of Vendor; and
 - [6] Such other documentation as may be requested by Buyer in relation to the Goods and/or Related Services.

VENDOR CERTIFICATION

The undersigned hereby certifies that (i) the invoice has been prepared from Vendor's books and records in accordance with the terms of the cited Contract, and to the best of my knowledge and belief, it is correct, the sum claimed is proper and due and has not been claimed or paid before, the Goods have been delivered and all required Services have been performed, the quantities and prices specified are consistent with the Contract, and all necessary Buyer approvals have been obtained, and (ii) appropriate refund to Buyer will be made promptly upon request in the event of disallowance of any portion of the invoice pursuant to the terms of the Contract by Buyer or the Government.

By: _____

Title: _____

Date: _____

- C. Buyer will promptly review invoices submitted to determine whether they are proper invoices. Invoices determined to be proper will be paid by Buyer within thirty (30) days of receipt, subject always to Buyer's prior receipt of funds designated for such payment under the USAID Contract. Invoices determined not to be proper will be returned to Vendor, generally within ten (10) business days of submission, with deficiencies noted for correction. In the event that an invoice is submitted which is partly proper and partly not proper, Buyer may, at its sole discretion, either return the entire invoice for correction or make payment of the proper portion and return the portion deemed not to be proper. Notwithstanding the foregoing, Buyer accepts no responsibility for any late payment resulting from Government acts or omissions.
- D. Unless otherwise stated in the Order Form, Buyer shall pay Vendor 100% of the Total Contract Price upon delivery. Buyer may request reasonable security for any advance payment(s), in a form and substance acceptable to Buyer and the Government, and with all costs thereof to be for Vendor's account.

- E. If payment(s) will be made electronically, Vendor shall be solely responsible for providing Buyer with correct wiring information. All costs and risks arising out of, relating to, or resulting from such wiring shall be borne by Vendor.

8. TITLE AND RISK OF LOSS OR DAMAGE

- A. Title to the Goods shall pass, in accordance with applicable law, directly to JSI Research & Training Institute Inc.
- B. Risk of loss or damage to the Goods shall be borne by Vendor and Buyer, respectively,, in accordance with the requirements of the Contract delivery term, except that each Party shall be responsible for any loss or damage if, and to the extent that, such loss or damage is due to that Party's negligent, willful or intentional conduct.

9. VENDOR WARRANTIES

- A. All Goods delivered and Services rendered hereunder shall be covered by the Manufacturer's standard international warranty in favor of JSI Research & Training Institute Inc.
- B. In addition and without prejudice to Paragraph A above, Vendor warrants that the Goods and Services delivered and rendered hereunder are merchantable and fit for use for the particular purpose described in the Contract (or, if no such purpose is specifically described, for the purposes for which the Goods or Services, as applicable, are ordinarily used).
- C. Vendor also hereby expressly warrants that all Goods (including without limitation their parts) and Services supplied, as applicable:
- [1] conform to Contract requirements (including without limitation the description in the Contract and the Specifications), as well as, if one or more specific Cooperating Countries is mentioned in the solicitation or the Contract, the requirements of that Cooperating Country and any other applicable regulatory agencies' requirements, and are free of defects in design;
 - [2] are free of latent defects (as used herein, defects that meet the following criteria: (a) such defects are not apparent to either Party during customary manufacturing or quality testing and/or inspection; and (b) such defects result solely from defective material, workmanship, or design and are not caused by misuse or misapplication of the Goods);
 - [3] will, to the extent found to be in breach of any warranty specified in the Contract, be removed, and repaired or replaced, covered by new warranties identical to those that applied to the originally supplied Goods and Services, extending for the longer of [a] the remainder of the original warranty period, or [b] a new warranty period;
 - [4] ensure that all spares and replacement parts are the same as the original spares and parts unless formally replaced by an improved and Buyer-approved technical equivalent; and

[5] are covered by intellectual property licenses, patents, permissions, or rights which will not infringe the intellectual property rights of any third person, and which, being granted to Buyer and the Government pursuant to the Contract, will be adequate to ensure that they may freely utilize the licenses, permissions and rights free and clear of any claim, encumbrance, lien or interest of any other person or entity, and in all other respects without disturbance or impediment.

- D. The period of all warranties set forth in this Article or in any other provision of the Contract shall be as stipulated on the Order Form.
- E. If any Goods or Services supplied hereunder are defective or otherwise do not meet the warranties specified herein or otherwise applicable at any time during the warranty period, Buyer may, at its option: (1) reject the affected item(s) and require a full refund or credit; (2) reject the affected item(s) and require prompt correction or replacement (freight prepaid) at Vendor's sole expense; (3) retain it/them at an equitably adjusted price; or (4) require Vendor to provide, if available, corrections in the form of field change order kits (including components, instructions and other necessary materials) from Vendor so that Buyer or its designee may make necessary changes or repairs. Repaired or corrected items shall be subject to the same warranties as if they were new. While returned item(s) are in Vendor's possession and while in transit during return to Vendor and reshipment to or as directed by Buyer, all risks and costs of loss, destruction or damage shall be for Vendor's account.
- F. Buyer shall submit warranty claims to Vendor within a reasonable time after discovery of any breach, indicating the nature and date of the claim.
- G. Vendor shall promptly correct any problem reported by the Government and/or Buyer by making necessary changes in the Goods or their manufacturing processes so that further Goods to be delivered to the Government and/or Buyer shall be as warranted herein. If Vendor becomes aware of any non-conformance to any warranty relating to the Delivered Goods, Vendor shall promptly notify Buyer thereof in writing.
- H. Buyer shall have the right, at any time and from time to time, to stop further deliveries of Goods from Vendor that do not conform to the warranties and other requirements of the Contract, and in such event Buyer shall advise Vendor of Buyer's best identification and assessment of the problems. Further deliveries of Goods shall not be made to Buyer until and unless Vendor has corrected the specified areas of non-conformance in the Goods, or Buyer authorizes in writing the shipment of such Goods pending Vendor's correction. Buyer's actions pursuant to this Paragraph shall not be deemed to constitute a change order, and Vendor shall not be entitled to any compensation due to the delays (if any) associated with or resulting from these actions.

10. SERVICE BULLETINS, RECALLS, AND COUNTERFEITING NOTICES

- A. Vendor shall promptly provide the Buyer with any service bulletins, safety notices and recall notices etc. issued by Vendor (or, if Vendor is not the manufacturer, by the Manufacturer) either directly or via the Manufacturer's local agent, if any.
- B. Vendor shall promptly provide the Buyer with written notice (including all pertinent particulars) regarding instances that may come to its attention by whatever means of possible counterfeiting, piracy, or unauthorized sales by third parties of diluted, adulterated, impure, misbranded, mislabeled, unsafe, ineffective, inefficacious, or otherwise non-standard items of the same type and brand as the Goods supplied in the Cooperating Countries.
- C. Notwithstanding any other provision in the Contract or any other agreement between the Parties, Buyer may disclose this information to appropriate authorities of the U.S. Government or the Cooperating Country governments, as well as others, as deemed necessary in Buyer's sole discretion to perform the USAID Contract, comply with its obligations under applicable law, or otherwise. The obligations under this Article shall continue to apply until the end of the warranty period of all Goods furnished by Vendor pursuant to the Contract.

Vendor will provide Buyer or its Quality Assurance designee access, upon request, to information, and any documentation related to product quality complaints, investigations conducted by the manufacturer, or any medical adverse event reports, and/or trends that are directly related to the supplied product.

11. CHANGE ORDERS

Buyer may, at any time or from time to time, by written order specifically designated as a "Change Order," require changes within the general scope of the Contract in accordance with FAR 52.243-1 (AUG 1987). Vendor shall perform any such changes so ordered. The authority to order a change is limited to Buyer's Procurement Representative. For purposes of the Contract, the time period in FAR 52.243-1(c) for Vendor to assert a right to an equitable adjustment shall be twenty (20) days rather than thirty (30) days. Notwithstanding the existence or pendency of any claim for such an adjustment, Vendor shall diligently proceed with performance of the Contract, as directed by Buyer, and nothing herein shall be construed as relieving Vendor of its obligation to perform, including, without limitation, the failure of the parties to agree upon Vendor's entitlement to, or the amount of, any such adjustment. Failure to do so may be deemed a breach of contract. If Vendor interprets any Buyer communication as a Change Order, but the communication is not specifically designated as a "Change Order," Vendor must secure written confirmation before performing or lose the right to seek any equitable adjustment. Any disagreement between the Parties pursuant to this Article shall be resolved in accordance with the Disputes provision herein.

12. OPTION FOR INCREASED QUANTITY

Unless this is an Indefinite Quantity Delivery type of contract, and if so provided in the Order Form, Buyer may increase the Goods and/or Related Services called for by the quantity and at the unit price(s) specified. Buyer may exercise this additional option by providing written

notice to Vendor within the period of time stipulated in the Contract. Delivery of the additional Goods or performance of the additional Related Services, as applicable, shall be subject to the terms and conditions of the Contract, except as the Parties may otherwise agree in writing.

13. TERMINATION, SUSPENSION, AND OTHER REMEDIES

- A. Buyer reserves the right to terminate this Contract in whole at any time, or in part from time to time, for its sole convenience. In the event of such termination, Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its sub-vendors, suppliers and subcontractors (including the Manufacturer, if different from the Vendor) to cease work. Subject to the terms of this Contract and to reimbursement of Buyer by the Government, Vendor shall be paid a percentage of the total Contract Price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Vendor can demonstrate to Buyer's satisfaction using its standard record keeping system, have resulted from the termination. Vendor shall not be required to comply with the Cost Accounting Standards or contract cost principles for this purpose. Vendor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- B. Buyer may also terminate the Contract at any time in whole, or from time to time in part, for cause in the event of default by Vendor (including, but not limited to, any default by Vendor's sub-vendors, suppliers or subcontractors, or by the manufacturer), or if Vendor fails to comply with any Contract term or condition, or fails to provide Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, Buyer shall not be liable to Vendor for any Goods or Related Services not already delivered, and shall have any and all of the other rights and remedies against Vendor provided by the Contract or by applicable law and regulation.
- C. If it is determined that Buyer improperly terminated the Contract for default, such termination shall be deemed a termination for convenience, and Vendor's rights and remedies shall be limited to those stated in Article 13.B. If the termination for default is not improper, in addition to the other rights and remedies provided by the Contract or by applicable law and regulation, Buyer may purchase elsewhere goods similar to those not yet delivered, and Vendor shall pay Buyer any costs that it incurs over the Contract Price (or relevant part thereof).
- D. If performance of the USAID Contract is suspended for any reason, Buyer may, by written notice, instruct Vendor to immediately suspend all or any part of its performance. The period of suspension shall extend for up to ninety (90) days from the date of Vendor's receipt of the notice, and may be extended if, and to the extent that, the suspension of the USAID Contract is extended. Before the end of the period, Buyer will either cancel the suspension or terminate the Contract pursuant to Paragraph A or B above. If the suspension is cancelled before it expires, or the suspension period expires without renewal, Vendor shall resume its performance. No additional compensation will be due to Vendor due to the suspension; however, if necessary, Vendor may propose an appropriate adjustment in the performance schedule. In the event of termination, the procedures in Paragraph A or B, as applicable, will be followed.
- E. Termination of the Contract shall not affect the existing rights and licenses granted to Buyer or the Government, which shall survive such termination.

- F. In the event that Vendor (or the Manufacturer, if Vendor is not also the manufacturer) shall cease conducting that portion of its business which produces, distributes or supports the Goods described herein, Buyer shall have, in order to fulfill its obligations to the Government, such rights to technical data, computer software and any other Vendor-provided information, documentation and materials used in connection with the Goods as are necessary for the continued performance of the USAID Contract. Vendor shall assist Buyer and the Government in every reasonable manner in arranging for the orderly transfer, under such provisions stated herein, of all activities to Buyer or to the designees of either of the foregoing.
- G. Notwithstanding termination or suspension in accordance with this article, Vendor shall, unless otherwise specifically instructed in writing by Buyer, continue performance of any not terminated or not suspended portion of the Contract.

14. NOTICES

- A. Contract notices shall be in writing; shall clearly reference the JSI R&T Contract Number; shall be manually signed by the notifying Party's authorized representative; shall be e-mailed as a PDF document, mailed postage prepaid or, if sent by recognized express courier, personally delivered; and shall, in all cases, be addressed to the individuals as identified on the Order Form.
- B. Contract notices transmitted by facsimile, telegram or telex may be provided as advance copies, provided that an identical copy is promptly transmitted in accordance with Paragraph A above. Notices shall be effective when received, or on the effective date stated in the notice, whichever is later.

15. DISPUTES BETWEEN THE PARTIES ON MATTERS INVOLVING THE GOVERNMENT

Notwithstanding any other provision of the Contract, any action by a cognizant Government official purporting to act within his/her authority under or in connection with the USAID Contract or the present Contract that binds Buyer shall also bind Vendor if, and to the extent that, the action relates to or affects the Contract. If requested by Vendor in writing, Buyer may agree at Vendor's expense to sponsor a claim with Government. Vendor shall reimburse Buyer for all costs incurred by Buyer as a result of sponsoring such a claim, without charge to the Contract.

16. DISPUTES

- A. The Parties shall make every reasonable effort to resolve through discussion any dispute between them arising from, or relating to, the Contract. If such efforts are unsuccessful, either Party may refer the matter to arbitration, which shall be the exclusive method of resolving such disputes
- B. The arbitration shall be conducted in Boston, Massachusetts, under the supervision of the American Arbitration Association ("AAA") using its Commercial Arbitration Rules (if Vendor is a U.S. entity) or its International Arbitration Rules (if Vendor is a non-U.S. entity), as then in effect, before a single arbitrator appointed in accordance with such rules. The decision of the arbitrator will be in writing, and will contain a statement of reasons; the resulting award shall be

final and binding on the Parties and shall be in lieu of any other remedy. Judgment may be entered upon the award in any court of competent jurisdiction.

- C. Notwithstanding the pendency of any arbitration proceeding, the Parties shall continue to perform their respective obligations pursuant to the Contract.

17. BUYER'S DISPOSITION RIGHTS

Vis-à-vis Vendor (or the manufacturer, if different from Vendor), Buyer and the Government shall have the right, in their sole discretion, to dispose of the Goods supplied under the Contract in any lawful manner including without limitation donation, use, resale, or re-export. Such disposition shall not require the approval or consent of Vendor, nor shall it be deemed to give rise to any claim by Vendor (or the manufacturer, if different from Vendor) against Buyer or the Government for compensation or otherwise of whatever nature. Buyer will notify Vendor before re-exporting the Goods outside of the Cooperating Countries.

18. COMMUNICATIONS WITH GOVERNMENT

All communications with the Government concerning the Contract or the Project of which the Contract is a part shall be made through Buyer unless otherwise expressly authorized by Buyer. If Vendor is called upon by the Government to communicate concerning the Contract or the Project, Vendor shall notify and consult with Buyer before responding.

19. CONFIDENTIAL INFORMATION AND DISCLOSURE

- A. Information which either Party may disclose to the other shall not be deemed to be "Confidential Information" and shall be acquired free from any restriction, unless the information is confidential and/or proprietary to the disclosing Party and:

- [1] if it is disclosed in tangible form, the disclosing Party marks such information as "Proprietary," "Restricted" or "Confidential"; and
- [2] if it is disclosed verbally, the disclosing Party expressly identifies such information as confidential at the time of disclosure and thereafter reduced to tangible form with a copy, prominently marked as aforesaid, delivered to the receiving Party within ten (10) days of the verbal disclosure.

When a writing contains both Confidential Information and non-confidential information, the disclosing Party shall specifically note which information is deemed confidential.

- B. Each Party shall exercise the same degree of care to avoid the disclosure, publication or dissemination of the other Party's Confidential Information as it affords to its own Confidential Information of a similar nature which it desires not to be disclosed, published or disseminated. Confidential Information disclosed under the Contract shall only be used by the receiving Party in the furtherance of the Contract and the performance of its obligations hereunder.
- C. Neither Party shall be obligated to protect Confidential Information of the other which:

- [1] is rightfully received by the receiving Party from another source without restriction;
 - [2] is known to or developed by the receiving Party independently without use of the confidential information;
 - [3] is or becomes generally known to the public by other than a breach of duty hereunder by the receiving Party;
 - [4] has been or is hereafter furnished by the disclosing Party to others without restriction on disclosure; or
 - [5] is known or available to the receiving Party by inspection or analysis of products available in the market.
- D. The obligation not to disclose, publish, disseminate or use said Confidential Information shall survive the cancellation, expiration, or termination of the Contract, and shall end five (5) years after the date of receipt of said Confidential Information, except with respect to any Software, for which the obligation shall continue until the occurrence of any of the events listed in Paragraph C, above.
- E. Nothing contained herein shall be construed as preventing Buyer from—
- [1] sublicensing or marketing Software or documentation to the Government; or
 - [2] disclosing Confidential Information to its affiliated entities, third parties and others in furtherance of the USAID Contract; provided, however, that such affiliated entities, third parties and others agree to protect such information to the extent provided herein.
- F. Vendor hereby authorizes Buyer to incorporate Vendor's (and, if Vendor is not also the Manufacturer, the Manufacturer's) Confidential Information in submissions to the Government, on condition that it bears an appropriate restrictive legend.

20. INDEPENDENT CONTRACTOR

The relationship between the Parties pursuant to the Contract is that of independent contractors, and nothing contained herein shall be deemed to create a relationship of partners, joint ventures, agent and principal, employer and employee, or any relationship other than that of independent contractors. At no time shall either Party make any commitments or incur any charges or expenses for or in the name of the other Party.

21. GOVERNING LAWS, REGULATIONS, AND LANGUAGE

- A. Vendor shall, in performing its obligations pursuant to the Contract, comply with all applicable statutes, rules, regulations, and executive orders of the Government (including without limitation the CFR and AIDAR), as well as all other applicable laws and regulations.

- B. The Contract, its making and performance, and the circumstances surrounding all of the foregoing, shall be interpreted in accordance with the laws of the State of Massachusetts in the U.S.A., without regard to its conflicts of law principles.
- C. The language governing the Contract, its interpretation, notices, disputes, and any related communications, shall be English.

22. GOVERNMENT-REQUIRED CERTIFICATIONS

Vendor shall furnish to Buyer any certification required by any applicable law, or applicable USAID regulation or policy, in effect on the date the Contract is issued or thereafter enacted. As used in this Article, the word "certification" shall include, but not be limited to, any plan or course of action or record keeping function, representation or document of similar tenor.

23. PROBITY

- A. Vendor shall strictly ensure that Vendor and its officers, directors, employees, agents, representatives, consultants and subcontractors avoid—
 - [1] any action in violation of (or that might reasonably be considered to be in violation of) U.S. Government or other applicable laws, regulations, rules and policies relating to ethics, integrity and proper business practices; and
 - [2] any corrupt practice (including without limitation the offering, giving, receiving or soliciting of anything of value to influence the action of any public official or any officer, employee or director of Buyer or Vendor) or fraudulent practice (including without limitation misrepresentation of facts to influence a procurement action or Contract execution or administration), to the actual or potential detriment of Buyer, the Government, or the Cooperating Countries.
- B. If an issue should arise concerning compliance with this Article, Vendor shall immediately provide Buyer with written notice describing the issue, all pertinent facts as known on the date of the notice, any conclusions reached by Vendor as of that date, and any corrective actions proposed. Failure to respond aggressively and appropriately to such issues may be treated by Buyer as a material breach of the Contract. Vendor shall indemnify and hold Buyer harmless for any costs, delays, losses, damages or other liabilities (including, but not limited to, reasonable costs and fees of attorneys and expert consultants and costs and fees incurred in connection with Government investigations) incurred by Buyer as a result of any occurrences covered by this Article, or any allegations relating to purported occurrences of this nature.

24. INDEMNITIES

- A. Vendor shall indemnify and hold harmless Buyer (including its officers, directors, employees and agents) and the Government from and against all claims, damages, losses and expenses with respect to the death, injury or disability of any persons and damage to or destruction of any property (including without limitation any loss of use, and any product liability or similar claim, in or under the laws of any of the Cooperating Countries or other applicable law) arising out of,

resulting from or connected in any way with the performance of the Contract by Vendor or Vendor's employees, the Manufacturer (if different from Vendor), other sub-vendors and subcontractors, or their respective officers, directors, employees and agents; provided, that the Goods are used and stored in a manner consistent with any manufacturer recommendations specifically noted by Vendor in its offer and expressly incorporated by Buyer into the Contract.

- B. Vendor shall, at its own expense, defend all suits or claims (whether or not false, fraudulent or groundless) by third parties alleging such injury or damage and shall pay all reasonable charges of attorneys, court costs, awards and all other costs and expenses in connection therewith. This provision shall survive the cancellation, expiration or termination of the Contract.
- C. Vendor shall indemnify Buyer (including its officers, directors, employees and agents) and the Government) against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any U.S. or foreign patent, trademark, or copyright, arising out of the performance of the Contract; provided that Vendor is reasonably notified of such claims and proceedings.
- D. Buyer shall give Vendor prompt written notice of—

[1] any claim by a third party, or

[2] any action or proceeding (including without limitation any Government investigation or inquiry) potentially involving one of the indemnities set forth above. Upon receipt of such notice, Vendor shall promptly assume the defense thereof, including the employment of counsel reasonably satisfactory to Buyer, and shall be solely responsible for the payment of all fees and expenses incurred in connection with such defense. Notwithstanding the foregoing, Vendor shall not, without Buyer's approval, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff a release, in form and substance satisfactory to Buyer, from all liability with respect to such claim or litigation.

25. RELEASE OF INFORMATION

Any Vendor news release, public announcement, advertisement or publicity concerning the Contract or the USAID Contract will be subject to prior written approval of Buyer. Vendor shall not disclose any information relating to the Contract to any person not authorized by Buyer or the Government to receive it.

26. GRATUITIES

Vendor shall ensure that Vendor, Manufacturer (if different from Vendor), and Vendor's sub-vendors and subcontractors if any, and their respective officers, directors, employees and agents, comply with the requirements of FAR 52.203-3, "Gratuities (APR 1984)." For purposes of this clause, in connection with the Contract, prohibited recipients of gratuities include not only employees of the Government, but of Buyer as well.

27. NOTICE OF DELAY OR IMPEDIMENT

Whenever any occurrence is delaying or impeding, or threatening to delay or impede, Vendor's timely and successful performance under the Contract, Vendor shall promptly give notice thereof, including all relevant information with respect thereto, to Buyer.

28. RETURN UPON COMPLETION

Upon completion of performance of the Contract, on request, Vendor shall promptly return to Buyer all Specifications, plans, drawings, patterns or samples - - and all copies of any of the foregoing. All of the items referred to in the preceding sentence shall be and remain, at all times, Buyer's sole property.

29. MANDATORY GOVERNMENT CLAUSES.

The Contract incorporates by this reference the mandatory U.S. Government clauses specified below (as well as all other FAR and AIDAR clauses cited in other provisions of the Contract) in their entirety, with the same force and effect as if they were given in full text. Buyer will make their full text available upon request by Vendor. Except where a different meaning is obviously intended, all references to the "Contractor" in such a clause shall be deemed to mean Vendor, and all references to "USAID," "the Government" or "the Contracting Officer" shall be deemed to mean Buyer. All documentation required from Vendor by these clauses shall be submitted to Buyer; and all approvals shall be submitted to and obtained from Buyer.

FAR: The following mandatory FAR clauses are incorporated, to the extent applicable: 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008); and 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006). In addition, Vendor shall ensure that neither Vendor nor any of its sub-vendors and subcontractors, is included on the GSA List (or any other official list) of suspended, debarred or ineligible contractors used by USAID. [Note: See FAR 12.504 for a list of laws that are expressly not applicable to subcontracts at any tier for commercial items.]

AIDAR: The following AIDAR clauses are incorporated to the extent applicable: 752.202-1, AID Definition Clause - General Supplement for Use in All Contracts (JAN 1990); 752.211-70, Language and Measurement (JUN 1992); and 752.225-70, Source, Origin and Nationality Requirements (FEB 1997).

Other: The Contract is authorized under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (P.L. 108-25) (the "Act"). The Act enunciates that the U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. Vendor shall not use any of the funds made available under the Contract to promote or advocate the legalization or practice of prostitution or sex trafficking. Vendor shall have a policy explicitly opposing prostitution and sex trafficking, as required by the Act. For purposes of this requirement, "sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22

U.S.C. 7102(9). Any violation of this requirement may result in the immediate termination of the Contract.

Access to Records: The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of Vendor's directly pertinent records involving transactions related to the Contract. Vendor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit or reproduction, until three (3) years after final payment under the Contract (or, if the Contract is terminated in whole or in part, for three (3) years after any resulting final termination settlement). Records relating to disputes shall be made available until such disputes are finally resolved. As used in this paragraph, "records" includes books, documents, accounting procedures and practices, and other data, regardless of form. This does not require Vendor to create or maintain any record that Vendor does not maintain in the ordinary course of business or pursuant to a provision of law.

30. MANDATORY GOVERNMENT CLAUSES INCORPORATED IN FULL TEXT.

If Vendor is a U.S. entity, FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010) shall apply.

A. Definitions. As used in this clause--

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of Vendor or subcontractor at any tier

B. To the maximum extent practicable, Vendor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under the Contract.

C. The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act. (JUN 2010)

(ii) 52.209-7 Information Regarding Responsibility Matter (JAN 2011)

(iii) 52.209-8 Updates of Information Regarding Responsibility Matters (Apr 2010)

(iv) 52.219-9 Utilization of Small Business Concerns (JAN 2011)

(vii) 52-222-21 Prohibition of Segregated Facilities (FEB 1999).

(viii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(ix) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2010) (38 U.S.C. 421(a));

(x) 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010)

(xi) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (SEP 2010)

(xii) 52.222-50 Combatting Trafficking in Persons (FEB 2009)

(xiii) 52.247-64, Preference for Privately Owned US.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR 52.247-64).

(xiv) 752.209-71 Organizational Conflicts of Interest Discovered After Award

(xvi) Prohibition on the Promotion or Advocacy of the Legalization or Practice or Prostitution or Sex Trafficking (Acquisition) (April 2010)

[1] While not required, Vendor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

D. Vendor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under the Contract.

31. TERRORISM

Vendor is reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is Vendor's legal responsibility to ensure compliance with these Executive Orders and laws. This provision shall be included in all subcontracts under the Contract.

32. VOLUNTARY POPULATION PLANNING ACTIVITIES (JUNE 2008)

A. Voluntary Participation and Family Planning Methods.

[1] The contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

[2] Activities which provide family planning services or information to individuals, financed in whole or in part under this contract, shall provide a broad range of family planning methods and services available in the country in which the activity is conducted or shall provide information to such individuals regarding where such methods and services may be obtained.

B. Requirements for Voluntary Family Planning Projects.

- [1] A family planning project must comply with the requirements of this paragraph.
- [2] A project is a discrete activity through which a governmental or nongovernmental organization or public international organization provides family planning services to people and for which funds obligated under this contract, or goods or services financed with such funds, are provided under this contract, except funds solely for the participation of personnel in short-term, widely attended training conferences or programs.
- [3] Service providers and referral agents in the project shall not implement or be subject to quotas or other numerical targets of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning. Quantitative estimates of indicators of the number of births, acceptors, and acceptors of a particular method that are used for the purpose of budgeting, planning, reporting with respect to the project are not quotas or targets under this paragraph, unless service providers or referral agents in the project are required to achieve the estimates or indicators.
- [4] The project shall not include the payment of incentives, bribes, gratuities or financial rewards to (i) any individual in exchange for becoming a family planning acceptor or (ii) any personnel performing functions under the project for achieving a numerical quota or target of total number of births, number of family planning acceptors, or acceptors of a particular method of contraception. This restriction applies to salaries or payments paid or made to personnel performing functions under the project if the amount of the salary or payment increases or decreases based on a predetermined number of births, number of family planning acceptors, or number of acceptors of a particular method of contraception that the personnel affect or achieve.
- [5] No person shall be denied any right or benefit, including the right of access to participate in any program of general welfare or health care, based on the person's decision not to accept family planning services offered by the project.
- [6] The project shall provide family planning acceptors comprehensible information about the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method. This requirement may be satisfied by providing information in accordance with the medical practices and standards and health conditions in the country where the project is conducted through counseling, brochures, posters, or package inserts.
- [7] The project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits.
- [8] With respect to projects for which USAID provides, or finances the contribution of, contraceptive commodities or technical services and for which there is not sub-contract or grant under this contract, the organization implementing a project for which such assistance is provided shall agree that the project will comply with the requirements of this paragraph while using such commodities or receiving such services.
- [9]
 - (i) The contractor shall notify USAID when it learns that an alleged violation is a project of the requirements of subparagraphs (3), (4), (5) or (7) of this paragraph; and
 - (ii) the contractor shall investigate and take appropriate corrective action, if necessary, when it learns about an alleged violation in a project of subparagraph (6) of this paragraph and shall notify USAID about violations in a project affecting a number of people over a period of time that indicate there is a systemic problem in the project.

(iii) The contractor shall provide USAID such additional information about violations as USAID may request.

C. Additional Requirements for Voluntary Sterilization Programs.

- [1] The contractor shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this contract are performed only after the individual as voluntarily appeared at the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.
- [2] Further, the contractor shall document the patient's informed consent by
- (i) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or
 - (ii) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the
 - (iii) operation. The receipt of this oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall speak the same language as the patient.
- [3] The contractor must retain copies of informed consent forms and certification documents for each voluntary sterilization procedure for a period of three years after performance of the sterilization procedure.

D. The contractor shall insert this Alternate I in all subcontracts involving family planning activities.

33. DEFINITIONS OF TERMS

When used in the Contract, the following terms, whether or not capitalized, shall have the meanings indicated:

- A. **AIDAR** means the AID Acquisition Regulations (48 CFR Chapter 7);
- B. **Amendment** means a writing signed by the Parties, designated as an "Amendment" and sequentially numbered, modifying the provisions of the Contract;
- C. **Associated Services** means Services that are not separately priced in the Contract, but rather are deemed to be included in the Prices of the Goods with which they are associated;
- D. **Buyer** means JSI Research & Training Institute, Inc. (JSI R&T), acting on behalf of USAID;

- E. Buyer's Procurement Representative means the individual natural person, designated as such by Buyer with written notice to Vendor;
- F. Contract means all the documents listed in Article 2 of the Contract Form, as amended from time to time.
- G. Cooperating Country means the country or countries in which Goods will be distributed and/or Services provided, as listed in the Contract Form;
- H. Delivery means goods delivered in accordance with the applicable term as defined by Incoterms 2000, as modified by the Contract.
- I. FAR means the Federal Acquisition Regulation (48 CFR Chapter 1);
- J. Goods means all items (including, but not limited to, supplies, equipment, parts, materials), together with all Associated Services that are not separately priced on the Contract, described in the Contract and strictly conforming in all respects to the requirements of such Contract;
- K. Government means the U.S. Government (unless otherwise stated, represented by the U.S. Agency for International Development), acting in its contractual capacity;
- L. Order Form means a Purchase Order, an Order Form for a Firm Fixed Price Contract, or a Delivery Order;
- M. Party means either Buyer or Vendor individually (collectively, the "Parties");
- N. Pharmaceutical means any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or animals; any substances (other than food) intended to affect the structure or any function of the body of humans or animals; and, any substance intended for use as a component in the above. The term includes drugs, vitamins, oral rehydration salts, biologicals, and some in-vitro diagnostic reagent/test kits; but does not include devices or their components, parts, or accessories;
- O. Price, except as may otherwise be specifically stated, means the Total Contract Price stated on the Order Form (covering all Goods described on the Order Form, all Associated Services necessary to perform Vendor's obligations pursuant to the Contract, and any Related Services, together with the prices of all Goods included in any option exercised pursuant to Article 11);
- P. Related Services means services (if any) specifically described and priced separately from the Goods as a Line Item on the Order Form;
- Q. Unit Price means the price indicated in the Order Form covering, as applicable, [a] each item of the Goods, along with any Associated Services, or [b] Related Services;

- R. USAID means the U.S. Agency for International Development;
- S. USAID Contract means Cooperative Agreement AID-OAA-A-11-00031 between USAID and Buyer (as modified from time to time); and
- T. Vendor means the legal entity to which the Contract is issued.

34. OFFSETS

- A. At any time, or from time to time, Buyer reserves the right to deduct, or cause to be deducted, from any payment(s) otherwise due to Vendor, whether in connection with the Contract or any other agreement, all or any part of any amount that Buyer determines is owed to Buyer by Vendor.
- B. Buyer will use this authority cautiously and fairly, providing advance written notice and an opportunity to comment whenever doing so is deemed practicable in Buyer's sole discretion. If prior notice is deemed impracticable, Buyer will give notice subsequently.

35. NON-WAIVER

Buyer's failure to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract or to exercise any right hereunder, shall not be construed as a waiver of the future performance of any such term, covenant or condition or the future exercise of such right.

36. SEVERABILITY

If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue in full force and effect as if the Contract had been executed with the affected provision eliminated.

37. SURVIVAL OF PROVISIONS

In addition to the rights and obligations which survive as expressly provided for elsewhere in the Contract, the other provisions which by their nature should survive shall survive and continue after any termination or cancellation of the Contract.

38. ASSIGNMENT

Vendor shall not assign or transfer, in whole or in part, any of its rights or duties under the Contract, or any of the monies due or to become due hereunder, without Buyer's prior written consent. Any assignment or transfer entered into by Vendor without such consent shall be null and void as against Buyer unless thereafter ratified by Buyer in writing.

Buyer may, at its sole discretion, assign the Contract, and any or all rights, obligations and claims thereunder or relating thereto, to the Government, at any time or from time to time during the Contract Term, without Vendor's consent but with written notice to Vendor.

39. LIMITATION ON DAMAGES

If a claim for damages or a right to any other form of relief, based on contract, indemnity, negligence or otherwise should arise in connection with the Contract, the claiming Party shall take all necessary measures to mitigate the damages or loss, to the extent that this can be accomplished without unreasonable cost or inconvenience. In no event shall any such claim or relief include or permit recovery of exemplary or consequential damages, however described.

40. EXCLUSIVE AGREEMENT

The Contract is the exclusive agreement between Buyer and Vendor pertaining to the subject matter hereof. It supersedes all prior agreements, understandings, communications, negotiations and discussions, whether oral, written or electronic. No purported trade usage, custom, course of dealing or verbal statements of any kind shall be binding on Buyer.

41. VENDORS WHO ARE NOT THE MANUFACTURERS OF THE GOODS

Vendors who are not also the Manufacturers of the Goods being supplied shall fully comply with the requirements of the Contract themselves. In addition, they shall also be responsible for requiring the actual Manufacturers to comply to the extent specified in the Contract or otherwise as necessary to ensure Vendors' own compliance.

APPENDIX C

SPECIAL CONTRACT TERMS AND CONDITIONS FOR THE PROVISION OF RELATED SERVICES

If the Contract calls for performance of Related Services overseas by Vendor employees or consultants (collectively, Vendor "personnel"), Vendor shall comply with the following requirements:

1. Vendor shall notify Buyer (sufficiently in advance to permit Buyer to notify USAID and obtain its concurrence if needed) of any planned travel overseas by its personnel. Such notice shall include the number and names of the personnel participating, the proposed itinerary and logistics arrangements, and the Services to be provided, along with the information specified in AIDAR 752.7004, EMERGENCY LOCATOR INFORMATION (JULY 1997).
2. Vendor shall ensure that its personnel, while in a Cooperating Country, abide by all applicable laws of the Cooperating Country and political subdivisions thereof.
3. Other than work performed under the Contract for which they are assigned, Vendor personnel shall not engage, directly or indirectly, either in their own name or in the name (or through the agency) of another person, in any business, profession or occupation in the Cooperating Country, nor shall they make loans or investments to or in any business, profession or occupation in the Cooperating Country, without Buyer's prior written approval. This provision does not apply to Vendor personnel who are citizens or legal residents of the Cooperating Country.
4. Vendor shall obtain (1) workers' compensation (Defense Base Act) insurance pursuant to FAR 52.228-3 (APRIL 1984) and AIDAR 752.228-3, and (2) medical evacuation (MEDEVAC) insurance pursuant to AIDAR 752.228-70 (Mar 1993) as modified by USAID Acquisition and Assistance Policy Directive 06-01 (text available at http://www.usaid.gov/business/business_opportunities/cib/pdf/aapd06-01.pdf) for personnel traveling to a Cooperating Country in connection with this Contract.
5. Vendor personnel traveling on Vendor's behalf shall possess appropriate language skills, if any, stated in the Contract, and shall be physically fit in accordance with AIDAR 752.7033 (JULY 1997)
6. Vendor shall comply with USAID guidance, if any, relating to branding/marketing of activities (see <http://www.usaid.gov/branding/>).
7. FAR 52.246-4, INSPECTION OF SERVICES - - FIXED-PRICE (AUG 1996) shall apply to Related Services.

8. If the Related Services involve the creation of any copyrightable materials, such materials shall be deemed to constitute "works made for hire" under the Copyright Act of 1976 unless otherwise stated in the Order Form or otherwise agreed to in writing by Buyer.

9. All logistics support, visas, legal compliance matters and taxes in connection with its personnel overseas shall be the sole responsibility of Vendor, as will all liability for the acts and omissions of Vendor personnel. Vendor shall indemnify and hold Buyer harmless for all costs (including reasonable attorneys fees) incurred by Buyer in relation to the matters covered by this paragraph.

10. Compensation for satisfactory performance shall be paid upon completion thereof in compliance with the terms and conditions of the Contract and solely in the form of the firm, fixed, all-inclusive prices specified in Article 5 [the Order Form??].

11. Notwithstanding any other provision of this Contract, no additional compensation or reimbursement will be provided to Vendor for complying with the foregoing requirements.

APPENDIX D

SPECIAL CONTRACT TERMS AND CONDITIONS

LIQUIDATED DAMAGES FOR DELAY

Vendor acknowledges the urgent need for the Goods, as well as the difficulty of ascertaining at the time of contracting the precise nature and amount of actual damages that Buyer will suffer in the event of any delay in Vendor's performance.

In view of the foregoing, if Vendor fails

(1) to make the Goods available for inspection and testing,

(2) to deliver the Goods, or

(3) to complete performance of the Related Services, in strict compliance with the terms of the Contract, by the date(s) specified in the Order Form, the Buyer may, in addition and without prejudice to any of its other rights or remedies under the Contract (or otherwise available at law or in equity), deduct from any payment(s) due or to become due to Vendor, under or in connection with this or any other agreement between the Parties, as liquidated damages, the amounts agreed upon and set forth in the Order Form. The Parties agree that these amounts represent a reasonable estimate of the actual damages anticipated at the time of contracting, and confirm that these amounts have been specifically negotiated and mutually agreed upon.

Once the maximum deduction has been reached, Buyer may, in addition and without prejudice to any other termination right set forth in the Contract, terminate this Contract for default without any further liability on its part (in which case Buyer may retain or collect, as applicable, the liquidated damages). In the event of timely or compliant delivery of partial quantities, Buyer may, in its reasonable discretion, reduce the periodic or total deduction to the extent it deems appropriate.

Notwithstanding the imposition of liquidated damages in accordance with this Paragraph, Vendor shall proceed with delivery and performance of its obligations pursuant to the Contract unless otherwise instructed or approved in writing by Buyer.