

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

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), if checked:

- 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 Agreement 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. For most up to date list, see: <http://www.usaid.gov/ads/policy/300/310>
- 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 Agreement 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 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

- [1] reject the Goods in their entirety, in which case Vendor shall promptly pay Buyer upon demand any excess costs of re-procurement;
- [2] deem any quantity of Goods not yet tendered to be rejected, and reduce the Total Contract Price accordingly; or
- [3] 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 Contact identified on the Order Form. The notice shall clearly reference the JSI 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 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 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)
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 Agreement 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 Agreement. 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., or unless otherwise stated.
- 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. Vendor shall perform any such changes so ordered. The authority to order a change is limited to Buyer's Procurement Representative. 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 Agreement 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 Agreement 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 Agreement. 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. LIQUIDATED DAMAGES

The time fixed for delivery is the essence of the contract, and all damages for late delivery or any other form of non-compliance with the contract terms shall be strictly enforced. In the event of delay in performance, JSI reserves the right to retain as liquidated damages from any money due the Contractor an amount equal to five percent (5%) of the cost of the contract for every complete week of delay or a part thereof, reckoning from the time fixed by the contract. The total amount of the liquidated damages shall, however, be limited to ten percent (10%) of the value of the delayed contract.

15. NOTICES

- A. Contract notices shall be in writing; shall clearly reference the JSI Agreement 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.

16. 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 Agreement 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.

17. 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.

18. 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.

19. 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.

20. 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 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.

21. 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.

22. 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 Standard Provisions), 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.

23. 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.

24. 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.

25. 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.

26. RELEASE OF INFORMATION

Any Vendor news release, public announcement, advertisement or publicity concerning the Contract or the USAID Agreement 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.

27. 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 2CFR200.318(c)(1). 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.

28. CONFLICT OF INTEREST

The Vendor agrees that there is no conflict of interest in accepting the contract which might affect the ability to provide fair and useful service and deliverables on behalf of JSI or USAID.

29. 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.

30. EXCUSABLE DELAYS

The Vendor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Vendor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Vendor shall notify JSI in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to JSI of the cessation of such occurrence.

31. 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.

32. ADDITIONAL PROVISIONS INCORPORATED BY REFERENCE

This contract is funded under JSI's Cooperative Agreement (i.e., the SPRING Project) with USAID. As required in the SPRING Cooperative Agreement, all contracts and procurement funded under this award are subject to applicable provisions required to flow down from the Cooperative Agreement, including USAID's Standard Provisions for U.S. Non-Governmental Organizations (NGOs) and Appendix II to 2 CFR 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. A list of these provisions can be found on the SPRING Intranet Procurement Page: <https://www.spring-nutrition.org/spring-procurement> as a downloadable document, and these provisions are hereby incorporated into this contract by reference.

33. EXECUTIVE ORDER ON TERRORIST FINANCING

The contractor must not engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (online at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or the United Nations Security designation list (online at: http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml).

34. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Contractor certifies that neither it nor its principals is presently excluded or disqualified from participation in this transaction by any US Government federal department or agency.

35. DEFINITIONS OF TERMS

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

- A. Amendment means a writing signed by the Parties, designated as an "Amendment" and sequentially numbered, modifying the provisions of the Contract;
- B. 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;
- C. Buyer means JSI Research & Training Institute, Inc. (JSI), acting on behalf of USAID;
- D. Buyer's Procurement Representative means the individual natural person, designated as such by Buyer with written notice to Vendor;
- E. Contract means all the documents listed in Article 2 of the Contract Form, as amended from time to time.
- F. Cooperating Country means the country or countries in which Goods will be distributed and/or Services provided, as listed in the Contract Form;

- G. Delivery means goods delivered in accordance with the applicable term as defined by Incoterms 2000, as modified by the Contract.
- H. 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;
- I. Government means the U.S. Government (unless otherwise stated, represented by the U.S. Agency for International Development), acting in its contractual capacity;
- J. Order Form means a Purchase Order, an Order Form for a Firm Fixed Price Contract, or a Delivery Order;
- K. Party means either Buyer or Vendor individually (collectively, the "Parties");
- L. 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;
- M. 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;
- N. Related Services means services (if any) specifically described and priced separately from the Goods as a Line Item on the Order Form;
- O. 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;
- P. USAID means the U.S. Agency for International Development;
- Q. USAID Agreement means Cooperative Agreement AID-OAA-A-11-00031 between USAID and Buyer (as modified from time to time); and
- R. Vendor means the legal entity to which the Contract is issued.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.