

## GENERAL TERMS AND CONDITIONS: REFERENCING PURCHASE ORDER/INDEPENDENT CONTRACT AGREEMENT

**1. Offer & Agreement:** The following terms together with those on the face of this agreement, other documents as may be incorporated by reference or attached hereto, and additional terms in any Change Notice issued to this order, constitute the offer of Family Health International (dba FHI360) to the Vendor and shall, when accepted, constitute the entire order or contract between FHI360 and Vendor. This agreement shall be deemed to have been accepted upon Vendor's signed acceptance on the cover of this order or commencement of performance. Any reference herein to any proposal, quotation, or other communication by Vendor shall, unless indicated to the contrary herein, be deemed to be limited to the description of the services and to be limited by the terms set forth or incorporated by reference herein.

**2. Assignment:** Neither party may assign this order or any benefits arising from this order without the prior written consent of the other, and, unless otherwise agreed in writing, the rights of any assignee shall be subject to all set-offs, counterclaim, and other comparable rights arising hereunder. FHI360 shall not, except as otherwise agreed in writing by FHI360, delegate or assign all or substantially all of on any item or service to be furnished under this agreement.

**3. Proprietary Information & Confidentiality:** Vendor shall consider all data, documentation, drawings, specifications software and other information furnished by FHI360 to be confidential and proprietary and shall not disclose any such information to any other person, or use such information itself for any purpose other than that for which it was intended in completing this order, unless Vendor obtains written permission from FHI360 to do so. Vendor agrees to execute FHI360's standard Non-Disclosure Agreement upon request.

**4. Terms of Payment:** Subject to any superseding terms on the face hereof, Vendor shall invoice FHI360 at \_\_\_\_\_ to the Attn: FHI360 Accounts Payables Department and be paid upon completion/acceptance of the required supplies/services. Vendor shall be paid not later than thirty (30) days after FHI360's receipt of an acceptable invoice or FHI360's receipt of the completed products/services, together with any required documents. Drafts will not be honored.

**5. Compliance with Law:** Vendor's performance of work hereunder and all products to be delivered hereunder shall be in accordance with any and all applicable executive orders, Federal, State, municipal, and local laws and ordinances, and rules, orders, requirements and regulations. Such Federal laws shall include, but not be limited to, the Fair Labor Standards Act of 1938 as amended, E.O. 11246, "Equal Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," relating to the affirmative action clause for disabled veterans, recently separated veterans, other protected veterans of the armed forces service medal veterans (41 CFR 60-300) are hereby incorporated herein for reference, as supplemented by regulations at 41 CFR Chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", the Copeland "Anti-Kickback" Act (18USC874 and 40USC276c and 18USC874 as supplemented by Department of Labor regulations at 29CFRpart 3, the Davis-Bacon Act, as amended (40USC276a-a7) and as supplemented by Department of Labor at 29CFRpart 5, the Contract Work Hours and Safety Standards Act (40USC327-333), and the Byrd Anti-Lobbying Amendment (31USC1352) and the. Incorporation and by reference; of Equal Opportunity Clause of 41 CFR 60-250.4 relating to disabled and Vietnam era veterans; and the provision of 41 CFR 60-741.4 relating to handicapped workers. **In addition the contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.** Otherwise agreed, governing law shall be that of the North Carolina. Vendors and subcontractors are hereby notified of your obligation to annually file a Standard Form 100: Equal Employment Opportunity Employer Information Report EEO-1 (EEO-1 Report) with the Joint Reporting Committee. The *mailing address* and other contact information for this Committee are as follows: EEO-1 Joint Reporting Committee, P.O. Box 19100, Washington, DC 20036-9100; *Telephone* 1-800-286-640; *Facsimile* 202-663-7185; *TTY* 202-663-7184; *Email:* el.techassistance.eeoc.gov

**6. Title and Risk of Loss:** Title to and risk of loss of, each product and/or service to be delivered hereunder shall, unless otherwise provided herein, pass from Vendor to FHI360 upon acceptance of such product/service by FHI360.

**7. Inspection:** (a) Vendor shall work within professional standards and limitations specified on work statements, drawings and specifications covering the work and shall make such inspections as are deemed necessary to insure Vendor compliance, unless deviation there from is authorized in writing by FHI360. (b) All shipments of materials shall be subject to final inspection by FHI360 after receipt by FHI360 at destination. If material supplied or work performed by Vendor is found to be defective, Vendor shall be given the opportunity to correct any deficiencies within a reasonable period of time. If correction of such work is impracticable, Vendor shall bear all risk after notice of rejection and shall, if so requested by FHI360 and at its own expense, promptly make all necessary replacements. Vendor shall provide immediate notice to FHI360 of any potential failure on the part of its suppliers to provide supplies/services required hereunder. Vendor is responsible for any deficiency on the part of its suppliers. **VENDOR SHALL BE RESPONSIBLE FOR ANY COSTS OF REPROCUREMENT AS MAY BE NECESSARY FOR FHI360 TO SECURE THE SUPPLIES/SERVICES AS A RESULT OF VENDOR'S INABILITY TO PERFORM THAT EXCEED THE AGREED UPON PRICE HEREIN.** (d) Final inspection and acceptance by FHI360 shall be conclusive except for latent defects, fraud, or for any rights provided by any product warranty.

**8. Force Majeure:** The Vendor shall not be liable by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of Vendor. Such cases may include, but are not restricted to, acts of God, acts of government or municipal or other authorities, fires, floods, epidemics, quarantines, strikes, and labor disputes. Such causes do not include deficiencies on the part of its suppliers.

**9. General Warranty:** Vendor warrants all supplies/services to be free from all materials defects and expressly represents that all such required supplies/services are capable of performing the function service for which they were intended. Vendor agrees to pass on all manufacturer's warranties to FHI360.

**10. Liens:** Vendor agrees to deliver the products/services which are the subject-matter of this order to FHI360 free and clear of all liens, claims, and encumbrances.

**11. Stop Work and Termination:** (a) FHI360 shall have the right to direct Vendor to stop work at any time. Such direction must be in writing and shall be effective for a period of not more than 30 days after which time Vendor may continue work absent direction to do so or a notice of termination. (b) This Order may be terminated upon default of either party in meeting its obligations hereunder. (c) This order may be terminated for convenience, without fault of either party, by FHI360 with advance written notice to Vendor. Vendor shall be paid for work completed and shall be reimbursed all actual costs for work in process incurred to time of termination notification inclusive of any associated administrative costs, restocking charges, vendor cancellation charges and settlement costs. Under no circumstances shall Vendor receive more than the original value of this Order (d) This order may be terminated for constructive default in the event that the FHI360 has reasonable cause to believe that the Vendor will not be able to perform in accordance with the terms and conditions of the Order. Vendor shall be given a reasonable opportunity to respond to a notice of constructive default termination. In the event of failure of the Vendor to deliver/complete any part of this order, then FHI360 shall, at its sole discretion, have the right to accept any delivered/completed part and unilaterally reduce the agreed upon price accordingly. (e) FHI360 acceptance of partial deliveries shall not constitute a waiver of any of the Vendor's remaining obligations hereunder. (f) The preceding paragraph (e) shall not limit any legal rights of either party to cancel this order by reason of any default, and FHI360 further reserves the right to cancel this order without further liability for articles not accepted by FHI360 in the event Vendor commits an act of bankruptcy, files or has filed against the petition of bankruptcy or insolvency or suffers any receivership or other similar petition to be filed for or against it.

**12. Insurance & Work on FHI360's or FHI360 Client Premises:** When Vendor performs work on FHI360's premises during the performance of this order, the Vendor agrees to maintain General Liability Insurance in the amount of at least \$500,000 per claim/occurrence and such other insurance as may be required in writing by the FHI360 Client. Vendor, however, shall maintain adequate insurance coverage against claims arising from injuries sustained by Vendor on FHI360's facilities and agrees to be liable for all damages & claims arising against FHI360 for which the Vendor is responsible.

**13. Independent Relationship:** Nothing in this Agreement shall be construed as creating anything other than an independent Contractor/Vendor, FHI360/Vendor relationship between FHI360 and the Vendor.

**14. Work Product Presumptive FHI360 Property:** All writings, books, articles, computer programs, databases, source and object codes, and other material of any nature whatsoever, including trademarks, trade names, and logos, that is subject to copyright protection and reduced to tangible form in whole or in part by Vendor in the course of Vendor's service to FHI360 shall be considered a work made for hire, or otherwise FHI360 property. During this agreement and thereafter, Vendor agrees to take all actions and execute any documents that FHI360 may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (FHI360 shall pay all related expenses). Vendor shall identify all materials in which Vendor intends to exempt from this provision prior to the use or development of such materials.

**15. Rights in Data:** The Vendor understands and agrees that FHI360 may itself and permit others, including government agencies of the United States and other foreign governments, to reproduce through but not limited to the publication, broadcast, translation, creation of other versions, quotations there from, any provided publications and materials, and otherwise utilize this work and material based on this work. During the agreement and thereafter, Vendor agrees to take all actions and execute any documents that FHI360 may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (all related expenses to be borne by FHI360). The Vendor shall identify all materials it intends to exempt from this provision prior to the use or development of such materials. The Vendor shall defend, indemnify, and hold harmless FHI360 against all claims, suits, costs, damages, and expenses that FHI360 may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the work, or any infringement or violation by the work of any copyright or property right; and until such claim or suit has been settled or withdrawn, FHI360 may withhold any sums due the Vendor under this agreement. Vendor agrees to specifically identify to FHI360 any and all computer software licenses ("including shrink-wrap") as may convey to the FHI360. Vendor agrees that any and all computer software developed in the performance of this order using FHI360 monies shall, unless otherwise agreed, become and remain the property of FHI360.

**16. Indemnification:** The Vendor shall defend, indemnify, and hold harmless FHI360 against all claims, suits, costs, damages, and expenses that FHI360 may sustain by reason of Vendor's negligent or unlawful actions resulting from Vendor's performance under this agreement.

**17. Liquidated Damages:** If the Vendor fails to deliver the supplies or perform the services within the time specified in this agreement, FHI360 may require that Vendor pay, in place of actual damages, liquidated damages in the amount of one percent (1%) of the agreement value for each day of delay. If FHI360 terminates this agreement in whole or in part for default, as provided under section 12 above, Vendor is liable for liquidated damages accruing until such time that FHI360 reasonably obtains delivery or performance from another vendor. These liquidated damages shall be in addition to any excess costs for re-purchase. Vendor will not be charged with liquidated damages when delay of delivery or performance is beyond the control and without the fault or negligence of the Vendor.

**18. Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** Vendor certifies by acceptance of this agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any U.S. Federal Government department of agency.

**19. Drug Trafficking:** FHI360 reserve the right to terminate this purchase order/subcontract to demand a refund or take other appropriate measures if the vendor is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

**20. Terrorism E.O. 13224:** Vendor agrees and certifies to take all necessary actions to comply with Executive Order No. 13224 on Terrorist Financing; blocking and prohibiting transactions with persons who commit, threaten to commit, or support terrorism.(E.O.13224 text available at: <http://www.whitehouse.gov/news/releases/2001/09/20010924-1.html> Note: Vendor is required to obtain the updated lists at the time of procurement of goods or services. The updated lists are available at: <http://treasury.gov/offices/enforcement/ofac/sanctions/terrorism.htm> and <http://www.un.org/Docs/sc/committees/1267>.

**21. Computer Software Licenses:** Vendor agrees to specifically identify to FHI360 any and all computer software licenses ("including shrink-wrap") as may convey to the FHI360. The Vendor agrees that any and all computer software developed in the performance of this order using FHI360 monies shall, unless otherwise agreed, become and remain the property of FHI360.

**22. Vendor Terms and Conditions:** The terms and conditions of this purchase order shall supersede any other terms and conditions except those expressly accepted by FHI360.

**23. Gratuities:** This agreement shall be terminated for cause in accordance with section 11 above should it be determined by FHI360 that Vendor offered or gave a gratuity (e.g. entertainment, gift, services or money) to any FHI360 employee or other persons responsible for or

connected to those responsible for the decision to award this agreement or the acceptance of performance under this agreement and that gratuity was intended to obtain this award or favorable treatment during performance of the award.

**24. Payment for Reimbursable Expenses:** Requests for payment for materials costs under Time and Materials agreements must be supported by receipts for all items invoiced.

**25. Independent Price Determination:** (a) Vendor certifies that—

(1) The prices in this order have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror, including but not limited to subsidiaries or other entities in which Vendor has any ownership or other interests, or any competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this order were not knowingly disclosed by the Vendor, directly or indirectly, to any other offeror, including but not limited to subsidiaries or other entities in which Vendor has any ownership or other interests, or any competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated or competitive solicitation) unless otherwise required by law; and

(3) No attempt was made by the Vendor to induce any other concern or individual to submit or not to submit an offer for the purpose of restricting competition or influencing the competitive environment. Vendor understands and agrees that violation of this certification will result in the termination of this order for default as well as exclusion from future solicitations.

**26. Eligibility Rules for Goods and Services:** Vendor shall not procure: (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. Vendors shall not procure any goods or services from firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." Prior to procuring any of the following goods and services, Vendor must obtain prior written approval from the FHI360 contracts administrator: (i) Agricultural commodities; (ii) Motor vehicles; (iii) Pharmaceuticals; (iv) Pesticides; (v) Used equipment; (vi) U.S. Government-owned excess property, or (vii) Fertilizer. All procurements must be conducted in accordance with 22CFR228, Rules on Procurement on Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety.

**27. Ocean Shipment of Goods:** Applicable for awards for \$100,000 or more and when goods purchased under this award are transported to cooperating countries on ocean vessels whether or not award funds are used for the transportation. Vendor must ensure transport on a US flag commercial vessels. When U.S. flag vessels are not available, or their use would result in a significant delay, the vendor must contract FHI360 Contracts Administrator before proceeding.

**28. Air Transportation:** In accordance with the standard provision entitled International Air Transportation, any international travel requires prior written approval from the FHI360 contracts administrator.

**29. Authorized Geographic Code:** Vendor shall comply with the Geographic Code specified by the US Government Prime Contract with FHI 360.

**30. Organizational Conflict of Interest:** The Vendor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that might indicate the existence of or give rise to actual or potential organizational conflicts of interest. Organizational conflict of interest, means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

**31. Excusable Delays:** The Vendor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Vendor and without its fault or negligence. The Vendor shall notify FHI 360 in writing as soon as it is reasonably possible after the commencement of any excusable delay.

**32. Export Control:** Vendor shall comply in all respects with all applicable local, state, and federal laws and regulations, as well as all U.S. statutes, regulations, and administrative requirements regarding relationships with non-U.S. governmental and quasi-governmental entities including but not limited to the export control regulations of the Department of State and the International Traffic in Arms Regulations ("ITAR"), the Department of Commerce and the Export Administration Act ("EAA"), the anti-boycott and embargo regulations and guidelines issued under the EAA, and the regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control.

**33. Foreign Corrupt Practices Act:** The anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1", *et seq.*, makes it unlawful for U.S. companies, as well as their officers, directors, employees, and agents, to corruptly offer or make a corrupt payment of money or anything of value to a foreign official for the purpose of obtaining or retaining business. Vendor acknowledges and understands that he/she must comply fully with the anti-bribery provisions of the FCPA. Specifically, Vendor understands and agrees that it shall be unlawful for the Vendor to pay, offer, promise to pay (or authorize to pay or offer) money or anything of value to a *foreign official* in order to assist FHI 360 in *obtaining* or *retaining business* for or with, or *directing business* to, FHI 360. A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.

**34. Combating Trafficking in Persons:** The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Subcontractor and its employees shall not:

- (1) Engage in severe forms of trafficking in persons during the period of performance of any Task Order;
- (2) Procure commercial sex acts during the period of performance of any Task Order; or
- (3) Use forced labor in the performance of any Task Order.

Subcontractor shall notify its employees of the government's zero tolerance policy, the actions that will be taken against employees for violations of this policy (including, but not limited to, removal from a Task Order, reduction in benefits, or termination of employment), and take appropriate action, up to and including termination, against employees or subcontractors that violate this policy.