

ANNEX II

TO RFP N° PCD/08/043

WIPO GENERAL CONDITIONS FOR THE PURCHASE OF SERVICES

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I. Mandatory Clauses

Article 1 – Confidential Nature of Documents

(1) All written or machine readable material, including but not limited to maps, drawings, photographs, mosaics, plans, manuscripts, records, reports, recommendations, estimates, documents and all other information or data (referred to hereinafter in this Article as “documents”) compiled by or received by the Contractor or its agents, employees, subcontractors or independent Contractors in connection with the contract shall be the property of WIPO, shall be treated as confidential and shall be delivered only to duly authorized WIPO officials on completion of the work or services under the contract or on termination of the contract, or as may otherwise be required by WIPO.

(2) In no event shall the contents of such documents or any information known or made known to the Contractor by reason of its association with WIPO be made known by the Contractor or its agents, employees, subcontractors or independent contractors to any unauthorized person without the written approval of WIPO.

(3) Subject to the provisions of this Article, the Contractor may retain a copy of documents produced by the Contractor.

(4) The Contractor shall take all reasonable measures to ensure that its agents, employees, subcontractors and independent contractors comply with the provisions of this Article.

(5) The obligations in this Article shall not lapse upon termination of the contract.

Article 2 – Use of Name, Emblem or Official Seal of WIPO and the United Nations

The Contractor, its agents, employees, subcontractors and independent contractors shall not advertise or otherwise make public the fact that it is performing, or has performed, work or services for WIPO or the United Nations, or use the name, emblem or official seal of WIPO or the United Nations or any abbreviation of the name or acronym of WIPO or the United Nations in connection with its business for advertising purposes or for any other purposes. The Contractor shall take all reasonable measures to ensure compliance with this provision by its agents, employees, subcontractors and independent contractors. This obligation shall not lapse upon termination of the contract.

Article 3 – Intellectual Property and other Proprietary Rights and Indemnities

(1) Unless otherwise agreed, all intellectual property and other proprietary rights, regarding any protectable subject matter collected or prepared in consequence of or in the course of the performance of the contract, shall become the sole property of WIPO. If the Contractor uses any protected subject matter, it shall obtain permission for the publication, use and/or adaptation of that protected subject matter free of cost to WIPO from the persons in whom any existing intellectual property and other proprietary rights therein may be vested and provide WIPO with evidence of such permission.

(2) The Contractor agrees that it will forthwith disclose and assign to WIPO all discoveries, processes or inventions made or conceived in whole or in part by it alone or in

conjunction with others relating to or arising out of the contract, and the said discoveries, processes or inventions shall become and remain the property of WIPO.

(3) At the request of WIPO and at its expense, the Contractor shall take all necessary steps, execute all necessary documents and generally assist WIPO in securing such intellectual property and other proprietary rights and transferring them to WIPO in compliance with the requirements of the applicable law.

(4) The Contractor shall hold WIPO immune from any claim based on or arising out of unauthorized use by the Contractor of any subject matter protected by intellectual property and other proprietary rights, including computer software.

(5) The obligations in this Article shall not lapse upon termination of the contract.

Article 4 – Amendments

Only the Procurement and Contracts Division of WIPO possesses the authority to agree on behalf of WIPO to any modification of or change in the contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification of or change in the contract, waiver of any of its provisions or additional contractual provisions shall be valid or enforceable unless previously approved in writing by the parties to the contract or their duly authorized representatives in the form of an amendment to the contract, including its annexes, duly signed by WIPO and the Contractor.

Article 5 – Officials not to benefit

The Contractor warrants that

(a) no official of WIPO has received or will be offered by the Contractor any direct or indirect benefit arising from the contract or the award thereof;

(b) no third party has received or will be offered any improper benefit arising from the contract or the award thereof;

(c) the Contractor has not engaged the services of a third party to obtain improper influence within the tender process;

(d) the Contractor is aware of and agrees that the non respect of these clauses will be considered a fundamental violation of the contract giving WIPO the right to declare the contract void and take any other appropriate legal action.

Article 6 – Bankruptcy

Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, WIPO may, without prejudice to any other right or remedy it may have under the terms of the contract, terminate the contract forthwith. The Contractor shall immediately inform WIPO of the occurrence of any of the above events.

Article 7 – Settlement of Disputes

(1) WIPO and the Contractor shall designate one or more representatives duly entitled to discuss and solve, in full cooperation with each other, all problems, whether of administrative, technical or financial nature, which may occur during the performance of the contract.

(2) WIPO and the Contractor shall use their best efforts to settle amicably any dispute, controversy or claim arising out of the contract or the breach, termination or invalidity thereof. Where WIPO and the Contractor wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the United Nations Commission of International Trade Law, UNCITRAL¹ Conciliation Rules then obtaining, or according to such other procedure as may be agreed between WIPO and the Contractor.

(3) Any dispute, controversy or claim arising out of or relating to the contract, or the breach, termination or invalidity thereof, shall, unless settled amicably under the preceding paragraph within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The number of arbitrators shall be one. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English. The Parties agree to be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such disputes, controversy or claim.

Article 8 – Form of Notice, Request, Statement or Approval

Any notice, request, statement or approval provided for in the contract shall be effective if it is given in writing by letter, telex or facsimile.

Article 9 – Delays

(1) If there should be any delay in the performance of the contract or any part thereof, the Contractor shall notify WIPO in writing giving the cause, such notification to reach WIPO no later than ten (10) days after the date on which the delay is known by the Contractor.

(2) The Contractor shall be liable for any excess costs or damage caused to WIPO by a failure or delay on the part of the Contractor in the performance of his obligations under the contract except where such failure or delay is due to:

(a) causes which are attributable to WIPO;

(b) any cause beyond the control of and without any fault or negligence on the part of the Contractor, including but not limited to acts of *force majeure*.

¹ <http://www.uncitral.org>

Article 10 – Source of Instructions

The Contractor shall neither seek nor accept instructions from any authority external to WIPO in connection with the performance of the contract. The Contractor shall refrain from any action, which may adversely affect WIPO and shall fulfil its commitments with the fullest regard to the interests of WIPO.

Article 11 – Encumbrances / Liens

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with WIPO against any monies due or to become due for any goods furnished under the contract, or by reason of any other claim or demand against the Contractor.

Article 12 – Force Majeure, Other Changes in Condition

(1) In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Contractor shall give notice and full particulars in writing to the Director, Procurement and Contracts Division of WIPO at Geneva, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the contract. The Contractor shall also notify WIPO of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with its performance of the contract. On receipt of the notice required under this Article, WIPO shall take such action as, in its sole discretion; it considers being appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under the contract.

(2) If the Contractor is rendered permanently unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the contract, WIPO may, in total or in part, suspend or terminate the contract by written notice with a delay of seven (7) days.

(3) If WIPO, by reason of *force majeure*, is rendered temporarily or permanently unable, wholly or in part, to perform its obligations or meet its responsibilities under the contract, or to receive benefits from the contract, WIPO may, in total or in part, suspend or terminate the contract by written notice with a delay of seven (7) days.

(4) *Force majeure* as used in these conditions means acts of God, war, hostilities (whether declared or not), invasion, revolution, insurrection, riot, commotion or disorder, epidemics or quarantine restrictions, or other acts of a similar or analogous nature or force, which are not within the control of the Party claiming the *force majeure* and which, by the exercise of reasonable diligence, skill and care, such Party is unable to foresee or prevent.

Article 13 – Assignment

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

Article 14 – Tax Exemption

(1) Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations including its specialized agencies, such as WIPO, are exempt from all direct taxes and from customs duties in respect of articles imported or exported for its official use. Accordingly, the Contractor authorizes WIPO to deduct from the Contractor's invoice any amount representing such taxes or duties. Payment of such corrected invoiced amount shall constitute full payment by WIPO. In the event that any tax authority refuses to recognize WIPO's exemption from such taxes, the Contractor shall immediately consult WIPO to determine a mutually acceptable procedure.

(2) This Article shall be understood without prejudice of any additional benefit on this matter granted to WIPO by any other bilateral or multilateral agreement or domestic legislation.

Article 15 – Privileges and Immunities

Nothing in or relating to the contract shall be deemed a waiver of any of the privileges and immunities of WIPO in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 and with the provisions of the Agreement between the Swiss Federal Council and WIPO to determine the organization's juridical status in Switzerland of December 9, 1970, and of the Implementation Arrangement of the same date related thereto.

II. Other General Conditions

Article 16 – Payment

Payment shall be made to the Contractor within 30 days after the work or services have been completed and accepted by WIPO and following the date of receipt of the provisional or final invoice, provided such invoice has been approved by WIPO.

Article 17 – Independent Contractor, Removal of Personnel

(1) Nothing contained in the contract shall be construed as establishing or creating between WIPO and the Contractor the relationship of principal and agent or employer and employee; it being understood that the Contractor is an independent contractor in relation to WIPO. No person engaged by the Contractor in connection with the performance of any obligation under the contract shall be regarded as an agent or employee of WIPO and the Contractor shall be solely responsible for all claims by such persons arising out of or in connection with their engagement by the Contractor.

(2) Other than persons specifically named in the contract, no person shall be assigned by the Contractor to work or perform services in connection with the contract until after the Contractor has notified WIPO of the identity of such proposed person, having provided WIPO with their *curriculum vitae*, and WIPO has notified the Contractor that WIPO approves such assignment.

(3) Upon reasonable notice by WIPO in writing stating its reasons, the Contractor shall promptly withdraw any person assigned to work or perform services in connection with

the contract and shall as soon as practically possible assign new persons in accordance with the provisions of paragraph (2) of this Article. WIPO shall not unreasonably refuse or delay approval of any such replacement. Such withdrawal or replacement shall not be a cause for suspension of the contract. Any costs or expenses resulting from any withdrawal or replacement of persons pursuant to this Article shall be borne by the Contractor.

Article 18 – Subcontracting

The Contractor shall engage no subcontractor to perform any work or services in connection with the contract unless the Contractor has notified WIPO of the identity of the proposed subcontractor and WIPO has notified the Contractor of its approval of the engagement of that subcontractor. WIPO shall, in its sole discretion, be entitled to reject any proposed assignment or subcontract, without having to give any justification in that regard. The approval by WIPO of the engagement of a subcontractor shall not relieve the Contractor of any of its obligations under the contract or from its responsibility for the work or services performed by the subcontractor.

Article 19 – Contractor’s General Responsibilities

(1) The Contractor warrants that it shall perform its obligations under the contract with due diligence and efficiency and in conformity with generally accepted sound professional, administrative and financial standards.

(2) The Contractor shall act at all times so as to protect, and not be in conflict with, the interests of WIPO, and shall take all reasonable steps to keep all costs and expenses at a reasonable level.

(3) The Contractor shall be the sole responsible for the work or services performed by its agents, employees, subcontractors and independent contractors in connection with the contract.

(4) The Contractor shall respect and abide by all applicable laws, regulations and ordinances of the country in which the obligations under the contract are to be performed, and shall take all reasonable measures to ensure that its agents, employees, subcontractors and independent contractors do so. In particular, the Contractor shall be responsible for obtaining all visas, authorizations or permits that may be needed by the Contractor’s personnel to work within WIPO premises during the execution of the contract.

(5) The Contractor shall not commence work or perform the services before the commencement date specified in the contract or, in the absence thereof, before having received WIPO’s written request to that effect.

(6) The Contractor shall cooperate with WIPO in the coordination of all work or services to be carried out, and shall supply all information in the manner stipulated.

(7) The Contractor will make reasonable endeavours to complete the work or services in the time specified, without halting or unduly interfering with the work of or other parties working for, or on behalf of, WIPO by reason of the Contractor’s fault.

(8) The Contractor shall draw up all plans, drawings and other documents necessary for carrying out the contract awarded to him.

(9) On completion of the work or services and in accordance with the deadlines specified in the contract, the Contractor shall supply WIPO with complete documentation and detailed plans of the work or services carried out, along with operating or maintenance manuals, where appropriate.

(10) The French or the English languages shall be used by the Contractor in all written communications to WIPO with respect to the performance of the obligations under the contract and with respect to all documents procured or prepared by the Contractor pertaining to such obligations, except as otherwise specified.

Article 20 – Insurance and liability

(1) The Contractor shall take out and maintain:

(a) liability insurance in an appropriate amount with respect to its agents and employees performing work or services in connection with the contract;

(b) comprehensive general liability insurance in an appropriate amount for all claims for death, bodily injury, loss or damage to property, including, but not limited to, products liability, arising from acts performed or omissions committed by the Contractor, its agents, employees, subcontractors and independent contractors in connection with the contract; and

(c) such other insurance as may be agreed upon between WIPO and the Contractor.

(2) WIPO accepts no responsibility for providing life, health, accident, travel or any other insurance coverage, which may be necessary or desirable in respect of any persons performing services in connection with the contract.

(3) The Contractor shall, upon request, provide WIPO with satisfactory evidence of the insurance required under this Article.

Article 21 – Termination

(1) Termination by WIPO: notwithstanding the provisions of Article 9 “Delays”, WIPO may terminate the contract for any reason upon not less than fourteen (14) days (in the case of contracts initially for a period of sixty (60) days or more) or seven (7) days (in the case of contracts initially for a period of less than sixty (60) days) notice to the Contractor.

(2) Termination by the Contractor: the Contractor may terminate the contract for cause upon not less than fourteen (14) days written notice to WIPO, which notice shall be provided in accordance with the Article 8 “Form of Notice, Request, Statement or Approval”. In the event of termination pursuant to this clause, no costs relating to termination shall be reimbursable by WIPO.

(3) The provisions of the contract applicable to the winding up of the contract, the liquidation of claims and the settlement of disputes shall remain in force for such additional period as may be necessary.

(4) Upon termination of the contract:

- (a) WIPO shall complete all payments, which may be due up to the effective date of termination;
- (b) the contractor shall deliver all work in process and in any event shall take all reasonable measures to avoid any loss or deterioration of goods or equipment or any other damage;
- (c) WIPO shall pay to the Contractor any sum, which is determined by WIPO as equitable for any work in process;
- (d) the Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and, to that end, shall provide such information as may reasonably be requested by WIPO concerning the preservation and protection of the work or services performed by the Contractor and the results thereof and all property of WIPO, and to minimize losses and further expenditure; the Contractor shall also take reasonable measures to provide for such prevention and protection and for minimization of losses and expenditure;
- (e) unless the termination has been occasioned by any fault or negligence on the part of the Contractor, its agents, employees, subcontractors or independent contractors, or by any failure of the Contractor to perform an obligation under the contract, the Contractor shall also be entitled, against appropriate vouchers, to be reimbursed for such reasonable costs and expenses as shall have been duly and properly incurred in accordance with the contract prior to the date of such notice of termination;
- (f) the Contractor shall produce such reports covering the work and services performed up to the time of termination as may reasonably be requested by WIPO. The reports shall conform to any reasonable requirements of WIPO as to nature, structure and contents.

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