

# TENDER DOCUMENT

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Ministry of Health



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## BID DOCUMENT AND SPECIFICATIONS

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### **PROPOSED DESIGN, SUPPLY & INSTALLATION OF SOLAR POWER UNIT INSTALLATIONS FOR URBAN & RURAL HEALTH FACILITIES IN CENTRAL, COPPERBELT, NORTH- WESTERN, LUAPULA, NORTHERN & MUCHINGA PROVINCES**

## Request for Proposal (RFP) #FHI360/ZPCTIIB/01/06/16

Commodity Required:	<b>DESIGN, SUPPLY AND INSTALLATION OF SOLAR POWER UNITS AT RURAL AND URBAN HEALTH CENTRES IN CENTRAL, COPPERBELT, NORTH-WESTERN, LUAPULA, NORTHERN AND MUCHINGA PROVINCES (implemented by FHI 360)</b>
Type of Contract:	<b>Firm Fixed Price</b>
Term of Contract:	<b>Upon Award through selected contractor's project plan</b>
Contract Funding:	<b>USAID No. AID-278-LA-14-00001</b>
End User:	<b>FHI 360 (in Zambia)</b>
This Procurement Supports:	<b>ZAMBIA PREVENTION, CARE AND TREATMENT PARTNERSHIP II BRIDGE PROJECT (ZPCT IIB/FHI360)</b>
Submit Proposal To:	<a href="#"><b>FHI360/ZPCTIIB</b></a>
Date of Issue of RFP:	<b>Date: 6<sup>th</sup> July, 2016</b>
Date Questions Due from Bidders	<b>Date:29<sup>th</sup> July, 2016</b>
Site visits to named facilities mandatory must be completed by:	
Date Proposal Due:	<b>Time: 14:00 Zambian time; 05<sup>th</sup> August 2016</b>
Method of Submittal:	Submit the proposal to the designated representative above with one hard copy and email electronic copy of all documentation included. The Bidder shall provide a firm fixed quote for all line items in order to be considered for evaluation. The Bidder agrees to hold the prices in its offer firm for 90 calendar days from the date specified for the receipt of offers, unless another time is specified in an addendum to this RFP.
Solicitation Number:	
Attachments TO RFP: All bidders are responsible to carefully review each attachment and follow any instructions that may be relevant to this procurement.	<ol style="list-style-type: none"> <li><b>1. Attachment "A" – Instructions to Bidder</b></li> <li><b>2. Attachment "B" – Technical Specifications/Bill of Quantities</b></li> <li><b>3. Attachment "C" – Form of Tender</b></li> <li><b>4. Attachment "D" – FHI 360 Pro-forma contract</b></li> </ol>

**Attachment A  
Instruction to Bidders**

FHI 360 is seeking proposals from qualified and responsible companies interested in providing the work described in this Request for Proposal (RFP) to be carried out in the sites listed below:

No.	Province	District	Facility	Facility Type	Facility Owner	Rural/Urban Status
1	Central	Itezhi-Tezhi	Masemu	RHC	GRZ	Rural
2	Central	Kabwe	Mahatma Gandhi Memorial	UHC	GRZ	Urban
3	Central	Kabwe	Kasanda	UHC	GRZ	Urban
4	Central	Kapiri Mposhi	Kapiri Urban Clinic	UHC	GRZ	Urban
5	Central	Kapiri Mposhi	Kampumba	RHC	GRZ	Rural
6	Central	Luano	Old Mkushi	RHC	GRZ	Rural
7	Central	Mkushi	Chalata	RHC	GRZ	Rural
8	Central	Mkushi	Chibefwe	RHC	GRZ	Rural
9	Central	Mumbwa	Mumbwa Urban Clinic*	UHC	GRZ	Urban
10	Copperbelt	Chililabombwe	Kakoso	UHC	GRZ	Urban
11	Copperbelt	Chingola	Chiwempala	UHC	GRZ	Urban
12	Copperbelt	Chingola	Muchinshi	RHC	GRZ	Rural
13	Copperbelt	Kitwe	Chimwemwe	UHC	GRZ	Urban
14	Copperbelt	Luanshya	Mpatamatu Clinic	UHC	GRZ	Urban
15	Copperbelt	Lufwanyama	Shimukunami	RHC	GRZ	Rural
16	Copperbelt	Masaiti	Masaiti Boma	RHC	GRZ	Rural
17	Copperbelt	Ndola	Lubuto	UHC	GRZ	Urban
18	Copperbelt	Ndola	Masala New	UHC	GRZ	Urban
19	Luapula	Chiengwe	Putu	RHC	GRZ	Rural
20	Luapula	Mansa	Senama	UHC	GRZ	Urban
21	Luapula	Mansa	Mabumba	RHC	GRZ	Rural
22	Luapula	Nchelenge	Kashikishi	RHC	GRZ	Rural
23	Luapula	Nchelenge	Kabuta	RHC	GRZ	Rural
24	Luapula	Nchelenge	Kambwali	RHC	GRZ	Rural
25	Luapula	Nchelenge	Chisenga Island*	RHC	GRZ	Rural
26	Luapula	Samfya	Samfya Stage II	RHC	GRZ	Rural
27	Luapula	Samfya	Kasanka	RHC	GRZ	Rural
28	Muchinga	Mpika	Mpepo	RHC	GRZ	Rural
29	Muchinga	Nakonde	Nakonde HC	RHC	GRZ	Rural
30	Muchinga	Nakonde	Mwenzu	RHC	GRZ	Rural
31	Northern	Kaputa	Kaputa	RHC	GRZ	Rural
32	Northern	Kasama	Location	UHC	GRZ	Urban
33	Northern	Kasama	Chisanga RHC	RHC	GRZ	Rural
34	Northern	Mbala	Tulemane	UHC	GRZ	Urban
35	Northern	Mbala	Senga	RHC	GRZ	Rural
36	Northern	Mpulungu	Mpulungu HC	UHC	GRZ	Urban

37	Northern	Nsama	Nsama	RHC	GRZ	Rural
38	North-western	Mushindamo	St. Dorothy	RHC	GRZ	Rural
39	North-western	Solwezi	Solwezi Urban*	UHC	GRZ	Urban
40	North-western	Solwezi	Kazomba UC	UHC	GRZ	Urban

**(Facilities marked with \* may require bigger solar power systems and bidders must verify on site. Chisenga Island RHC requires use of a hired boat. Bidders must meet cost of fuel and coxswain allowance)**

Bidders proposal submission shall be made in accordance with the instructions outlined in this attachment. Bidders shall submit their proposal with one hard copy or one electronic copy not later than **14:00 hours local time in Zambia on 05<sup>th</sup> August, 2016** at FHI 360/Zambia Country Office, **ZPCT IIB Lusaka, FHI360, Plot 2374, Farmers Village, Zambia National Farmers Union (ZNFU) Complex, Off Nangwenya Road, Show-grounds, Lusaka.**

**Late submissions will not be accepted under whatever circumstance.**

Proposals submitted not in accordance with the RFP Instructions contained herein will be considered non-responsive and will be rejected by FHI360.

Site visits will be carried out at the convenience and expense of the bidder **with directions and information of health facility location available from the five ZPCT IIB/FHI360 provincial offices of Kabwe, Ndola and Solwezi, Mansa and Kasama. Bidders must obtain signed, stamped site visit certificates.** Any questions concerning the RFP should be addressed to [procure\\_zambia@fhi360.org](mailto:procure_zambia@fhi360.org) no later than 17 hours on the 29<sup>th</sup> July 2016; phone inquiries will not be entertained. Bidders have the discretion to submit hard copies via mail or express courier but must ensure that their proposals are received by the deadline. FHI 360 will not make exceptions for any delay. Late proposals will not be considered. Bidders must submit the offer in accordance with the instructions contained herein, stating that quoted fixed price(s) shall remain valid for a minimum period of 90 days.

**1. Proposal Overview**

FHI360 seeks a firm to provide all materials, equipment and skilled labor to **DESIGN, SUPPLY AND INSTALL SOLAR 40 POWER UNITS AT RURAL AND URBAN HEALTH CENTRES IN CENTRAL, COPPERBELT, NORTH-WESTERN, LUAPULA, NORTHERN AND MUCHINGA PROVINCES.** Details of the project are provided in the Attachment B Technical Specifications. **All Bidders are required to conduct a visit to the project work site(s) prior to submitting a proposal in response to the RFP requirements.** This RFP will result in the award of one Firm-Fixed Price contract to the Bidder who offers the best overall value to FHI 360. The successful Bidder will be selected solely on the basis of the RFP evaluation factors. Accordingly, offers submitted in response to this RFP shall provide clear, complete, and straightforward responses to the evaluation factors. Elaborate proposals, color brochures and other excesses are discouraged. Information submitted about any company other than the Bidder, whether an affiliated company, Contractor, or other associated business, may not be given much weight unless the proposal contains evidence that the Bidder has obtained a commitment from this other business entity to perform a portion of the work.

**2. RFP Requirements**

**Local Employment:** The Bidder must employ the local labor force as far as possible. To qualify as a member of the local labor force, employees must be a resident of Zambia at a minimum of at least one (1) year. The work shall begin as soon as possible, which will maximize the rapid employment opportunities for local Zambians, while still assuring good quality of workmanship and adherence to safety requirements. A key objective is to make the maximum use of local contractors, suppliers, craftsmen and laborers in the specific neighborhoods where the work will be executed. The Bidder shall also promote the employment of women.

**3. Responsibility of the Bidder to Submit a Sufficient Tender**

(a) Bidders shall be deemed to have inspected and examined the site and its surroundings and information available in connection therewith and to have satisfied themselves before submitting their tenders, as to:

- The extent and nature of work and materials necessary for the execution of and completion of the works and the remedying of any defects therein,
- The means of access to the site and traffic conditions and accommodation they may require including that for the temporary works,
- The proximity and nature of neighbors, and the regulations and rules of the requisite local authority.

and, in general, shall be deemed to have obtained all necessary information, as to risks, contingencies and all other circumstances which may influence or affect their tenders.

(b) Bidders shall be deemed to have based their rates and firm fixed prices on their own inspection, data collection, quantity surveying and examination all as aforementioned.

(c) By submitting their offers, Bidders declare that the specifications and BOQs (if any) which they will receive with the tender documents are only for tender purposes and may differ from the real site conditions to the extent that they are responsible to examine in their bidding procedure.

(d) Bidders are solely responsible to study the tender documents and any other related information or document to obtain the detailed breakdown of works and bill of quantities, and by submitting their offers, Bidders declare that their offers include all of the works needed, whether implicitly or explicitly mentioned in the tender documents or BOQ, needed to complete the works and to the satisfaction of the Client.

(e) The standard of care for all construction services performed under the winning Contract shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the Contract specifies that portions of the technical specifications be performed in accordance with a performance standard, the design and construction services shall be performed so as to achieve such standards.

(f) Neither FHI 360's review, approval or acceptance of, and/or payment for, the services required under the winning Contract shall be construed to operate as a waiver of any rights under the winning Contract or of any cause of action arising out of the performance of the winning Contract. The winning Bidder shall be and remain liable to FHI 360 in accordance with applicable law for all damages to the project caused by the winning Bidder's negligent performance of any of these services furnished under the winning Contract.

(g) If the winning Bidder is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

**4. Administrative Details and General Instructions:**

All proposals shall be prepared in two volumes: a technical volume and a price/business volume. Each volume (A and B) shall be separate and complete in itself so that evaluation of one may be accomplished independently from evaluation of the other. The technical volume must not contain reference to price. Incomplete proposals: Bidders who fail to submit a complete proposal may be excluded from the competition and thus receive no further consideration for award. In order for your proposal to be considered, it MUST be prepared at a minimum in **ENGLISH** language.

**Volume A – Technical Volume:** The Bidder's technical proposal shall completely address all requirements set forth hereby this RFP document. The Bidder's technical offer will be evaluated and scored based upon the following Factors:

- Factor 1:** The completeness and accuracy of the Bidder's technical approach toward satisfying the Work requirements set forth hereby this RFP and the Proforma Contract (Attachment E). Provide a complete methodology that describes the approach of the firm in order to complete the work. A maximum of 20 pages are accepted.
- Factor 2:** The acceptability, reasonableness and realism of the Bidder's proposed Work and delivery schedule. Provide a proposed work and delivery schedule base on the delivery date defined on Attachment B.
- Factor 3:** Provide a detailed description of the workmanship, equipment and construction "warranties" offered by the Bidder.
- Factor 4:** The composition, technical skill and experience of the Bidder's personnel who will perform the Work. Provide the curriculum vitae of the following key personal: civil/structural engineer, architect and electrical engineer.
- Factor 5:** The skill, experience and qualifications of the Bidder's Project Manager. Provide the curriculum vitae of the Project Manager
- Factor 6:** Relevant past performance information on other like refurbishment/construction work previously performed by Bidder for other customers. Bidders must have an acceptable and verifiable past performance record. The FHI 360 Project Supervisor will evaluate the past performance record and make a determination as to the validity and materiality of any negative past performance information. The evaluation may take into account past performance information regarding predecessor companies, key personnel who have relevant experience and Contractors that will perform major or critical aspects of the project when such information is relevant to the instant acquisition. Provide at least the description of 5 previous experiences that can help the Project Supervisor evaluate the past performance. Provide contact information of the previous experiences.

**Volume B – Price/Business Volume** The Bidder's price/business volume shall be prepared in accordance with the following instructions:

- **Breakdown for The Firm Fixed Price:** Bidder shall submit a **firm fixed price** to undertake the subject works. Bidder must prepare a detailed work breakdown/ BOQ of the works, and the basis on which the fiscal proposal was based. This breakdown will not be used to re-measure the works and the scope of works might not be limited to the items mentioned in this breakdown. Such breakdown will only be used to examine the realism of the Bidder's offer and to estimate the percentage completion of works during the construction phase. The Bidder may use the BOQ in Attachment B, Section II (Bid Data sheet) as a starting point / aid tool in preparing his proposal.
- **Form of Tender (Attachment C):** Bidder shall fully complete and sign the "Tender" document attached as.
- **Proforma Contract (Attachment D):** Bidder shall review and sign the Contract document attached as Attachment E. The signatory authority shall have binding contractual authority for the Bidder's firm. In the event Bidder provides exceptions to any of the terms and conditions contained in the Proforma Contract, these exceptions will be included in the Bidder's Price/Business Volume and identified as "Exceptions to Terms and Conditions Presented in Proforma Contract". FHI 360 is under no obligation to change the terms presented in this RFP, and the Bidder's exceptions to terms provided herein may be deemed by FHI 360 as a non-responsive bid and rejected. FHI 360 also reserves the right to modify the RFP to provide all Bidders a fair opportunity to revise their proposals in the event a specific term, specification or requirement requires revision. However, FHI 360 also reserves the right to award the Contract without further revisions or discussions with Bidders responding to the RFP.

**5. Basis for Award**

Award shall be made to the Bidder who submits the "best value" offer in terms of price, technical, past performance and other factors. Note: FHI 360 intends to make award without discussions. Accordingly, Bidders are cautioned to read the RFP Instructions, Technical Specifications, and Proforma Contract carefully to ensure their offers contain all the information required. Because Bidders are unlikely to be given the opportunity to submit a revised proposal, their price proposal should reflect their best prices. FHI 360 will issue a Purchase Order incorporating the documents set forth in this RFP to the winning Bidder.

## Attachment B

### Technical Specifications/Bill of Quantities

#### 1. BACKGROUND

FHI 360 will use USAID funds and resources to contract for the above referenced works Attachment A, item 1. FHI 360 has prepared the following technical specifications, in order to serve as reference for the preparation of a proposal for firms or related professional groups interested in participating in the tender.

#### 2. SPECIFICATIONS

1. This bid is for the complete design, supply and installation of solar systems based on the expected power consumption for the entire health facility and staff housing (if applicable) under **Section II** of this bid document.
2. The solar system is to be designed as solar only primarily but may also be designed to operate as a **hybrid system** and programmed to operate with solar as P1 (Priority 1) and/or any existing utility, if any, as P2 (Priority 2).
3. The Photovoltaic (PV) panels shall be mounted on the ground surface and/or on a specially made tower/stand or roof of the proposed battery housing. This shall be determined by contractor after visiting sites.
4. The bid documents to be submitted shall satisfy the following technical requirements:

##### 4.1 Technical submissions required:

- 4.1.1 **Bill of Quantities stating clearly the quantity of each electrical and mechanical item and pricing to support the installation.**
- 4.1.2 **Design electrical drawings of the proposed solar power system.**
- 4.1.3 **Design mechanical drawings of the proposed secure protective housing for battery storage installed complete with DC fan extractor/air conditioner if required, tamper proof and secure supporting frames for the installation of PV panels.**
- 4.1.4 **Statement of the AC voltage output of the proposed solar power system (whether single phase or three phase).**
- 4.1.5 **Battery number, capacity and autonomy designed for at least three days' autonomy.**
- 4.1.6 **Include warranty period (minimum 12 months),**
- 4.1.7 **Provide maintenance and service schedule with approximate anticipated costs after expiry of warranty period**
- 4.1.8 **Provide end-user training on system operation and basic maintenance**

- 4.2 **Any other information the contractor may choose to include e.g. the DC voltage of the solar system, the capacity of the charge controller, the capacity of the inverter, the number and rating of the PV panels, any other accessories that will support the installations e.g. fuses, MCBs, tamper/theft-proof frame for the PV panels, cabling etc.**

5. In addition, the bid documents to be submitted shall satisfy the following commercial and regulatory requirements that form part of the evaluation criteria:

- 5.1 **Company profiles clearly showing physical, postal and email addresses and contact numbers.**
- 5.2 **Copies of certificate of company registration or incorporation.**
- 5.3 **References from reputable previous clients**
- 5.4 **Latest evidence of registration with the National Council for Construction in Category E (general electrical) or Category Se (special electrical)**
- 5.5 **Copy of signed and stamped certificates of site visit.**
- 5.6 **Proof of original bidding document accessed from FHI360 website [www.fhi360.org](http://www.fhi360.org) or the FHI360 Zambia Lusaka Country office.**
- 5.7 **Valid tax clearance certificate from relevant Tax revenue authority (Zambia Revenue Authority for local firms).**
- 5.8 **Latest Audited Financial statements must be included in the bid unless the bidder is a new entity**
- 5.9 **Qualifications of key personnel. i.e. Contracts Manager with a Bsc minimum 5 years' experience works similar nature, Site Engineer with a Bsc in Engineering or related field with minimum 4 years'**

- experience on works of similar nature. Proof of registration of key personnel with Engineers Registration Board or any relevant professional body is required
- 5.10 Bid security/bond from a recognized bank or insurance company of not less than 2 percent of the proposed bid sum.
  - 5.11 Proof of substantial financial ability or access to substantial credit facility offered either by a financial institution or equipment manufacturer of not less than 30% of bid sum.
  - 5.12 Proof of logistical capacity to carry out multiple installations or any evidence of past experience in project of similar size
  - 5.13 Experience in after sales service and maintenance thereafter. Bidder should submit proposal indicating provision of warranty of 12 months on the solar system and back up service

Physical addresses:

- ZPCTIIB Lusaka, FHI360, Plot 2374, Farmers Village, Zambia National Farmers Union (ZNFU) Complex, Off Nangwenya Road, Show-grounds, Lusaka.
  - ZPCTIIB Kabwe, Chitanda House, Kabwe Zambia
  - ZPCTIIB Ndola, 46 Chintu Avenue, Northrise, Ndola Zambia
  - ZPCTIIB Solwezi, Plot 4147, Riverside, Solwezi, Zambia
  - ZPCTIIB Kasama, Plot 974, Mwamba Road, Kasama, Zambia
  - ZPCTIIB Mansa, Plot 104 & 105 Chitimukulu Road, Mansa Zambia
6. The contractor is strongly advised to confirm the extent of works with ZPCTIIB staff and/or beneficiary centers
  7. Any queries concerning this bid should be put in writing and sent to [procure\\_zambia@fhi360.org](mailto:procure_zambia@fhi360.org) not later than 17 hours on the 29<sup>th</sup> July 2016
  8. Each page of this document must be signed by the bidder or their representative.

**Section II Bid Data Sheet I (Typical minimum health facility equipment listing. Contractor to verify additional power requirement as dictated by facility size)**

ITEM NO.	ENERGY CONSUMING DEVICE	NUMBER OF DEVICES	POWER CONSUMPTION (WATTS)	HRS DEVICE USED PER DAY	ENERGY CONSUMED PER DAY (WHRS)
1	ABX Micros	1	150	8	1200
2	Air conditioner	3	4,500	8	108000
3	Baby resuscitator	1	690	24	16560
4	Blower	1	2,000	8	16000
5	Bulbs (indoor lighting)	17	60	24	24480
6	Bulbs (outdoor lighting)	4	100	24	9600
7	Centrifuge	1	130	8	1040
8	Computer	5	150	8	6000
9	Domestic upright fridge	4	1,200	24	115200
10	Electric kettle	1	2,200	12	26400
11	Facscout	1	160	8	1280
12	Fluorescent/LED lamps (indoor lighting)	26	36	24	22464
13	Fluorescent/LED lamps (outdoor lighting)	11	36	24	9504
14	Incubator	1	2,277	8	18216
15	Microscopes	2	30	8	480
16	Mini fridge	1	800	24	19200
17	Phone charger	10	5	8	400
18	Printer	6	250	8	12000
19	Roller mixer	1	50	8	400
20	RPR shaker	1	60	8	480

21	Sockets	36	1,800		0
22	TV	3	80	8	1920
23	Vaccine fridge	1	220	24	5280
24	Water distiller	1	1,000	8	8000
<b>TOTAL</b>					<b>424104</b>
<b>ADD 30% FOR FUTURE LOAD INCREASE</b>					<b>551335</b>

**Bid Data Sheet II (Typical Staff housing household items listing)**

Energy Consuming Device	Number of Devices	Power Consumption (W)	Hours device used per Day	Energy Consumed per day (Whrs)
Fluorescent/LED lamps (Indoor lighting)	10	18	6	1080
Fluorescent/LED lamps (outdoor lighting)	4	36	12	1728
Television	1	150	12	1800
Home theater/radio	1	1000	12	12000
Electric Fan	1	100	12	1200
Phone Charging	1	2.5	8	20
<b>TOTAL</b>				<b>17828</b>
<b>ADD 30% FOR FUTURE INCREASE IN LOAD</b>				<b>23176</b>

**NB: The vendor is expected to distribute and wire the dedicated in surface mounted conduits, solar sockets, overhead lighting points, switches according to the list outlined above and should be labelled 'Solar power'. All electrical reticulation to be surface mounted.**

**3. GUARANTEES (UPDATE IN ACCORDANCE WITH BUSINESS PRACTICE IN ZAMBIA)**

It is required that the proposal includes the following guarantees, obtained from a well-known bank in Zambia:

1. A 2% value of the contract as a tender bond. This bond is required for all contractors interested in submitting a proposal for the reconstruction project.
2. A 20% value of the contract as an advance payment in the case the contractor does not fulfill its contractual obligations (this bond will be asked of the contractor that is awarded the Contract).
3. A 20% value of the contract as a performance bond which need to remain valid for a period of 12 months after the work have been received without complaints (this bond will be asked of the contractor that is awarded the Contract).

**4. WORK DELIVERY DATE**

A work schedule is required for each proposal, which needs to consider **30<sup>th</sup> November, 2016** as the deadline for the delivery of the work included in the proposal.

**5. ENVIRONMENTAL CONSIDERATIONS**

The contractor is expected to follow sound environmental practices while doing the project. Moreover, the contractor must comply with the following measures included in this Environmental Mitigation Plan, and must include in the methodology of the proposal the controls that will be introduced to implement the measurements:

#	Description of Mitigation Measure	Responsible Party	Monitoring Methods		
			Indicators	Methods	Frequency
1	Carefully evaluate all plans and designs in order to select the best alternative that produce the least amount of waste.	Contractor	Quantity of waste produced.	On site evaluation.	Monthly report.
2	Recover all reusable materials and provide a second use to the ones that are still capable of it. Dispose materials in areas where a small risk of contamination of surface and ground water is present.	Contractor	Quantity of materials reused or disposed in especial areas.	On site evaluation.	Monthly report.
3	An approved government landfill must be identified near the working site. It must be used to dispose materials that are not subject to reuse.	Contractor	Quantity of materials disposed in the landfill.	On site evaluation.	Monthly report.
4	Identify possible points of contamination and define procedures on how to protect it.	Contractor	Number of possible contamination points.	On site evaluation.	Monthly report.
5	Place signs at the site properly warn danger and allow the circulation around it.	Contractor	Site well identified with dangerous warning signs.	On site evaluation.	Monthly report.
6	Identify alternative ways for pedestrians, motorists or persons with disabilities if necessary.	Contractor	Alternative ways well identified.	On site evaluation.	Monthly report.
7	Define the work hours based on surrounding activities in order to reduce uncomfortable time periods for neighbors.	Contractor	Compliance with working hours schedule	On site evaluation.	Monthly report.

## 6. REPORTS (AS NEEDED BY THE PROJECT TEAM)

Initial report (within 7 days of the signature of the contract):

- Detailed work plan, organization chart, work schedule.
- Quality assurance plan
- Environmental mitigation controls

Monthly report:

- The report must reflect the progress of the physical and financial aspects of the project. If a deviation has occurred, the report must indicate it and provide the measures to correct it.
- Photographic report of the progress of the Environmental controls (as described by the environmental mitigation plan)
- Any relevant aspect of the project that needs attention.

Final report:

- The final report must indicate the work developed and any modification that occurred during the construction process as well as a financial analysis of project.

All reports must be submitted in a hard copy format and via email to the FHI 360 designated representative.

**Attachment C  
Form of Tender**

The Bidder shall prepare and submit a written Tender which includes the following statements completed in their entirety:

1. Having examined the Terms and Conditions of Contract, Technical Specifications, and Bill of Quantities for the execution of the Work, we, the undersigned, offer to execute, complete, and maintain the whole of the said Work in conformity with the, Terms and Conditions of Contract, Specifications, and Bill of Quantities for the total fixed price sum of \_\_\_\_\_ (\$).

2. We undertake, if our Bid is accepted, to commence work under the Contract within \_\_\_\_\_ days of receipt of the fully executed Contract document countersigned by FHI 360, and to complete and deliver the whole of the of the Work comprised in the Contract within \_\_\_\_\_ days calculated from the last day of the aforesaid period in which the Work is to commence.

3. We certify that we are not included on any list of suspended, debarred, or ineligible bidders used by the US Government.

4. We agree to abide by this Bid for the period of **90** days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding agreement between us.

6. We understand and agree that FHI 360 is not bound to accept the lowest or any bid it may receive.

7. Our bid price includes the following:

- Amount of Insurance obtained by Bidder \_\_\_\_\_ (See Contract for minimum insurance requirements)
- Period for commencement of work on site from FHI 360's Contract order to commence the Work \_\_\_\_\_ calendar days
- Time of Completion of all Work \_\_\_\_\_ calendar days (based on Commencement Date)
- Amount of Liquidated Damages (see Contract Term "Liquidated Damages" and provide the greater of amounts for the following) (a) One (1) percent (%) of the price of delayed BOQ line item or (b) \$500.00 USD for each day after the originally scheduled completion or delivery date until the day of actual delivery and acceptance by FHI 360
- Percentage of Retention (See Contract Article "Invoice Instructions").
- Time within which final payment to be made to Contractor after Certification of Completion and written acceptance by FHI 360 is provided **20** calendar days.

8. The Bidder shall invoice in accordance with the Milestone Payment Provision set forth below which will be incorporated into the Contract under the "Invoice Instructions" Article. The Bidder shall include fixed payment amounts for each of the following Milestone Events. IMPORTANT: The Bidder may include additional Payment Milestones; however, the Bidder's Final Milestone Payment shall not be less than 25% of the overall fixed price for the Contract.

**Mobilization**

Estimated percentage of completion: **20% of Total Project**

Mobilization payment amount: **\$XXX,XXX.XX**

**Milestone No 1**

Estimated percentage of completion: **20% of Total Project**

Milestone payment amount: **\$XXX,XXX.XX**

**Milestone No 2**

Estimated percentage of completion: **20% of Total Project**

Milestone payment amount: **\$XXX,XXX.XX**

**Milestone No 3**

Estimated percentage of completion: **15% of Total Project**

Milestone payment amount: **\$XXX,XXX.XX**

**Milestone No 4**

Estimated percentage of completion: **15% of Total Project**

Milestone payment amount: **\$XXX,XXX.XX**

Dated this \_\_\_\_ day of \_\_\_\_\_ 2016.

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

Duly authorized to sign bids for and on behalf of \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_ Title: \_\_\_\_\_

**Attachment D  
Proforma Contract**

FHI 360 CONTRACT No. \_\_\_\_\_  
(To be assigned by FHI 360 at time of award)

In support of

**DESIGN, SUPPLY AND INSTALLATION OF SOLAR POWER UNITS AT RURAL AND URBAN HEALTH CENTRES IN  
CENTRAL, COPPERBELT, NORTH-WESTERN, LUAPULA, NORTHERN AND MUCHINGA PROVINCES  
(implemented by FHI 360)**

ISSUED TO:

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(Type in Contractor's Address)

ISSUED BY:  
FHI 360

**CONTRACT AGREEMENT**

This Contract Agreement (the "Contract") is hereby made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ (Insert Month), 2014\_\_ (the "Effective Date") by and between **FHI 360**, hereinafter referred to as FHI 360, a non-profit United-States based organization, whose local office in \_\_\_\_\_ and \_\_\_\_\_ (Insert Contractor Legal Name), a \_\_\_\_\_ (Insert Entity Type) organized and existing under the laws of the \_\_\_\_\_ (Insert Sovereignty Type) of \_\_\_\_\_ (Insert Sovereign Name) (the "Contractor") (with FHI 360 and Contractor also individually referred to as a "Party" hereto and collectively referred to as the "Parties" hereto).

**WITNESSETH:**

**WHEREAS**, FHI 360 desires to obtain the services of the Contractor for a portion of the works to be performed under FHI 360's Contract with the United States Agency for International Development (USAID) (hereinafter referred to as the "Customer".)

**WHEREAS**, Contractor has presented its proposal for contract services to FHI 360 that FHI 360 has accepted in accordance with the terms and conditions hereinafter contained; and

**WHEREAS**, with the approval of and from time to time as requested and directed by FHI 360 in writing in accordance with this Contract, Contractor agrees to provide Contract works and other services supporting the construction and refurbishment activities of the Project hereinafter referred to as ("Work") in Zambia.

**WHEREAS**, the following documents shall be deemed to form and be read and constructed as part of this Contract:

- (a) the Articles of the Contract Terms and Conditions
- (b) the Purchase Order(s) issued hereunder
- (c) Technical Specifications
- (d) Tender
- (e) Contract Signature Page
- (f) Other Contract documents.

**WHEREAS**, in consideration of the payments to be made by FHI 360 to the Contractor as hereinafter mentioned, the Contractor hereby covenants with FHI 360 to execute, complete, and maintain the Work in conformity in all respects with the provisions of the Contract.

**WHEREAS**, FHI 360 hereby covenants to pay the Contractor in consideration of the execution, completion, and maintenance of Work the Firm Fixed Price at the times and in the manner described by the Contract.

**IN WITNESS** whereof the Parties hereto have caused this Contract to be executed by its duly authorized representatives as of the Effective Date.

**CONTRACTOR**

**FHI 360**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## TERMS AND CONDITIONS

### ARTICLE 1: DEFINITIONS

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

“Bill of Quantities” is the document prepared by the Contractor in which he has indicated the price of the Work on the basis of the foreseen quantities of items of work and the fixed unit prices applicable to them forming the part of the Contractor’s Tender.

“Certification of Substantial Completion” means when the whole of the Work has been substantially completed and has satisfactorily passed any test on completion prescribed by the Contract, the Contractor may give a notice to that effect to the FHI 360 Project Manager, accompanied by a written undertaking to finish with due expedition any outstanding work during the Warranty period. Such notice and undertaking shall be deemed to be a request by the Contractor for the FHI 360 Project Manager to issue a Certification of Substantial Completion in respect of the Work. The FHI 360 Project Manager will, within **21** calendar days of the date of delivery of such notice, either issue to the Contractor, a Certification of Substantial Completion stating the date on which, in his opinion, the Work was substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the Work which, in FHI 360’s opinion, is required to be done by the Contractor before the issuance of such Certification. The FHI 360 Project Manager shall also notify the Contractor of any defects in the Work affecting substantial completion that may appear after such instructions and before completion of the Work specified therein. The Contractor will be entitled to receive such Certification of Substantial Completion within **21** calendar days of completion, to the satisfaction of the FHI 360 Project Manager, of the Work so specified and making good any defects so notified. Upon issuance of the Certification of Substantial Completion of the Work, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work during the Warranty period.

“Client” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Contractor) any assignee. (i.e. Family Health International, hereinafter ‘FHI 360’)

“Commencement Date or Effective Date” means the date upon which the Contractor receives the award of the Contract from FHI 360 and Work performance begins.

“Contract” means the Terms and Conditions Articles set forth herein, the Technical Specifications, the Tender, and such further documents as may be expressly incorporated in the Contract document.

“Contractor” means the person or firm whose Tender has been accepted by FHI 360 and the legal successors in title to such person, but not (except with the written consent of FHI 360) any assignee of such person or firm.

“Contractor’s Equipment” means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.

“Cost” means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

“Customer” means FHI 360’s client, the United States Agency for International Development (USAID).

“Country” means the country in which the Site is located. i.e. Zambia.

“Customer” refers to FHI 360’s funder, the United States Agency for International Development (USAID).

“FHI 360 Procurement Officer” means the designated FHI 360 person who has contractual authority over the Work being performed under the Contract. The FHI 360 Procurement Officer is the only person authorized by FHI 360 to make changes or amendments to the Contract.

“FHI 360 Project Manager” means the designated FHI 360 person who has been provided the technical authority to manage the Work on behalf of FHI 360. The FHI 360 Project Manager does not have authority to sign and bind FHI 360 to contractual agreements.

“Force Majeure” means an exceptional event or circumstance: which is beyond a Party’s control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.

“Lower tier contractor” means any person or firm named in the Contract as a lower-tier contractor for a part of the Work or any person or firm to whom a part of the Work has been contracted with the consent of FHI 360 and the legal successors in title to such person or firm, but not any assignee of such person or firm.

“Materials” means things of all kinds (other than Plant) intended to form or forming part of the permanent work.

“Party” means either the Client or the Contractor.

“Purchase Order” means the document that the FHI 360 Procurement Officer will use to authorize the Contractor to commence Work under the Contract, or subsequently modify the Contract to incorporate mutually acceptable changes in Work scope, technical specifications, funding, performance period, and terms and conditions after the Contract has been awarded. Purchase Order(s) issued under this Contract fully incorporate the Terms and Conditions of the Contract which are set forth herein.

“Site or Location” means the place(s) provided by FHI 360 where the Work is to be executed and any other places as may be specifically designated in the Contract as forming part of the Site or Location.

“Technical Specifications” means the refurbishment and/or construction work (hereinafter referred to as the “Work”), and other technical information of a like nature that the Contractor will utilize in performing the Work under the Contract.

## TERMS AND CONDITIONS

“Tender” means the Contractor’s priced offer to FHI 360 for the execution and completion of the Work and the remedying of any defects therein in accordance with the provisions of the Contract.

“Tests on Completion” means the tests specified in the Contract or otherwise agreed by FHI 360 and the Contractor which are to be made by the Contractor before the Work or any section or part thereof are taken over by FHI 360.

“Time for Completion” means the time for completing the execution of and passing the tests on completion of the Work as stated in the Contract calculated from the Commencement Date.

“Variation” means a change to the Specification (if any) which is instructed by the Client under Article 18.

Words importing persons or parties shall include firms and organizations. Words importing singular or one gender shall include plural or the other gender where the context requires.

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Client shall issue any necessary instructions to the Contractor, and the priority of the documents shall be in accordance with the order as listed in Appendix F.

### **ARTICLE 2: PURPOSE OF THE CONTRACT**

FHI 360 hereby engages Contractor to provide the Work as described in the contract attachments and Contractor hereby agrees to perform such Work as of the Commencement Date. The Contractor, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the refurbishment Work and remedy any defects therein in accordance with the Articles of the Contract. The Contractor shall provide all superintendence, labor, materials, equipment, and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects at Contractor’s expense, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. Additionally, the Contractor shall be fully responsible for the professional quality, technical accuracy, and the coordination of all non-construction services furnished by the Contractor. All Work shall be conducted in accordance with current Zambian local ordinances, laws, statutes and regulations.

The Work shall begin on the “Commencement Date”, which will maximize the rapid employment opportunities for local Zambians, while still assuring good quality of workmanship.

### **ARTICLE 3: LOCAL EMPLOYMENT**

A key objective of the Contract is to make the maximum use of local contractors, suppliers, craftsmen and laborers in the specific neighborhoods where the Work will be executed and completed. The Contractor shall also promote the employment of women. To qualify as a member of the local labor force, employees must be a resident of Zambia of the given project for at least one (1) year.

### **ARTICLE 4: TYPE OF CONTRACT**

This is a Firm Fixed Price Contract for the satisfactory completion of the Work set forth in the RFP documents. FHI 360 shall issue individual Purchase Order to direct and

authorize the Work set forth hereunder. Upon completion and FHI 360 acceptance of the Work specified herein, the Contractor will submit invoice(s) in accordance with the milestone payment provisions established elsewhere herein. In addition to any other available remedies, if, in the opinion of FHI 360, Contractor fails to perform in accordance with the terms of this Contract, the FHI 360 Procurement Officer may refuse or limit approval of any invoices for payment, and may cause payments to Contractor to be reduced or withheld until such time as FHI determines that Contractor has met the performance terms as established by the Contract. The Firm Fixed Price(s) for the Work to be performed under this Contract is/are set forth in the Tender document which is attached and incorporated herein.

### **ARTICLE 5: TERM OF THE CONTRACT**

The Contract shall begin on the Commencement Date of the Contract and continue until all Work is satisfactorily completed, inspected and accepted by the FHI 360 Project Manager, unless the Contract is terminated early for cause, convenience or default. Time is of the essence in the performance of Work under this contract and the contractor shall perform all Work in accordance with the performance schedules set forth herein.

### **ARTICLE 6: LIQUIDATED DAMAGES**

Contractor recognizes the importance of completing the Work in accordance with the schedule and term set forth herein and agrees to the following liquidated damages provisions and procedures:

1. Upon discovery of information indicating a reasonable certainty that the Work will not be completed before the scheduled delivery date or term of the Contract, Contractor shall immediately notify the FHI Procurement Officer and provide information related to the estimated length of delay. The parties will work jointly toward resolution of a plan to resolve the delayed delivery or completion date. If the parties reach agreement on an extended completion date and Contractor again fails to meet the extended delivery date, otherwise known as the “Cure Period,” the FHI 360 Procurement Officer may (a) terminate the Contract for Default; (b) exercise its right to recover liquidated damages specified hereunder; and/or (c) further extend the completion date. No payments, progress or otherwise, made by FHI 360 to Contractor after any scheduled completion date shall constitute a waiver of liquidated damages.
2. Notwithstanding the above paragraph, in the event Contractor’s failure to meet a Completion or Delivery Date set forth herein, FHI 360 shall be entitled to the greater of either (a) one (1) percent (%) of the price of delayed BOQ line item (See Tender for Amount) or (b) \$500 (See Tender for Amount) for each day after the originally scheduled completion or delivery date until the day of actual delivery and acceptance by FHI 360. Liquidated damages shall not exceed the total price of this Contract.

### **ARTICLE 7: CHANGE ORDER PROVISIONS**

This Contract is issued in connection with certain Customer requirements under the Program. In the event that FHI 360 reasonably determines that such requirements necessitate revisions of, additions to, or deletions of the terms and

## TERMS AND CONDITIONS

conditions of this Contract, Contractor agrees that it will negotiate in good faith with FHI 360 such revisions, additions, or deletions. If any such revision, addition, or deletion causes an increase or decrease in the price of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment in price may be made pursuant to the "Standard of Performance" clause of this Contract.

### **ARTICLE 8: FHI 360 CONTRACTUAL REPRESENTATIVES**

Notwithstanding any other provision of this Contract, FHI 360's authorized representative for contractual matters (the "Procurement Officer") is \_\_\_\_\_ and/or such other representative(s) as the Procurement Officer may specify by written notice to Contractor. The Procurement Officer shall be responsible for the contractual administration of the Contract, the provision of notices to Contractor, and any and all matters relating to administration of this Contract. Only the Procurement Officer and his/her designated representative shall have authority to make changes or amendments to the Contract. FHI 360 shall not be responsible or liable to Contractor, or be obligated to pay Contractor for any costs for Contractor effort that is not in accordance with or authorized under this Contract, or the directions of the Procurement Officer.

### **ARTICLE 9: NOTICES**

Any notice or demand which under the terms of this Contract or under any statute must or may be given or made by Contractor or FHI 360 shall be in writing and shall be given or made (a) by facsimile; (b) by certified or registered mail; (c) by overnight courier; or (d) electronic mail addressed to the respective Party as follows:

#### **To FHI 360:**

FHI 360

#### **TO CONTRACTOR:**

Refer to Contractor's Tender for contact information.

Such notice or demand shall be deemed to have been given or made (a) when sent by facsimile; (b) when mailed; (c) when picked up at the origin point by overnight courier service; and (d) when sent via electronic mail and there is either electronic or written acknowledgement and/or confirmation that the facsimile, mail, courier or electronic mail has been received by the receiving party.

### **ARTICLE 10: INSPECTION AND ACCEPTANCE**

#### **1 Superintendence by Contractor**

At all times during the performance of this Contract and until the work is completed and accepted, Contractor shall have on the work site a competent Site Supervisor who is approved and accepted by the FHI 360 Project Manager. The Site Supervisor will have authority to act on behalf of Contractor and will be in charge of the Work as a whole on a continuous basis and having authority with responsibility for providing adequate supervision or direction to take all action that may be required in performance of the Contract.

The extent and character of the work to be done by Contractor shall be subject to the general oversight, supervision,

direction, control, and approval of authorized FHI 360 Project Manager.

Inspection and acceptance of all deliverables provided under this Contract shall be made by FHI 360 authorized representatives. FHI 360 will accept deliverables on the basis of criteria set forth in Sections B and C of this Contract, as well as in any pertinent attachments. FHI 360 will retain deliverables that are determined to be unacceptable and will advise Contractor in writing of deficiencies.

FHI 360's review, approval or acceptance of, or payment for services required under this Contract shall be construed as a waiver of any rights under this Contract, and Contractor shall be and will remain liable to FHI 360 in accordance with applicable laws for all damages to FHI 360 caused by Contractor's negligent performance of any of the services furnished under this Contract.

#### **2 Material and Workmanship**

All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided for in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor may, at its option, submit a written request to FHI 360 for the use of any equipment, material, article, or process that, in the judgment of FHI 360, is equal to that named in the specifications, unless otherwise specifically provided for in this Contract.

Contractor shall perform all work under this Contract in a skillful and workmanlike manner.

#### **3 Differing Site Conditions**

Contractor shall promptly give a written notice to FHI 360 of (1) subsurface or latent physical conditions at the site that differ materially from those indicated in this Contract, (2) unknown physical conditions at the site that differ materially from those indicated in this Contract, and (3) unknown physical conditions at the site, of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inherent in the work character provided for in this Contract.

No request by Contractor for an equitable adjustment to this Contract under this clause shall be allowed, unless Contractor has given the required written notice.

No request by Contractor for an equitable adjustment to this Contract for unexpected site conditions shall be considered by FHI 360 if made after final payment under this Contract.

#### **4 Construction Schedules**

Contractor, shall, within 7 days after the effective date of this Contract or within the time stated in the Appendix, prepare and submit for approval to FHI 360 three (3) copies of a practicable schedule showing the order in which Contractor proposes to perform the work, and the dates on which Contractor contemplates starting and completing the several

## TERMS AND CONDITIONS

salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a critical path chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If Contractor fails to submit a schedule within the time prescribed, FHI 360 may withhold approval of payments until Contractor submits the required schedule.

If, in the opinion of the Project Manager, Contractor falls behind the approved schedule, Contractor shall take steps necessary to improve its progress, including those that are required by Project Manager without additional cost to FHI 360. In such circumstance, FHI 360 may require Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit schedules in chart form as the Project Manager deems necessary to demonstrate how the project will recoup lost time and get back on schedule to finish within the specified time of this Contract.

Failure of Contractor to comply with the requirements of FHI 360 under this clause shall be grounds for a determination by the Project Manager that Contractor is not executing the work with sufficient diligence to ensure completion within the time specified in this Contract. Upon making this determination, the Project Manager may terminate Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this Contract.

### 5 Layout of Work

Contractor shall lay out its work from established baselines and benchmarks indicated on the Technical Specifications, and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the FHI 360 or designee. Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by FHI 360 or designee until authorized to remove them. If such marks are destroyed by Contractor or through its negligence before their removal is authorized by FHI 360 or designee, Contractor will replace them and deduct the expense of the replacement from any amounts due or to become due to Contractor.

### 6 Technical Specifications for Installation

In case of a difference in specifications between the technical specifications of the tender document and the contractor's design, the technical specifications shall govern. In case of a resultant discrepancy in the figures, costing, and/or specifications, the matter shall be promptly submitted to FHI 360, who shall promptly make a determination in writing. Any adjustment by Contractor without such a determination shall be at its own risk and expense. FHI 360 or designee shall furnish, from time to time, clarifications of technical specification and/or detailed drawings and other information as considered necessary.

### 7 Permits and Responsibilities

Contractor will be responsible for obtaining any necessary licenses and permits. The Contractor shall comply with all laws, codes, and regulations applicable to the performance of this work. Contractor shall also be responsible for all damages to persons or property that occurs as a result of Contractor's fault or negligence. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work.

### ARTICLE 11: WORK REQUIREMENTS

A. All Work shall be performed in accordance with sound and generally accepted professional practices and industry standards by professional, managerial, and technical personnel fully qualified in the respective disciplines required. The design and refurbishment (which includes construction) shall be done in accordance with internationally recognized ordinances and standards applicable to the project location in Zambia.

B. Contractor shall have the complete Professional, Managerial, and Technical responsibility for the validity, accuracy and reliability of the Work performed, and its Work shall conform to all applicable standards, statutes, rules and regulations and the Contract design criteria and definition.

C. The Work shall be performed at a location identified by FHI 360 and such location shall not be changed without approval of FHI 360. FHI 360 and its Customer shall have access at all times to the location where Work is performed and to all of the drawings, specifications, data, calculations, models, test results and specimens, documents and other things related to the Work or to the Project as a whole.

D. Contractor shall maintain an adequate construction inspection system and perform such inspections as will ensure that the Work performed under this Contract conforms to the requirements of this Contract. The Contractor shall maintain complete inspection records and make them available to FHI 360. All Work shall be conducted under the general direction of FHI 360 and is subject to the FHI 360's inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms and conditions of this Contract. The Contractor shall, without charge to FHI 360, replace or correct Work found by FHI 360 not to conform to the requirements of this Contract, unless FHI 360 consents in writing to accept the work with an appropriate adjustment in the price for the Work. The Contractor shall promptly segregate and remove rejected material from the premises.

E. The Client may at any time prior to the expiry of the period stated in the Appendix, notify the Contractor of any defects or outstanding work. The Contractor shall remedy at no cost to the client any defects to the Contractor's design, Materials, Plant or workmanship not being in accordance with the Contract.

The cost of remedying defect attributable to any other cause shall be valued as a Variation. Failure to remedy any defects or complete outstanding work within a reasonable time of the clients notice shall entitle the client to carry out all necessary work at the Contractor's cost.

## TERMS AND CONDITIONS

### ARTICLE 12: PROJECT SITE

Whenever Contractor has employees performing the Work, at any worksite, property of the Customer, or of any third party, Contractor shall comply with all government laws and regulations with regard to safety, security and sanitation, and shall be fully responsible for the safety of its personnel. Contractor shall not create any hazards for others, or the work of others, and shall conduct its Work in a manner which protects life, property and the environment. If Contractor is to furnish any items of equipment, machinery and materials which are to become a permanent part of a Project required by the Contract, Contractor shall warrant that the equipment, machinery and materials will perform as specified and are free from defects in workmanship and materials for a period of one year after initial commercial operation of the equipment or completion of the Contract, whichever is later, unless a different period is stated in the "Terms and Conditions" of this Contract. With respect to items of machinery, equipment, and materials manufactured by others, Contractor's obligation shall be limited to the terms of the best warranty obtainable from the manufacturer.

Contractor shall be responsible for the care, custody, control and safekeeping and preservation of all Contractor-furnished labor, materials, equipment, supplies and other items pertaining to the Work performed under this Contract.

### ARTICLE 13: STANDARD OF PERFORMANCE

In the event Contractor's services hereunder should not prove satisfactory to FHI 360 and/or Customer, as a result of human error, omission or otherwise, Contractor's obligation resulting there from shall be to perform corrective services of the type originally undertaken, provided such corrective services are requested in writing by FHI 360, within the *notice* period and terms of compensation, if any, for such work to be as required by FHI 360.

The FHI 360 Procurement Officer may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, scope of work, drawings or designs; (ii) inspection or acceptance; (iii) description of services to be performed; (iv) time of performance (i.e., hours of the day, days of the week, etc.); and (v) place of performance. Contractor shall comply immediately with such direction.

If such change increases or decreases the cost or time required to perform this Contract, the parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. FHI 360 will modify this Contract in writing accordingly. Unless agreed in writing, Contractor must assert any claim for adjustment to the FHI 360 Procurement Officer in writing within 15 days and deliver a fully supported proposal to the FHI 360 Procurement Officer within 30 calendar days after Contractor's receipt of such direction. FHI 360 may, at its sole discretion, consider any claim regardless of when asserted. FHI 360 may examine contractor's pertinent books and records to verify the amount of Contractor's claim. Failure of the parties to agree upon any adjustment shall not excuse Contractor from performing in accordance with FHI 360's direction.

If Contractor considers that FHI 360's conduct constitutes a change, Contractor shall notify the FHI 360 Procurement

Officer immediately (within 7 calendar days) in writing as to the nature of such conduct and its effect upon Contractor's performance. Pending direction from FHI 360's Procurement Officer, Contractor shall take no action to implement any such change.

Notwithstanding the foregoing provisions of this Article, the price of this Contract for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this Contract indicating the new Contract price.

### ARTICLE 14: EMPLOYMENT PRACTICES

Contractor shall provide competent and adequately trained and skilled personnel. Contractor shall, on request, remove from the Work Site any person found by FHI 360 to be incompetent, unsafe, disorderly, unreliable, or unwilling to comply with regulations, but Contractor shall not remove or reassign its Manager in charge of the Work or its other key personnel designated in the Terms and Conditions of this Contract without the approval of FHI 360 unless such person is no longer employed by Contractor. Contractor shall cooperate with security measures for the prevention of theft, pilferage, waste and for the safety of all employees.

The Contractor shall not subcontract the whole of the Works. The Contractor shall not subcontract any part of the Works without the consent of the Client.

### ARTICLE 15: AUTHORIZED GEOGRAPHIC ID NUMBER

The authorized geographic ID Number for procurement of goods and services procured in support of the USAID funded program in Zambia under this Contract is 935.

### ARTICLE 16: USAID MARKING POLICY

NOTE: The requirements of this Article currently do not apply to the Contract. However, in the event FHI 360's Customer directs FHI 360 to implement the requirements of this Article, the FHI 360 Procurement Officer will notify the Contractor of said direction, and Contractor shall immediately commence to comply with the terms of this Article.

- A. It is USAID policy that USAID-financed project construction sites and other project locations be suitably marked with the USAID emblem. Shipping containers are also to be marked with the last five digits of the USAID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semi-finished products which are not packaged.
- B. Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the FHI 360 Project Manager, or by the USAID Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.
- C. Authority to waive marking requirements is vested with the USAID Regional Assistant Administrators, and with Mission Directors.

## TERMS AND CONDITIONS

D. A copy of any specific marking instructions or waivers from marking requirements is to be sent to the FHI 360 Procurement Officer; the original should be retained by Contractor.

### ARTICLE 17: DELAYS

FHI 360 may require Contractor to suspend performance hereunder completely or partially for whatever length of time Customer and/or FHI 360 may elect. The time for completion shall be extended by an appropriate period that Contractor is delayed by any cause beyond the Contractor's reasonable control. FHI 360 shall not be liable for any damages, direct, and consequential or otherwise, suffered by Contractor due to delays and suspensions. Contractor shall be obligated to proceed with the work notwithstanding a dispute on reimbursement; such action shall not prejudice either party's claim with respect to reimbursement.

### ARTICLE 18: RIGHT TO VARY

The Client may instruct Variations; such Variations shall be valued as follows:

- a. at a firm fixed price contract agreed between the Parties, or
- b. where appropriate, at rates in the Contract, or
- c. in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation, or failing which
- d. at appropriate new rates, as may be agreed or which the Client considers appropriate, or
- e. if the Client so instructs, at day work rates set out in the Appendix for which the Contractor shall keep records of hours of labor and Contractor's Equipment, and of Materials used.

### ARTICLE 19: VARIATION AND CLAIMS PROCEDURE

If the Contractor incurs Cost as a result of any of the Client's Liabilities, the Contractor shall be entitled to the amount of such Cost. If as a result of any of the Client's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.

The Contractor shall submit to the Client an itemized make-up of the value of Variations and claims within 28 days of the instruction or of the event giving rise to the claim. The Client shall check and if possible agree the value. In the absence of agreement, the Client shall determine the value.

### ARTICLE 20: INVOICE INSTRUCTIONS

A. Invoices are to be submitted to FHI 360's Accounts Payable Department at the following address:

FHI360 Zambia Country Office, Plot 2374, Farmers Village, Zambia National Farmers Union (ZNFU) Complex, Showgrounds, Lusaka, Zambia

B. To be considered properly prepared; invoices must include:

- Purchase Order + Contract Number
- Invoice Number
- Invoice Date and Billing Period
- Milestone Description/Line Item and Billing Amount from Tender
- Total Amount Due on this Invoice
- Current and Cumulative Amount for Each Line Item
- Name, Telephone, email, and Fax Number of the Person to Contact in case of questions about the invoice

C. Certification as to Accuracy of Invoice: All invoices must include the following certification, signed by a responsible official of the Contractor's organization:

*"I hereby certify that, to the best of my knowledge and belief, all charges presented are correct, accurate, and complete, that payment therefore has not been received, and that all amounts requested are for the appropriate purposes and in accordance with the Contract."*

D. Payment Terms: A properly prepared invoice will be paid within 30 days of receipt. FHI 360 shall promptly notify Contractor of an intention to withhold any portion of a submitted invoice.

### E. Milestone Payments

Contractor shall have completed all work comprised in the Milestone for which the payment is sought and FHI 360 shall have approved completion of the Milestone in accordance with the Contract. The Contractor shall have complied with all his contractual obligations in relation to progress of work covered by the Milestone including, where required under the Contract, the provision of information required by FHI 360 for the progress of assessing contractual performance. Without prejudice to the foregoing, FHI 360 shall not be obligated to make a payment to the Contractor in respect of a completed Milestone in the event that FHI 360 shall have reasonable cause to believe that the Contractor will be unable to render complete performance of its obligations under the Contract. FHI 360 intends to rely on the milestone payment schedule and approval as the basis for rejecting any claim for payment which the Contractor may make; FHI 360 shall provide the Contractor reasonable notice in writing of its reasons for rejection. Save as hereby provided, the Contractor's right to retain all payments is conditional on complete performance of the Contract.

### Milestone Payment Schedule (See Contractor's Tender):

The Contractor will invoice and be paid in accordance with the Milestone Payment Schedule included with the Bidder's Tender. The Contractor may invoice for multiple milestones on a single invoice. There is no requirement for specific milestone sequence, so long as the Work is completed in accordance with the Technical Specifications and Term. **Ten percent (10%)** payment of the entire contract sum will be withheld as retainage until final completion and acceptance by FHI 360.

### ARTICLE 21: AUDIT OF CONTRACTOR'S RECORDS

The Contractor shall maintain, and FHI 360 shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all charges claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, work sites, offices, or parts of them, engaged in performing this Contract.

## TERMS AND CONDITIONS

### ARTICLE 22: PROPERTY

FHI 360 may provide to Contractor property owned by either FHI 360 or the Customer ("Furnished Property"). Furnished Property shall be used only for the performance of this Contract. FHI 360 shall keep title and risk of loss to all Furnished Property, except that Contractor shall be responsible for loss or damage to Furnished Property that result from Contractor's negligence in handling such Furnished Property.

### ARTICLE 23: ASSIGNMENT

This Contract shall inure to the benefit of and be binding upon the Parties and their successors and assigns. Notwithstanding the foregoing, Contractor shall not assign any right or interest under this Contract (excepting solely for moneys due or to become due) or delegate any obligation under this Contract without the prior written consent of FHI 360. The Contractor may perform the Work through its affiliates and Contractors, provided that FHI 360's consent is first obtained before any affiliates or Contractors are engaged. No contracting shall in any way relieve the Contractor from its obligations hereunder and Contractor shall be responsible to FHI 360 for all Work performed by Contractor's lower Contractor(s) at any tier. In the event of an unauthorized assignment, this Contract may be terminated by FHI 360 immediately without prior notice to the Contractor.

### ARTICLE 24: COMPLIANCE WITH ZAMBIAN LAW

Contractor's performance of work hereunder and all products or services to be delivered hereunder shall be in accordance with any and all applicable national, regional, municipal, and other local laws, customs and ordinances, and all rules, requirements and regulations thereunder. The fixed price set forth herein includes payment of all applicable taxes, duties, surcharges, fees and other costs of doing business under this Contract.

### ARTICLE 25: COMMUNICATION WITH CUSTOMER

FHI 360 shall be the primary contact for all communication and coordination with the Customer for which the Work performed under this Contract is provided. Unless otherwise agreed to or authorized by FHI 360, Contractor shall not exchange any Work specific correspondence with Customer and shall not perform any work under this Contract requested by the Customer. FHI 360 shall not be liable to Contractor for the costs of any work performed by Contractor that is not authorized by the FHI 360 Procurement Officer or his/her designated representative(s).

### ARTICLE 26: PRESS RELATIONS

Contractor shall coordinate all press inquiries and statements with USAID's Bureau for Legislative and Public Affairs (LPA). Contractor shall seek approval from LPA, through the FHI 360 Procurement Officer, before agreeing to or allowing staff to conduct interviews with the press. The Contractor shall not speak on behalf of USAID or FHI 360 but will refer all requests for USAID information to the FHI 360 Procurement Officer.

### ARTICLE 27: CONFIDENTIAL INFORMATION

A. During the term of this Contract, Contractor and its employees may receive or have access to data and information that is confidential and proprietary to FHI 360 or

its Customer. All such data and information ("Confidential Information") made available to, disclosed to, or otherwise made known to Contractor as a result of services under this Contract shall be considered confidential and shall be considered the sole property of FHI 360 and/or FHI 360's Customer. Confidential Information may be used by Contractor or its employees only for purposes of performing the obligations hereunder. Contractor shall not reveal, publish or otherwise disclose Confidential Information to any third party without the prior written consent of the disclosing party.

B. The foregoing obligations shall not apply to Confidential Information which:

- is or becomes generally available to the public other than as a result of a disclosure by Contractor;
- becomes available to Contractor on a non-confidential basis from a third party source which is not prohibited from disclosing such information by a legal, contractual or fiduciary agreement to a third party;
- Contractor develops independently without use of the disclosing party's Confidential Information, as demonstrated by written records and evidence;
- was in Contractor's possession or known to it prior to its receipt from the disclosing party; or
- is required by law to be disclosed, provided Contractor notifies the disclosing party promptly and gives the disclosing party an opportunity to seek an appropriate protective order.

C. These obligations of confidentiality and non-disclosure shall remain in effect for a period of five (5) years after the termination of this Contract.

### ARTICLE 28: COMPLIANCE WITH LOCAL LAWS

Contractor and all persons furnished by Contractor shall comply at their own expense with all applicable laws, ordinances, regulations and ID Numbers, including the identification and procurement of required permits, Export Control, Certifications, licenses, insurance, approvals and inspections in performance under this Contract. If: (i) FHI 360's contract price is reduced; (ii) FHI 360's costs are determined to be unallowable; (iii) any fines, penalties, or interest are assessed on FHI 360; or (iv) FHI 360 incurs any other costs or damages; as a result of any violation of applicable laws, orders, rules, or regulations by Contractor, its officers, employees, agents, suppliers, or Contractors at any tier, FHI 360 may proceed to make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other agreement with Contractor, or may demand payment (in whole or in part) of the corresponding amounts. Contractor shall promptly pay amounts so demanded.

### ARTICLE 29: LABOR DISPUTES

Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, Contractor shall immediately (within 5 calendar days) give notice thereof, including all relevant information, to FHI 360.

### ARTICLE 30: INSURANCE

The Contractor shall purchase and maintain Insurance Policies listed herein and renew them on a continuous basis

## TERMS AND CONDITIONS

from the Effective Date of this Contract until the date of completion of all Work.

- A. One or more Policies covering risks of loss or damage occasioned to third parties caused by the execution of the Work by Contractor, his agents and employees. Such coverage shall have a minimum third party liability limit of US \$1 million for any one occurrence, unlimited any one period of insurance. In this Article, a "Third Party" includes, but not limited to, FHI 360, FHI 360's Customer and their respective employees and representatives.
- B. One or more policies for risks of incidents or injuries occurring to any worker or other persons working for the Contractor or his sub-contractors in accordance with **applicable laws**
- C. Each Policy purchased by the Contractor shall be in accordance with the following paragraphs:
  - 1. Must be in accordance with applicable laws and regulations of Zambia.
  - 2. It must state that coverage under the policy remains valid at least (30) thirty days following the date of any written notification of its cancellation, sent to FHI 360. Copies of all the insurance policies purchased shall be sent to FHI 360 by the Contractor prior to starting the execution of Work.
- D. In case the Insurance Policy purchased by the Contractor does not cover any of its sub-contractors, Contractor shall require its lower-tier Contractor(s) to purchase Policies in accordance with the above clauses and to renew them on a continuous basis for the duration of the services assigned to them. A copy of such insurance policies shall be forwarded to FHI 360 prior to starting the execution of the services.
- E. FHI 360 considers the purchase and retention of insurance as a "Material Term" of the Contract. Accordingly, should the Contractor not purchase the above insurance within 30 days of the effective date of this Contract, Contractor agrees that FHI 360 can purchase the required insurance and backcharge the Contractor for the costs of said insurance and collect said moneys from any moneys owed by FHI 360. The collection of the moneys paid by FHI 360 will be collected from the Contractor in any manner deemed acceptable by FHI 360. Contractor will be responsible and liable for ensuring that the Work is performed by Contractor in accordance with the terms of this Contract and its attachments. Contractor agrees that any non-conformance may lead to damages and or penalties or expenses for FHI 360 under the Contract with Customer and Contractor hereby agrees to hold FHI 360 harmless for and indemnify against any such damages, penalties or expenses.

### **ARTICLE 31: STANDARDS OF CONDUCT/FOREIGN CORRUPT PRACTICES ACT**

Corruption or any other improper business practices will not be tolerated. Transactions relating to the expenditure of public funds require the highest degree of public trust and an

impeccable standard of conduct by the Contractor and any other agent acting in connection with this Contract. Examples of such unacceptable behavior include providing or offering bribes to any person associated with FHI 360's contract with the Customer or any Contracts; soliciting or accepting kickbacks or bribes; and knowingly making any false or misleading accounting reports or financial statements. Contractor and any other agents acting under this Contract are expected to employ due diligence and have internal controls in place towards practicing good governance in execution of this Contract. In the event Contractor is found to have engaged in illegal activity, improper behavior, or corrupt practices, the Contractor will be subject to corrective actions in accordance with the Contract terms up to including termination for default.

### **ARTICLE 32: RESTRICTIONS ON CERTAIN PURCHASES**

Except as otherwise authorized by FHI 360, the Contractor may not enter into any transactions in support of the Work to be provided under this Contract that involve prohibited sources.

### **ARTICLE 33: INDEMNIFICATION**

Contractor hereby agrees to indemnify, defend and hold harmless FHI 360 and its subsidiaries and affiliates, together with their respective officers, employees, agents, contractors, attorneys, successors and assigns (each an "Indemnitee") from and against any and all demands, claims, liabilities, fines, penalties, losses, damages, costs and expenses of whatsoever nature, including attorneys fees, which may be asserted by any third party against any Indemnitee in whole or in part by reason of, or in connection with the following:

- a. any bodily injury, sickness, disease or death of or to any person or persons, or any damage to or destruction of any property occurring in connection with, arising out of, or resulting from the negligence or misconduct of Contractor, its employees, agents or assigns in connection with this Contract;
- b. any failure of Contractor to comply with the insurance requirements set forth in this Contract;
- c. all amounts payable to Contractor employees under workers' compensation or similar laws in connection with performance of services pursuant to this Contract.

### **ARTICLE 34: ASSUMPTION OF LIABILITY; WAIVER AND RELEASE**

In consideration of the mutual covenants, terms and conditions contained in this Contract, it is understood and agreed that Contractor hereby assumes full responsibility for defending against any and all claims, causes of action, demands, liabilities, fines, penalties, losses, damages, costs and expenses of whatsoever nature, including attorney's fees, resulting from death, bodily injury, and damage to property, arising out of or connected with any act or omission of Contractor and/or performance of services pursuant to this Contract by Contractor, its agents, employees or assigns, and hereby releases and discharges FHI 360 from any responsibility whatsoever for any such claims, demands, losses or expense, unless a negligent or wrongful act or omission of FHI 360 was a material contributing factor to such claims, demands, losses, or expense.

## TERMS AND CONDITIONS

### ARTICLE 35: EXECUTIVE ORDER ON TERRORISM FINANCING

Contractor is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Contractor to ensure compliance with these Executive Orders and laws. Contractor's failure to comply with this requirement shall be grounds for immediate termination for default. This provision must be included in all Contracts/subawards issued under this Contract.

### ARTICLE 36: DEBARMENT AND SUSPENSION

In accepting this Contract, the Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any U.S. Federal department or agency. Any change in the debarred or suspended status of the Contractor during the life of this Contract must be reported immediately to FHI 360. The Contractor agrees to incorporate the Debarment and Suspension certification into any lower-tier Contract that they may enter into as a part of this Contract.

### ARTICLE 37: TAXES

Unless the Contract specifies otherwise, Contractor is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Contractor's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Contractor has furnished a valid exemption Certification or other evidence of exemption.

### ARTICLE 38: WARRANTY

A. Contractor represents, warrants, and covenants that in connection with any Work performed under this Contract: it is in the business of performing the Work described in this Contract; it is experienced and expert in performing such Work; all equipment used in the performance of the Work hereunder shall be suitable for such use; it understands the currently-known hazards which are presented to persons, property, and the environment in connection with the performance of such Work and the transportation, storage and disposal of material; it is aware of all laws, regulations, orders, and other governmental requirements pertaining to the performance of such Work; it will perform such Work in full compliance with all applicable laws, regulations, orders, and other governmental requirements; it will perform such Work in compliance with all necessary and applicable permits and it has obtained or will obtain all permits necessary to perform the Work hereunder; it possesses the professional and technical skills required to perform the Work; no enforcement actions have been brought or are likely to be brought against Contractor that could have a material adverse effect on FHI 360 and any agents or personnel employed by the Contractor will meet the same standards as apply to Contractor.

B. If Contractor fails to satisfy the requirements of the Work and the requirements of this Article, Contractor will, without additional compensation, promptly correct or revise any errors or deficiencies in the Work furnished hereunder. If Contractor fails after reasonable notice to proceed promptly with the correction, repair, or replacement of any defective items,

materials, or workmanship, FHI 360 may replace or repair such items or materials, correct such workmanship, and charge the costs thereof to the Contractor and/or terminate this Contract for default. The warranty period for Work shall be the longer of the warranty period stated in the Specifications, or one year. The warranty period shall commence upon Final Acceptance of the Work.

### ARTICLE 39: LIENS AND CLEAR TITLE

To the extent permitted by law, Contractor hereby waives and agrees not to claim any lien against the Work performed or the property on which it is performed. Contractor agrees to obligate its Contractors and vendors not to claim any such lien. Contractor and its lower tier Contractors and vendors shall pay or cause to be paid when due, all bills for labor, materials, equipment or services connected with the Work, and shall not assert any lien or permit any lien to be asserted or maintained against the project Work, or any funds or land involved in the Work.

Contractor warrants that the title to all materials, supplies and equipment installed or delivered by Contractor, together with all improvements and appurtenances constructed or placed by the Contractor, is free from any claims, liens, security interests, or charges.

If any lien or encumbrance is asserted or maintained in violation of this Article, Contractor shall promptly proceed to have it removed. If Contractor fails to remove any such lien or encumbrance, then FHI 360 may, but without obligation to do so, do everything necessary to have the lien or encumbrance removed, and Contractor shall pay any and all costs including attorney's fees incurred by FHI 360 in connection therewith.

### ARTICLE 40: TERMINATION

A. If there is a breach of this Contract by either party, the party not in breach shall give notice to the breaching party in writing. If the breach, including nonperformance or unsatisfactory Service, is not cured within the ten (10) days of the receipt of such notice, then the non-breaching party may terminate this Contract upon the expiration of such ten (10) day period without further notice or action.

B. This Contract shall be terminated automatically upon the bankruptcy, insolvency, or dissolution of either party.

C. If Contractor's representations, certifications and warranties under this Contract are breached, this Contract will become null and void and in such event any compensation paid to Contractor shall be forfeited and refunded to FHI 360 within 30 calendar days, and no future compensation payments shall be made for Contractor's account. FHI 360 reserves to itself any and all other claims and rights accruing from such breach.

D. FHI 360 may terminate/cancel this Contract or any part of the Contract upon thirty (30) days written notice to Contractor without any compensation due to Contractor other than compensation for Services provided.

E. In the event of any such early termination, except for termination resulting from Contractor's breach of this Contract, Contractor shall be entitled to payment of the compensation, or such pro rata part thereof, which is due and

## TERMS AND CONDITIONS

payable to it to the end of the Notice Period, as well as payment of any reasonable expenses which have been actually incurred by it as of the end of the Notice Period or which it shall have to incur as a consequence of any such early termination for the convenience of FHI 360 or FHI 360's Customer. The acceptance of such payment of Contractor shall constitute full settlement of any and all claims of Contractor against FHI 360 of every description, and shall be made only after Contractor signs a release prepared by FHI 360 from any claims, rights and privileges it might have against FHI 360.

### ARTICLE 41: DEFAULT

A. FHI 360 may, at its option, cancel or suspend this Contract for Default including, but not limited to, the following situations:

- 1) the failure, refusal or inability of the Contractor to perform the Work in accordance with this Contract for any reason (except for those reasons that are beyond Contractor's control) after receiving notice from FHI 360 and an opportunity to cure and Contractor has failed to do so; provided however, at FHI 360's option, safety or security violations may result in immediate cancellation; or
- 2) Contractor has become insolvent, has failed to pay its bills returned from suppliers and Contracts due to insufficient funds; or
- 3) A legal action is placed against Contractor which, in FHI 360's opinion, may interfere with the performance of the Work; or
- 4) In FHI 360's opinion, the Work will not be completed in the specified time and FHI 360 has requested Contractor to take steps necessary to accomplish the required progress and completion, and Contractor has failed to do so.

B. In addition to other remedies, FHI 360 may at its option and without prejudice to its other rights, take over and complete all or part of the Work using Contractor's equipment and facilities at the worksite. FHI 360 will be the sole judge whether Contractor is substantially performing Work in accordance with this Contract. Contractor shall be liable for additional costs to FHI 360 arising from cancellation.

C. If the Contract is cancelled, Contractor shall vacate the worksite but shall not remove material, plant, or equipment without the approval of FHI 360. In the event of such cancellation, FHI 360 shall pay Contractor for services satisfactorily performed prior to the date of cancellation which are of benefit to FHI 360. In no event shall FHI 360 be liable for lost or anticipated profits or overhead on uncompleted portions of the Work. Any reports, drawings or other documents prepared for FHI 360 prior to the effective date of such cancellation shall be delivered to FHI 360 by Contractor. Contractor shall not enter into any agreements, commitments or lower-tier Contracts which would incur significant cancellation costs without prior written approval of FHI 360 Procurement Manager. Such written approval is a condition precedent to the payment of any cancellation charges by FHI 360.

### ARTICLE 42: RISK AND RESPONSIBILITY:

a. The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of the completion of Works. Responsibility shall then pass to the

Client. If any loss or damage happens to the Works during the above period, the Contractor shall rectify such loss or damage so that the Works conform with the Contract.

b. Unless the loss or damage happens as a result of an Client's Liability, the Contractor shall indemnify the Client, the Client's Contractors, agents and employees against all loss or damage happening to the Works and against all claims or expense arising out of the Works caused by a breach of the Contract, by negligence or by other default of the Contractor, his agents or employees.

c. If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Client, demobilize the Contractor's Equipment.

If the event continues for a period of 84 days, either Party may then give notice of termination which shall take effect 28 days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- 1) any sums to which the Contractor is entitled under Article 19.
- 2) the Cost of his suspension and demobilization,
- 3) any sums to which the Client is entitled.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

### ARTICLE 43: VALIDITY AND WAIVER

The invalidity in whole or in part of any provision of this Contract shall not affect the validity of other provisions. A waiver of a breach of any provision of this Contract shall not constitute a waiver of any subsequent breach of that provision or a breach of any other provision of this Contract. The failure of FHI 360 to enforce at any time or from time to time any provision of this Contract shall not be construed as a waiver thereof.

### ARTICLE 44: DISPUTES

All disputes and differences that may arise out of or in connection with this Contract will be settled by negotiations between the FHI 360 Contracting Officer and the Contractor's duly authorized representative. For non-U.S. domiciled Contractors, disputes which remain unresolved after sixty (60) days will be settled by arbitration according to the international arbitration rules of the International Chamber of Commerce. A panel of three (3) arbitrators will be selected, with each party designating a single arbitrator. The location of the arbitration will be Washington D.C. The laws controlling the arbitration will be the laws of the State of North Carolina, United States of America. The provisions of the United Nations Convention for the International Sale of Goods are specifically excluded. Pending final determination of any dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract.

### ARTICLE 45: FEDERAL ACQUISITION REGULATION (FAR) AND USAID SUPPLEMENT CLAUSES

The applicable Federal Acquisition Regulation (FAR) clauses, including those listed below, are hereby incorporated into this

**TERMS AND CONDITIONS**

Contract by reference. These clauses have the same force and effect as if they were given in their full text.

- a) Unless one of the exceptions provided in (b) below shall apply: the term "Agreement" shall mean "Contract"; the term "Vendor" shall mean "Contractor"; the term "Government" shall mean "FHI 360"; and the term "Contracting Officer" shall mean the "FHI 360 Procurement Officer or other authorized individual."
- b) The following instances are exceptions to the general rules as provided in (a) above:
  - 1. Where it is clear, by the context of the provision itself or the conditions under which it is being applied, that the reference is intended to refer to the Government, its officers or agents, or the prime contractor specifically;
  - 2. Where an explicit provision of this Contract states a contrary intent;
  - 3. Where access to proprietary financial information or other proprietary data is required; or
  - 4. Where interpretation in accordance with the rules stated above would place FHI 360 in a position of violating the equivalent or related provisions of the Prime Contract whereas construction of the terms without modification would not.
- c) References in any provision incorporated by reference herein to the "Disputes" clause shall be construed as references to the "Disputes" provision contained elsewhere herein. No provision herein shall be taken to imply any direct access on the part of the Contractor to the Disputes process as defined in the terms of the Prime Contract.

Reg	Clause	Date	Clause Title
FAR	52.204.7	Jul 2013	Central Contractor Registration
FAR	52.209-6	Aug 2013	Protecting the Government's Interests When Contracting With Contractors Debarred, Suspended, or Proposed for Debarment (Over \$25,000)
FAR	52.215-2	Jun 1999	Audit and Records - Negotiation (Over \$100,000)
FAR	52.215-8	Oct 1997	Order of Precedence – Uniform Contract Format
FAR	52.215-14	Oct 2010	Integrity of Unit Prices (Over \$100,000)
FAR	52.215-19	Oct 1997	Notification of Ownership Changes
FAR	52.216-7	Jun 2013	Allowable Cost and Payment
FAR	52.222-50	Feb 2009	Combating Trafficking in Persons
FAR	52.223-6	May 2001	Drug-Free Workplace
FAR	52.225-13	Jul 2000	Restrictions on Certain Foreign Purchases
FAR	52.227-1	Dec 2007	Authorization and Consent
FAR	52.228-3	Apr 1984	Workers Compensation Insurance (Defense Base Act)
FAR	52.232-1	Apr 1984	Payments
FAR	52.232-11	Apr 1984	Extras
FAR	52.232-23	Jan 1986	Assignment of Claims
FAR	52.242-13	Jul 1995	Bankruptcy (Over \$100,000)
FAR	52.245-2	Apr 2012	Government Property (Fixed-Price Contracts)
FAR	52.246-25	Feb 1997	Limitation of Liability - Services (Over \$100,000)

Reg	Clause	Date	Clause Title
FAR	52.202-1	NOV 2013	Definitions
FAR	52.203-3	Apr 1984	Gratuities (Over \$100,000)
FAR	52.203-5	Apr 1984	Covenant Against Contingent Fees (Over \$100,000)
FAR	52.203-6	Sept 2006	Restrictions on Contractor Sales to the Government (Over \$100,000)
FAR	52.203-7	Oct 2010	Anti-Kickback Procedures(Over \$100,000)
FAR	52.203-8	Jan 1997	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Over \$100,000)
FAR	52.203-10	Jan 1997	Price or Fee Adjustment for Illegal or Improper Activity (Over \$100,000)
FAR	52.203-12	Oct 2010	Limitation on Payments to Influence Certain Federal Transactions (Over \$100,000)
FAR	52.204.4	May 2011	Printed or Copied Double Sided on Recycled Paper

USAID (CUSTOMER CLAUSES)		
752.202-1		Definitions
752.211-70	Jun 1992	Language and Measurement
752.225-71	Feb 1997	Local Procurement
752.228-7	Mar 1996	Insurance-Liability to Third Persons
752.7008	Apr 1984	Use of Government Facilities or Personnel

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### ARTICLE 46: MANDATORY AND REQUIRED AS APPLICABLE STANDARD PROVISIONS

#### USAID ELIGIBILITY RULES FOR PROCUREMENT OF COMMODITIES AND SERVICES (JUNE 2012)

a. This provision is not applicable to commodities or services that the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under this award.

b. Ineligible and Restricted Commodities and Services:

(1) Ineligible Commodities and Services. The recipient must not, under any circumstances, procure any of the following under this award:

- (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, or
- (vi) Weather modification equipment.

(2) Ineligible Suppliers. Any firms or individuals that do not comply with the requirements in Standard Provision "Debarment and Suspension" and Standard Provision "Preventing Terrorist Financing" must not be used to provide any commodities or services funded under this award.

(3) Restricted Commodities. The recipient must obtain prior written approval of the Agreement Officer (AO) or comply with required procedures under an applicable waiver, as provided by the AO when procuring any of the following commodities:

Agricultural commodities,

- (ii) Motor vehicles,
- (iii) Pharmaceuticals,
- (iv) Pesticides,
- (v) Used equipment,
- (vi) U.S. Government-owned excess property, or
- (vii) Fertilizer.

c. Source and Nationality:

Except as may be specifically approved in advance by the AO, all commodities and services that will be reimbursed by USAID under this award must be from the authorized geographic code specified in this award and must meet the source and nationality requirements set forth in 22 CFR 228. If the geographic code is not specified, the authorized geographic code is 937. When the total value of procurement for commodities and services during the life of this award is valued at \$250,000 or less, the authorized geographic code for procurement of all goods and services to be reimbursed under this award is code 935. For a current list of countries within each geographic code, see ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID.

d. Guidance on the eligibility of specific commodities and services may be obtained from the AO. If USAID determines that the recipient has procured any commodities or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the AO may require the recipient to refund the entire amount of the purchase.

e. This provision must be included in all subagreements, including subawards and contracts, which include procurement of commodities or services.

[END OF PROVISION]

#### PREVENTING TERRORIST FINANCING (AUGUST 2013)

a. 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/\(SDN\)](http://www.treasury.gov/resource-center/sanctions/(SDN))). Or the United Nations Security designation list (online at: [http://www.un.org/sc/committee/1267/faq\\_sanctions\\_list.shtml](http://www.un.org/sc/committee/1267/faq_sanctions_list.shtml)).

b. This provision must be included in all subagreements, including subawards and contracts issued under this award.

[END OF PROVISION]

#### TRAFFICKING IN PERSONS (JUNE 2012)

a. USAID is authorized to terminate this award, without penalty, if the recipient or its employees, or any subrecipient or its employees, engage in any of the following conduct:

(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 award;

(2) Procurement of a commercial sex act during the period of this award; or

(3) Use of forced labor in the performance of this award.

b. For purposes of this provision, "employee" means an individual who is engaged in the performance of this award as a direct employee, consultant, or volunteer of the recipient or any subrecipient.

c. The recipient must include in all subagreements, including subawards and contracts, a provision prohibiting the conduct described in a(1)-(3) by the subrecipient, contractor or any of their employees.

[END OF PROVISION]

#### STANDARDS FOR ACCESSIBILITY FOR THE DISABLED IN USAID ASSISTANCE AWARDS INVOLVING CONSTRUCTION (SEPTEMBER 2004)

APPLICABILITY: This provision must be included in Request for Applications (RFAs) and in awards involving construction.

a. One of the objectives of the USAID Disability Policy is to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations, and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The full text of the policy paper can be found at the following Web site: [http://pdf.usaid.gov/pdf\\_docs/PDABQ631.pdf](http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf).

b. USAID requires the recipient to comply with standards of accessibility for people with disabilities in all structures, buildings or facilities resulting from new or renovation construction or alterations of an existing structure.

c. The recipient will comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the

## TERMS AND CONDITIONS

Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA will be used.

d. New Construction. All new construction will comply with the above standards for accessibility.

e. Alterations. Changes to an existing structure that affect the usability of the structure will comply with the above standards for accessibility unless the recipient obtains the Agreement Officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.

f. Exceptions. The following construction related activities are excepted from the requirements of paragraphs a. through d. above:

(1) Normal maintenance, reroofing, painting or wall papering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply unless they affect the accessibility of the building or facility; and

(2) Emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as "most vulnerable."

[END OF PROVISION]

In the event that the Contract or Purchase Order(s) document is translated into another language, the English version of said document(s) shall prevail.

### **ARTICLE 47: ORDER OF PRECEDENCE**

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Client shall issue any necessary instructions to the Contractor, and the priority of the documents shall be in accordance with the order as listed in Appendix F.

### **ARTICLE 48: ENTIRE AGREEMENT**

Both parties acknowledge that they have read this Contract, understand it, and agree to be bound by its terms and further agree that it is the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

### **ARTICLE 49: LANGUAGE REQUIREMENTS**

The Contract and Purchase Order(s) issued hereunder and all notices, communications and submittals between the parties pursuant to the implementation of this Contract shall be in the English language, unless otherwise directed in writing by FHI 360. All translation services, to include the physical presence of qualified translators, necessary for written or oral communications shall be provided by Vendor.

