

## Standard Commercial Terms and Conditions

Effective: March 1, 2016 – September 5, 2016

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**A. PERFORMANCE EQUALS ACCEPTANCE**

The terms and conditions herein become the exclusive and binding agreement between Contractor (“Seller”) and MSH (“Buyer”) covering the purchase of the products/services described in the Contract when these terms and conditions are accepted by written acknowledgment and/or commencement of performance by either party.

**B. WARRANTY**

Contractor represents and warrants to MSH that:

1. it is duly organized, validly existing and in good standing in the jurisdiction of its incorporation/organization/formation;

2. it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Contract, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Contract;
3. it has the full right, power and authority to enter into this Contract, to grant the rights and licenses granted under this Contract and to perform its obligations under this Contract;
4. the execution of this Contract by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Contractor;
5. the execution, delivery and performance of this Contract by Contractor will not violate, conflict with, require consent under or result in any breach or default under:
  - a) any of Contractor's organizational documents; or
  - b) any applicable law;
6. when executed and delivered by each of MSH and Contractor, this Contract will constitute the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
7. it is in compliance with all laws applicable to this Contract;
8. it shall perform the services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Contract;
9. the work will not infringe or misappropriate any copyright, patent, trade secret, trademark, or other proprietary right held by any third party, and;
10. all items delivered hereunder will be merchantable and fit for use for the particular purpose described in this Contract.

### **C. DELAYS**

The Contractor shall promptly notify MSH in writing of any factor, occurrence, condition or event that may adversely affect or delay proper and timely completion of the work and/or the ability of the Contractor to perform its obligations specified herein. The Contractor acknowledges that time is of the essence with respect to the work. The Contractor shall be liable for default for any material failure to perform in accordance with the terms of this Contract unless such non-performance is caused by an occurrence beyond the Contractor's reasonable control and without the Contractor's fault or negligence, including acts of God or the public enemy, acts of the Government in either its sovereign

or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

#### **D. INSPECTION AND ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. Acceptance of goods/deliverables is understood to take place either upon signature of a goods received note by an authorized MSH employee, or upon detailed written email confirmation sent by an authorized MSH employee. MSH reserves the right to inspect or test any supplies or services that have been tendered for acceptance. MSH may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in Contract price. If repair/replacement or reperformance will not correct the defects or is not possible, MSH may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services.

#### **E. TITLE AND RISK OF LOSS**

Title and Risk of loss or damage to the Good(s)/Product(s) provided under this Contract shall remain with the Contractor until MSH or its designee, consignee, or agent receives delivery of and accepts the Product(s) at the destination specified in the Contract. Contractor shall be liable to MSH for the full actual loss, damage or injury to the Good(s)/Product(s) occurring while in the custody, possession or control of the Contractor, or resulting from Contractor's actions or inactions. MSH shall submit to the Contractor a written claim for loss, damage or injury to any Good(s)/Product(s) within 30 days after delivery to the destination specified in the Contract. Title and Risk of loss or damage shall pass to MSH only upon MSH's final acceptance of the Good(s)/Product(s) regardless of when or where MSH takes physical possession.

#### **F. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

From time to time during the Term, either Party ( "Disclosing Party") may disclose or make available to the other Party ("Receiving Party") information about its business, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure:

1. is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this clause by Receiving Party or any of its Representatives;
2. is or becomes available to Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
3. was known by or in the possession of Receiving Party or its Representatives prior to being disclosed by or on behalf of Disclosing Party;
4. was or is independently developed by Receiving Party without reference to or use of, in whole or in part, any of Disclosing Party's Confidential Information; or
5. is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.

Receiving Party shall:

1. protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
2. not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
3. not disclose any such Confidential Information to any person or entity, except to Receiving Party's Representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. Receiving Party shall be responsible for any breach of this clause caused by any of its Representatives. At any time during or after the term of this Agreement, at the Disclosing Party's written request, Receiving Party and its Representatives shall promptly return to Disclosing Party all copies, whether in written, electronic or other form or media, of Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to Disclosing Party that such Confidential Information has been destroyed. Disclosing Party may seek equitable relief (including injunctive relief) against Receiving Party and its Representatives to prevent the breach or threatened breach of this clause and to secure its enforcement, in addition to all other remedies available at law.

## **G. WORK PRODUCT/INTELLECTUAL PROPERTY**

“Work Product” shall consist of all deliverables and other data, information, designs, know-how, software, inventions, and other material and intellectual property in all media and forms now known or hereafter developed or prepared in the course of, or resulting from, the performance of this Contract and modifications to the Contract. By accepting this Contract the Contractor acknowledges that:

1. MSH, or such party as MSH may designate, shall retain all title to and all rights in any Work Product provided under this Contract.
2. Work Product shall be the sole and exclusive royalty-free property of MSH, or any party that MSH designates, and shall be deemed to be a “work made for hire” in the course of performance hereunder. This shall include intellectual property not first developed in the course of, or resulting from, the performance of this Contract, but which is incorporated in any deliverable provided by the Contractor to MSH hereunder.
3. If title to any Work Product may not, by operation of law, vest in MSH all title to and rights and interest therein are hereby irrevocably assigned by the Contractor to MSH, or such party as MSH may designate.
4. The Contractor agrees to take all such other actions as may be reasonably requested by MSH to carry into effect the provisions of this Work Product/intellectual property requirement, including, without limitation, the execution of assignments, copyright registrations, and patent applications.

The Contractor further represents and warrants that:

5. the Work Product delivered to MSH does not infringe the rights of any other party
6. the Contractor is the sole proprietor of the Work Product with full power and authority to enter into this Contract
7. the Work Product has not been previously published anywhere and no rights have been granted with respect to it
8. the Work Product does not violate, either in whole or in part, any copyright or other contract, and does not contain anything libelous or slanderous in character, or violate the right of privacy of any person.

#### **H. RELATIONSHIP**

It is understood and agreed that the Contractor is furnishing the goods and/or services under this Contract as an independent entity, and nothing contained in this Contract will create any association, partnership, joint venture, employer-employee or agent-principal relationship. The relationship

established by this Contract shall be solely between MSH and the Contractor; with the Contractor retaining full and complete liability for the actions or inactions of any subcontractors or agents. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

#### **I. SUCCESSORS AND ASSIGNS**

This Contract is binding on and inures to the benefit of the Parties to this Contract and their respective permitted successors and permitted assigns.

#### **J. NO THIRD PARTY BENEFICIARIES**

This Contract benefits solely the Parties to this Contract and their respective permitted successors and assigns and nothing in this Contract, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

#### **K. SUBCONTRACTORS**

Prior to the commencement of any work by any Subcontractor, Contractor shall enter into a written agreement with such Subcontractor that binds the Subcontractor to terms that are at least as protective of the rights and information of MSH under this Contract. Contractor's engagement of a Subcontractor does not relieve Contractor of its obligations under this Contract. Contractor shall remain fully responsible for the performance of each Subcontractor and its employees and for their compliance with all of the terms and conditions of this Contract as if they were Contractor's own employees. Nothing contained in this Contract creates any contractual relationship between MSH and any Subcontractor.

#### **L. ASSIGNMENT OF RIGHTS**

Neither Party may assign its rights or responsibilities under this Contract without the prior written consent of the other party.

#### **M. PAYMENT TERMS**

Payment terms for this Contract are as specified. For Net 30 Days payment shall be made within 30 days from receipt; inspection and acceptance of all delivered items pending receipt by MSH of a final invoice from the Contractor along with confirmation of acceptance by an appropriately authorized

individual (see Inspection and Acceptance above). For Payment on Delivery payment shall be made upon receipt; inspection and acceptance of all delivered items pending receipt by MSH of a final invoice from the contractor along with confirmation of acceptance by an appropriately authorized individual (see Inspection and Acceptance above). For Partial Prepayment a portion of the total cost shall be paid in advance of delivery/completion as agreed with MSH. In order to make any payment MSH must have the payee's current W9, W8 or other tax form(s) as required by local law, as well as all banking information needed to effect payment. MSH will make all payments electronically using the banking information on file with MSH. Payments will be made in the currency of the Contract, and may not be split across multiple accounts. Contractor acknowledges that if the bank account provided to MSH does not accept payment in the currency of the Contract MSH shall have the sole authority to determine at what rate the required currency conversion is made.. Upon receipt of accelerated payments from the Government MSH shall make accelerated payments to any Contractors qualifying as small businesses, to the maximum extent practicable.

#### **N. INDEMNIFICATION**

Subject to the terms and conditions of this Contract, the Contractor ("Indemnifying Party") shall indemnify, defend and hold harmless MSH and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Contract and the cost of pursuing any insurance providers, incurred by Indemnified Party/awarded against Indemnified Party (collectively, "Losses"), relating to/arising out of or resulting from any Claim of a third party alleging:

1. Breach or non-fulfillment of any representation, warranty or covenant under/representation or warranty set forth in this Contract by Indemnifying Party or Indemnifying Party's personnel; or
2. Any negligent or culpable act or omission of Indemnifying Party or its personnel including any recklessness or willful misconduct in connection with the performance of its obligations under this Contract; or
3. Any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent acts or omissions of Indemnifying Party or its personnel; or
4. Any failure by Indemnifying Party or its personnel to comply with applicable laws.\

#### **O. INSURANCE – Contracts under \$100,000 USD or local currency equivalent**



In addition to any other insurance coverage required by Law, the Contractor shall, at all times during the period of performance of this Contract, carry and maintain adequate insurance to cover any and all claims, losses or damages arising from activities conducted for the purposes of this Contract.

**P. INSURANCE – Contracts over \$100,000 USD or local currency equivalent**

At a minimum, Contractor shall, at its sole cost and expense, provide and maintain the following insurance coverage and insurance coverage limits:

1. Worker's Compensation: Contractor shall provide and maintain worker's compensation insurance as required by the laws of the applicable jurisdiction, as well as employer's liability coverage with minimum limits of \$1,000,000 (or an equivalent value in the local currency), covering all of Contractor's employees who are engaged in any work under the Contract; and if any work is subcontracted, Contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the Contract,
2. Commercial General Liability: Contractor shall maintain general liability coverage on a comprehensive broad form on an occurrence basis in the minimum amount of \$1,000,000 (or an equivalent value in the local currency) combined single limit (where the defense is in excess of the limit of liability);
3. Automobile: Contractor shall maintain automobile liability insurance to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the Contract, and the minimum combined single limit shall be \$1,000,000 (or an equivalent value in the local currency) bodily injury and property damage, including:

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor under the Contract. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage in accordance with the governing jurisdiction(s). With respect to any insurance company domiciled in the United States, the company must be authorized to do business in the state(s) where work is to be performed and must carry an A. M. Best's rating of at least A- FSC: XI.

Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with applicable laws or the Contract. The limits of coverage under each insurance policy maintained by Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. In addition,

Contractor represents and warrants that, it shall maintain insurance and limits as stipulated above and MSH shall be listed as an “additional insured” on the Contractor’s certificate of insurance. Contractor shall furnish MSH with certificates of insurance depicting the insurance requirements set forth in this section. MSH reserves the right at any time to immediately terminate the Contract, or any portion thereof, if in MSH’s opinion such insurance coverage is inadequate.

**Q. FURTHER ASSURANCES**

On MSH’s reasonable request, Contractor shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Contract.

**R. LICENSES & PERMITS**

Contractor shall, at its own expense, maintain all certifications, credentials, licenses and/or permits necessary to conduct its business relating to this Contract. Contractor shall also ensure that its employees, Subcontractors, and equipment are properly licensed and permitted as required by all jurisdictions where work is conducted in fulfillment of this Contract.

**S. RIGHT TO AUDIT**

At any time during the term of this agreement upon advance written notice, Contractor shall allow MSH, its management, its auditors and/or its regulators, to inspect, examine, test and audit (each, an “Audit”) Contractor’s and its subcontractors’ operations, procedures and business records that are relevant to the services provided hereunder by Contractor. In addition, to the extent Contractor is given access to Personal Information, MSH shall have the right to perform an Audit with respect to Contractor’s and its subcontractors’ processing activities and security practices to verify information processing activities and security practices that are relevant to the providing of the Services are carried out in compliance with the terms of this Agreement. In the event that MSH reasonably determines that Contractor’s security practices and procedures do not meet industry standards or the requirements of this Agreement, then Contractor shall without unreasonable delay correct such deficiencies at its own expense and reimburse MSH for the full cost of the audit.

**T. ELIGIBILITY TO RECEIVE FUNDING OR PAYMENT FROM MSH**

By signing this Contract the Contractor certifies that neither it, nor any of its principals:

1. are presently debarred, suspended, proposed for debarment, or otherwise declared ineligible for the award of contracts by any applicable authority or institution; including but not limited to the US Federal Government.
2. have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; commission of any other offense indicating a lack of business
3. are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated above d.
4. have had one or more public transactions (Federal, State, or local) terminated for cause or default within the preceding three years.
5. will knowingly enter into any subagreements or subcontracts under this Contract with a person or entity that is debarred, suspended, proposed for debarment, or otherwise declared ineligible for the award of contracts by any applicable authority or institution; including but not limited to the US Federal Government.
6. Have been convicted of any United States federal criminal violations under United States Federal Law within the previous 24 months
7. Have any unpaid United States federal tax liabilities that have been assessed for which all judicial and administrative remedies have been exhausted or lapsed, and that are not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability

MSH shall not be responsible for any costs incurred in connection with the work of any Contractor or subcontractor that cannot certify all of the above or that falsely certifies the above

#### **U. EXECUTIVE ORDER ON TERRORISM FINANCING**

U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Contractor to ensure compliance with those Executive Orders and Laws by ensuring that any and all potential subcontractors are checked against the applicable watch lists to verify that they are not associated

with any terrorist organizations prior to issuing any subcontract. This provision must be included in any lower-tiered contracting instruments issued under this Contract.

#### **V. TRAFFICKING IN PERSONS/ PROHIBITED LABOR**

MSH has a zero tolerance policy regarding all forms of trafficking in persons, including but not limited to: forced labor, sex trafficking, bonded labor, debt bondage among migrant laborers, involuntary domestic servitude, forced or indentured child labor, and child soldiers. Contractors, their employees, labor recruiters, brokers or other agents, must not engage in:

1. Trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the period of this Contract;
2. Procurement of a commercial sex act during the period of this Contract;
3. Use of forced labor in the performance of this Contract;
4. Acts that directly support or advance trafficking in persons , including but not limited to:
  - a) Destroying, concealing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
  - b) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee.
  - c) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
  - d) Charging employees recruitment fees ; or
  - e) Providing or arranging housing that fails to meet the host country housing and safety standards.

If the Contractor is found to have violated this provision, MSH is authorized to terminate all active contracts without penalty, and is also authorized to pursue any other remedial actions authorized as stated in section 1704(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013).

#### **W. ANTI-BRIBERY/ KICKBACK /LOBBYING CERTIFICATION**

By signing this Contract the Contractor hereby certifies that the Contractor or any agents thereof:

1. have not and will not pay, offer to pay, or authorize the payment directly or indirectly of any monies or things of value to any government official or employee, or to any political party or candidate for political office for the purpose of influencing any act or decision of such official or of the Government
2. are not and will not become an official or employee of the Government during the term of this Contract
3. have not and will not solicit or attempt to solicit any additional personal compensation, credit, gift, gratuity, or thing of value directly or indirectly, from any MSH employee in order to obtain or retain business or direct business to any person
4. have not and will not include, directly or indirectly, the amount of any bribes or kickbacks in the price of this Contract.
5. will notify MSH immediately if any MSH staff member requests any form of gift, commission, or personal discount

The Contractor shall notify MSH in writing immediately of any change in circumstances that renders any representation or warranty made in this section inaccurate or incomplete. In no event shall MSH be obligated under this Contract to take any action or omit to take any action which MSH believes in good faith would cause it to be in violation of any laws, including without limitation the U.S. Foreign Corrupt Practices Act.

#### **X. PROHIBITED GOODS**

The Contractor must not, under any circumstances, procure any of the following under this Contract: (i) Military equipment, (ii) Surveillance equipment, (iii) Commodities and services for support of police or other law enforcement activities, (iv) Abortion equipment and services, (v) Luxury goods and gambling equipment, (vi) Weather modification equipment, (vii) Any goods or services obtained from firms or individuals that are debarred, suspended, proposed for debarment, or otherwise declared ineligible for the award of contracts by any applicable authority or institution; including but not limited to the US Federal Government, (viii) Any goods produced using the labor of any person undergoing a sentence of imprisonment or any forced or indentured child labor, or (ix) Any goods shipped from, or services provided by citizens or legal residents of, any of the prohibited source countries listed in mandatory reference ADS 310 mac. Guidance on the eligibility of specific commodities and services may be obtained from MSH. If MSH determines that the Contractor has procured any commodities or

services under this Contract contrary to the requirements of this clause, and has received payment for such purposes, MSH will require the Contractor to refund the entire amount of the purchase.

#### **Y. EXPORT REGULATIONS**

The goods to be shipped under this Contract (if any) may be subject to U.S. export control laws and regulations. Contractor shall not export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, any goods provided pursuant to or derived from this Contract to any prohibited country as specified in U.S. export control laws and regulations or to any foreign national, country, end-use, or end-user that requires an export license or other approval without first obtaining such license or approval.

#### **Z. MANDATORY DISCLOSURE**

If the Contract will be direct-charged to a USAID funded cooperative agreement Contractor must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the MSH all violations of U.S. Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent to: U.S. Agency for International Development Office of the Inspector General P.O. Box 657 Washington, DC 20044-0657. Phone: 1-800-230-6539 or 202-712-1023. Email: [ig.hotline@usaid.gov](mailto:ig.hotline@usaid.gov) URL: <https://oig.usaid.gov/content/usaid-contractor-reporting-form>.

Failure to make required disclosures may result in any and all remedies that are legally available, including but not limited to the suspension or debarment of the Contractor. To confirm whether the Contract you received from MSH will be direct-charged to a USAID funded cooperative agreement contact MSH.

#### **AA. OTHER COMPLIANCE**

The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this Contract and shall be responsible for ensuring that all subcontractors and/or agents performing work under this contract also comply. These Federal, State, and local laws, executive orders, rules and regulations include, but are not limited to:

1. Equal Opportunity - specifically E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," to the extent required
2. Affirmative Action for Workers with Disabilities,
3. The Prohibition of Segregated Facilities,
4. Service Contract Act of 1965
5. The anti-boycott laws administered by the U.S. Commerce and Treasury Departments
6. Any proclamation, Executive order, or statute administered by the Office of Foreign Asset Control (OFAC), and OFAC's implementing regulations at 31 CFR chapter V
7. International Traffic in Arms Regulations, 22 C.F.R. Parts 120 et seq.; the Export Administration Regulations, 15 C.F.R. Parts 730 et seq.; and the Foreign Asset Control Regulations, 31 C.F.R. Chapter V
8. All applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).
9. The Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b))
10. 49 U.S.C. 40118, the "Fly America Act"
11. 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts;
12. 18 U.S.C. 431 relating to officials not to benefit
13. 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards
14. 41 U.S.C. chapter 87, Kickbacks
15. 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections
16. Minimum wage laws under Executive Order 13658; and
17. 41 U.S.C. chapter 21 relating to procurement integrity

## **BB.LIMITING CONSTRUCTION ACTIVITIES**

Construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property including without limitation, improvements, renovation, alteration and refurbishment is not eligible for reimbursement under this Contract.

#### **CC. PERSONAL CONFLICT OF INTEREST**

The Contractor shall not engage in conflicting activities, i.e. activities that conflict with interests of MSH or the Contractor's obligations under this contract. The Contractor shall not engage in any activity that creates a financial or material interest that would compromise or appear to compromise its impartiality in performing the work required by this Contract. This Contract is not exclusive and the parties are free to engage in other relationships of a similar nature with other parties

#### **DD. ORGANIZATIONAL CONFLICT OF INTEREST**

The Contractor shall not engage in any activities or relationships that would affect the Contractor's objectivity in performing the work by rendering it unable or potentially unable to provide impartial assistance or advice to MSH, that would create an unfair competitive, or any form of organizational conflict of interest for MSH.

#### **EE. TAXES**

As a registered international non-profit corporation MSH is exempt from sales tax, value added taxes and most other duties and levies. The Contractor shall exclude any such charges from the Contract price and shall not bill MSH for any taxes/duties/levies from which it is exempt.

#### **FF. LIQUIDATED DAMAGES**

If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, the Contractor shall pay liquidated damages of 1% of the total Contract price, per calendar day of delay, to MSH. If MSH terminates this Contract in whole or in part under the Termination for Cause/Breach of Contract clause, the Contractor shall be liable for liquidated damages accruing until MSH reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause. The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Delays clause in this Contract.

#### **GG. BANKRUPTCY OR ADMINISTRATION**

In the event the Contractor enters into proceedings relating to bankruptcy or administration, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy or administration to MSH immediately upon the initiation of any proceedings relating to that bankruptcy



or administration. This notification shall include the date on which the bankruptcy or administration petition was filed, the identity of the court in which the bankruptcy or administration petition was filed, and a listing of all Contracts and/or Orders against which final payment has not been made. This obligation remains in effect until final payment under this Contract

#### **HH.DISPUTES – NOTICE OF DISPUTE:**

In the event of any dispute relating to the interpretation or application of this Contract a Party must send written notice of the dispute to the other Party for attempted resolution by good faith negotiations within twenty-eight (28) calendar days after such notice is received. If the matter has not been resolved, or if the Parties fail to meet, within twenty-eight (28) calendar days of the notice of dispute, either Party may initiate Alternative Dispute Resolution (“ADR”) proceeding as described in the ‘Disputes – Alternate Dispute Resolution’ clause of this Agreement.

#### **II. DISPUTES – ALTERNATE DISPUTE RESOLUTION (“ADR”):**

To begin an ADR proceeding, a Party shall provide written notice to the other Party of the issues to be resolved by ADR clearly identified as a ‘Notice of Initiation of ADR’. Within twenty-one (21) days following receipt of the original ADR notice, the Parties shall select a mutually acceptable neutral from the International Institute of Conflict Prevention & Resolution (CPR) Panels of Distinguished Neutrals to preside in the resolution of the ADR proceeding. If the Parties are unable to agree on a mutually acceptable neutral within such period, either Party may request the President of the CPR Institute for Dispute Resolution (“CPR”), 366 Madison Avenue, 14th Floor, New York, New York 10017, to select a neutral.

No later than fifty-six (56) calendar days after selection, the neutral shall hold a hearing to resolve each of the issues identified by the Parties. The ADR proceeding shall:

1. Take place at a location agreed upon by the Parties. If the Parties cannot agree, the neutral shall designate a location.
2. Be conducted in English
3. Be carried out in accordance with the rules and procedures established by the neutral regarding submission of exhibits, calling of witnesses, proposed rulings and remedies, time allotted for each Parties testimony, and all other aspects of the proceedings.

Settlement negotiations, including any statements made therein, shall not be admissible under any circumstances. Affidavits prepared for purposes of the ADR hearing also shall not be admissible. As to all other matters, the neutral shall have sole discretion regarding the admissibility of any evidence.

#### **JJ. CHANGES**

This Contract may only be changed or amended via issuance of a written amendment signed by an authorized representative of both Parties.

#### **KK. OPTION TO EXTEND**

MSH may, at its sole discretion, choose to extend the period of performance of this Contract via issuance of a written modification issued in accordance with the 'Changes' clause above.

#### **LL. NOTICES**

All notices, requests, consents, claims, demands, waivers and other communications under this Contract (each, a "Notice") must be in writing and must be delivered by email with read receipt, facsimile with confirmation of transmission, personal delivery, or nationally recognized overnight courier with postage prepaid. Except as otherwise provided in this Contract, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

#### **MM. SEVERABILITY**

If any provision of this Contract shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions, other than the portions determined to be invalid or unenforceable, shall not be affected thereby, and each valid provision hereof shall be enforced to the fullest extent permitted by law.

#### **NN. TERMINATION FOR CONVENIENCE**

MSH reserves the right to terminate this Contract, or any part thereof, for its sole convenience via issuance of written notice to the Contractor. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, stop all work hereunder and cause any and all of its suppliers and Subcontractors to cease work as soon as possible no more than 5 business days from receipt of notice from MSH. In the event that the Contract is terminated for convenience MSH shall pay the Contractor for those costs incurred in direct relation to the work being performed, at the rate(s) agreed to in the Contract, up to the date of termination less the amount of any payments made to

Contractor prior to the date of the termination. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided, nor for any orders for materials or supplies placed after written notice of termination was issued by MSH. The Contractor shall not be entitled to any claim or claim of lien against MSH for any additional compensation or damages in the event of such termination and payment. Termination of this Contract will not constitute a waiver of any of the terminating Party's rights or remedies under this Agreement, at law, in equity or otherwise.

**OO. TERMINATION FOR CAUSE/BREACH OF CONTRACT**

MSH reserves the right to terminate this Contract, or any part thereof, for cause in the event that:

1. The Contractor defaults, fails to perform, fails to comply with any of the contract terms and conditions, or prevents any other party to the Contract from being able to perform its obligations, or;
2. The Contractor becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; or;
3. The Contractor files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; or;
4. The Contractor is in breach of, or threatens to breach, any representation, warranty or covenant of Contractor under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Contractor within a commercially reasonable period of time under the circumstances, in no case exceeding ten business days following Contractor's receipt of notice of such breach.

Any termination under this section is effective on Contractor's receipt of MSH's notice of termination or any later date set out in the notice.

Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In the event that the Contract is terminated for cause MSH shall not be liable to pay the Contractor any amount for supplies or services that had not yet been accepted by MSH at the time written notice was issued. In addition MSH may seek damages adequate to cover economic losses resulting from the breach of contract and the Contractor shall be liable to MSH for any and all rights



and remedies provided by law. If it is determined that MSH improperly terminated this Contract for default, such termination shall be deemed a termination for convenience. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies under this Agreement, at law, in equity or otherwise.

**PP. APPLICABLE LAW**

This Contractor shall be governed, construed, and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws rules.

**QQ. SURVIVAL**

The respective rights and obligations set forth in the clauses pertaining to Confidentiality, Limitation of Liability, Warranties, Indemnification, and Insurance as well as this clause (Survival) shall indefinitely survive the expiration or termination of this Contract.

**RR. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communications and prior writings with respect there to.