

United States Institute of Peace

Terms and Conditions

1. **Independent Contractor**

Contractor shall be an independent contractor with respect to performance of all work performed under this Agreement, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of USIP nor shall it or they have any authority to speak for or otherwise to bind USIP in any manner. As an independent contractor, you are responsible for the safety and security of individuals working under this contract. USIP strongly encourages individuals who will be traveling and working in conflict zones and areas prone to violence and instability, to acquire security awareness training prior to operating in those environments. It is the responsibility of the individual contractor to obtain this training.

2. **USIP Name and Logo**

USIP name and logo are the property of USIP. Neither shall be used by Contractor for any purpose(s) except with the express, prior written authorization of USIP.

3. **Confidentiality and Non-Disclosure**

“Confidential Information” means all information in whatever form or in whatever medium recorded, relating to the Work disclosed in writing, orally, or in any other form to Contractor by USIP, either directly or indirectly, and all information compiled or developed during the course of the Work, except for the following:

- (1) Information in the public domain through no action of Contractor in breach of this Agreement; or
- (2) Information independently developed by Contractor; or
- (3) Information acquired by Contractor from a third party not delivered to Contractor in breach of confidentiality agreements which said third party may have with USIP, the Government, USIP’s other contractors or affiliates, or any other third party.

Both during the term of this Agreement and following completion of the work or termination of the Agreement, Contractor will retain in strict confidence, and not disclose to third parties or use for the benefit of anyone other than USIP any Confidential Information, without the prior written consent of USIP.

All Confidential Information obtained or developed pursuant to the Agreement shall be subject to this Agreement unless expressly excepted in writing by the USIP.

Nothing contained herein shall be deemed to prevent disclosure of any Confidential Information by Contractor if, in the written opinion of Contractor’s counsel, such disclosure is required by any applicable federal or state law, rule, or regulation, or by any applicable order, subpoena, judgment, or decree; provided, however, that Contractor shall give USIP at least ten (10) days prior written notice before disclosing any Confidential Information and, in making such disclosure, Contractor shall take all reasonable steps to preserve the confidentiality of the Confidential Information to the greatest extent possible.

If and when requested in writing, Contractor shall, and shall cause its lower tier subcontractors to execute any such confidentiality agreements as are deemed necessary for the protection of USIP, the Government and/or any of their respective other contractors.

4. **Indemnity – Intellectual Property**

Except as specifically agreed by USIP, all original work of Contractor under the Contract shall be treated as “work for hire” and all right, title and interest in such work shall be assigned to or owned by USIP.

Contractor represents and warrants that all intellectual property of any nature included in any deliverable to USIP (or any other party under the Contract) shall be public domain property, or the original work of Contractor, or shall be used with all applicable consents or licenses from the owner, copyright holder or patent owner.

Contractor shall indemnify, defend, save and hold harmless USIP from and against any and all claims, actions, and damages which USIP may suffer or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights relating to the work performed by contractor or any of its subcontractors under or in connection with the Agreement. Any such suit or claim shall be defended at Contractor's expense by counsel satisfactory to USIP. If, in any such suit or claim, a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the work, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Contractor shall promptly make every reasonable effort to secure for USIP or, at no cost to USIP, a license authorizing continued use of the infringing item. If Contractor is unable to secure such suspension or such license within a reasonable time, Contractor shall, at its own expense and without impairing USIP's use of the work, either replace the affected work, or part, combination or process thereof, with non-infringing components or parts or modify the same so that same becomes non-infringing.

5. Publicity

Contractor shall not disclose the nature of its work under the Agreement or engage in any other publicity or public media disclosures with respect to the work without the prior written consent of USIP.

6. Acceptance and Inspection

USIP shall have the right to inspect all work performed under this Agreement upon delivery or pursuant to such other terms as may be agreed upon in writing. Acceptance shall not occur until after completion of inspection. Acceptance shall not absolve Contractor from correcting errors, omissions, and other defects in workmanship under the Warranty provisions of the Agreement to the extent that they are not patently apparent and discoverable upon reasonable inspection at time of delivery or as otherwise agreed upon. Payment shall be conditioned upon USIP's acceptance of the work under this Agreement.

7. Representation and Warranty of Work

No principal, employee or subcontractor of Contractor:

- (1) Is an employee of or personal services contractor to the Institute; or
- (2) Has a familial or other relationship with a USIP employee participating in the contracting for or receipt of the Services under this Agreement except as specifically acknowledged and consented to by USIP in a writing attached to this Agreement. Contractor warrants that all work:
 - (i) Shall, as applicable, be free of defects in workmanship,
 - (ii) Shall be performed in accordance with the accepted professional standards and industry codes applicable to the work in effect as of the award of the Agreement,
 - (iii) Shall be performed in a good and workmanlike manner, and
 - (iv) Shall strictly conform to the Agreement.

Upon receipt of written notice of a defect or deficiency in the work, Contractor shall at USIP's sole option and at no cost to USIP, promptly re-perform, repair, or replace, such defective or deficient work so that it conforms with the requirements of the Agreement. If USIP deems it inexpedient for Contractor to correct defective or deficient work, USIP may make a deduction from the Contract price in lieu of such correction, as determined by USIP.

8. Compliance with Laws

In the performance of work under this Agreement, Contractor shall comply, and shall require its subcontractors, agents, and other representatives to comply with all applicable laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any Federal, District of Columbia, or other governmental entity or other body having jurisdiction over the Agreement or any activity conducted at or in connection with the Agreement (collectively "Laws"). Contractor agrees to indemnify and hold USIP harmless for, of, and from any loss, including but not

limited to fines, penalties, and corrective measures, USIP may sustain by reason of Contractor's failure to comply with any such Laws in connection with the performance of its work for USIP under this Agreement. Contractor shall obtain and maintain all permits, licenses, and consents required by governmental authorities for performance of any work to be performed under this Agreement. At no time during the term of this Agreement shall Contractor be debarred from contracting with the U.S. Government, subject to sanctions promulgated or supervised by any U.S. Government agency, or otherwise ineligible to contract with the U.S. Government for any reason. Such debarment, sanction status or exclusion at any time shall be a material breach of the Agreement. Contractor's subcontracting under this Agreement with any person debarred, subject to sanctions, or ineligible to contract with the U.S. Government shall be grounds for termination of this Agreement at the sole discretion of USIP.

9. Section 508 Compliance

Because USIP receives Federal funds for its work, to the extent Contractor's work will involve creating or modification of Information Technology hardware or software, Contractor shall ensure that it is in compliance with the requirements section 508 of the Rehabilitation Act of 1973, as amended, as they may be applicable.

10. Compliance with Workplace Rules

Contractor, to the extent work is to be performed on the premises of USIP, shall conform its activities to all procedures, work hours, and safety rules and regulations as may be in force at USIP. Contractor shall also undergo such safety and other training as may be offered by USIP with regard to its site.

11. Contractor Personnel Access to USIP Facilities

USIP also shall have the right in its sole discretion to request that Contractor remove and replace any one or more of its staff working at USIP if such person is deemed by USIP to be incompetent, disorderly, or otherwise unsatisfactory. Contractor shall promptly comply with such request. USIP shall have the right in its sole discretion to revoke access to its premises for any one or more of Contractor's personnel.

12. Equal Opportunity

The Contractor agrees that it will not discriminate against any employee or applicant for employment to be employed in the performance of work under this Agreement with respect to hire, tenure, terms, conditions or privileges of employment, or matters directly or indirectly related to employment because of age, sex, height, weight, marital status, race, color, religion, sexual orientation, national origin, ancestry, disability or veteran status. Contractor also agrees to comply with all applicable provisions of Executive Order 11246 of September 24, 1965, as amended. Breach of this covenant may be regarded as a material breach of this Agreement.

13. Record Retention and Audits

Contractor and its subcontractors of any tier shall maintain true and correct sets of cost and other records relating to the work and all transactions related to the Work and shall retain all such records for at least three (3) years after final payment under this Agreement.

USIP, itself or through its designated agent (e.g., audit firm), from time to time at any time after the date of this Agreement until three (3) years after final payment under this Agreement, may make an audit of any and all records of Contractor and any of its subcontractors of any tier that pertain to the performance of work under the Agreement. Contractor shall assist USIP in making the above audits.

Such audits will not include Contractor's payroll or other confidential information of Contractor's other clients unless it relates directly to this Agreement. Contractor shall include, and shall require all its subcontractors of any tier to include, in all lower tier subcontracts in connection with the work under this Agreement, a provision materially similar to this paragraph. USIP may at any time require Contractor to submit to the Institute a copy of its latest Annual Audited Report ("annual audit" or "audit").

14. Assignment

Neither this Agreement nor any part thereof nor any right arising therefrom shall be transferred or assigned by Contractor to any other individual, firm, partnership, corporation, institution, or government agency without the

prior written consent of USIP.

15. Termination for Convenience

At any time, USIP may, in its discretion, terminate this Agreement in whole or in part for its convenience, by giving five (5) business days written notice to Contractor. Upon receiving such notice, Contractor shall:

- (a) Stop performance of all Work except that reasonably necessary to carry out termination; and
- (b) Make no further monetary commitments except with the written consent of USIP.

16. Default by Contractor

USIP shall have the right, in addition to all other rights or remedies it may have under this Agreement or by law or in equity, to terminate this Agreement in whole or in part if Contractor:

- (a) fails:
 - (i) to comply with the material terms of this Agreement;
 - (ii) to make satisfactory progress toward completion of the work; or
 - (iii) to perform its work in a satisfactory manner in terms of quality;
- (b) makes any assignment for the benefit of creditors, or
- (c) initiates or has initiated against it bankruptcy, insolvency, receivership, or similar proceeding, by giving notice to Contractor.

In the event of a breach under subparagraph (a), USIP shall afford Contractor a period of ten (10) days to correct the breach or present an acceptable plan to USIP for correcting the breach. The failure of USIP to terminate Contractor for any default shall not be deemed a waiver of its right to terminate contractor for some other related, subsequent, or independent default. Upon receipt of such notice, Contractor shall stop all Work. Contractor shall be entitled to be paid only for Work previously submitted and accepted by USIP. USIP shall be entitled to recover from Contractor the costs of retaining others to complete the Work agreed to under this Agreement.

17. No Waiver of Breach

Any failure by USIP at any time, or from time to time, to enforce or require the strict compliance with and performance by Contractor of any of the terms or conditions of the Agreement shall not constitute a waiver by USIP or a breach of any such terms or conditions or any other breaches, or the right of USIP to avail itself of the remedies it may have for any such breach.

18. Indemnity - General

Contractor shall indemnify, defend, hold and save USIP, USIP's affiliates, and each of its/their respective agents, successors, assigns, and any and all officers, directors, shareholders, employees or representatives of any of the foregoing, harmless from and against any loss, claim, liability, judgment, cost or expense (inclusive of attorney and expert fees), including but not limited to any and all property damage, delay, business interruption, lost business transactions or opportunities, or lost profits to Contractor and/or to any one or more third parties and any and all personal injury to Contractor and/or to any one or more third parties, including death, in the event such loss, claim, liability, cost or expense to any extent whatsoever (even if any entity other than Contractor is contributory thereto) arises from or relates to any act or omission of Contractor, its employees or affiliates in connection with the Work. Contractor waives any right to assert immunity from these obligations under any workers' compensation or other employee benefit statute.

19. Damages / Limitation of Liability

In no event shall USIP or any of its affiliates, representatives or any directors, officers, or employees of any of the foregoing be liable to contractor or any of its lower tier subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated or otherwise, and contractor hereby releases USIP, and its respective affiliates, representatives, directors, officers and employees from any such liability.

In no event shall USIP be liable to contractor, regardless of cause, for any amount in excess of the total amount of this Agreement.

20. Insurance (for Contracts above \$100,000.00)

Unless otherwise agreed to in writing, Contractor will procure and maintain during the period that this Agreement remains in force insurance coverages with limits of not less than those designated below, and which shall provide for written cancellation notice at least thirty (30) in advance of such event:

(a) Workers' Compensation insurance as is required by the jurisdiction in which the contract is to be performed; and Employer's Liability insurance with limits of not less than the following:

- (i) \$500,000 trauma, each accident
- (ii) \$500,000 disease, each employee
- (iii) \$500,000 disease, policy limit

(b) Commercial General Liability. The general liability policy shall include the following coverage:

- (i) Coverage for the acts of independent contractors;
- (ii) Coverage for claims arising out of products, ongoing and completed operations, which shall be maintained for at least twelve (12) months after completion of the Services to be provided under this Agreement;
- (iii) Coverage for liability assumed under this Agreement;
- (iv) Personal and Advertising Injury Liability;
- (v) An endorsement providing additional insured status to the Endowment of the United States Institute of Peace, the United States Institute of Peace, their directors, officers, employees and agents. Such coverage as provided thereunder to the additionally-insured parties is to be considered as primary, not contributing with or in excess of any other coverage that may otherwise be available to those additional insureds.
- (vi) If the nature of the work to be performed by Contractor involves any of the construction trades, the aggregate limit will apply on a per project basis.

The general liability policy shall have the following minimum coverage levels:

- (i) \$2,000,000 combined single limit, general aggregate.
- (ii) \$1,000,000 combined single limit, each occurrence, products and completed operations.
- (iii) \$1,000,000 per offense personal injury.
- (iv) \$1,000,000 combined single limit each occurrence, bodily injury and property damage liability.

(c) Business Automobile Liability. Coverage must apply for any automobile, whether owned, non-owned or hired:

- (i) \$1,000,000 each accident combined single limit, bodily injury and property damage liability.

(d) Umbrella or Excess Liability. In addition to the above primary limits, Umbrella or Excess Liability Insurance with limits of not less than the following:

- (i) \$1,000,000 each occurrence.
- (ii) \$1,000,000 general aggregate.
- (iii) \$1,000,000 products/completed operations aggregate limit.

Such Umbrella or Excess Liability policy shall contain a provision that it will not be more restrictive than the primary insurance.

(e) Professional Liability/Errors & Omissions. If Contractor is required to perform services of a professional nature (such as accounting, computer consulting or legal), it must in addition to the above requirements, maintain Professional/Errors & Omissions Liability coverage for loss arising out of Contractor's professional liability in the capacity for which it is being hired, with the limit of liability being at least \$1,000,000 each claim, \$1,000,000 annual aggregate. The retroactive date of such policy, if applicable, must be on or before the date of this Agreement. Such coverage must be maintained for a period of at least three (3) years following

completion of the Contractor's services to be performed under this Agreement.

All policies of insurance required under this Agreement, with the exception of Workers' Compensation and Professional Liability, shall be endorsed to provide additional insured status to the Endowment of the United States Institute of Peace, the United States Institute of Peace, their affiliates, directors, officers, employees and agents. Such coverage as provided thereunder to the additionally-insured parties is to be considered as primary, not contributing with or in excess of any other coverage that may otherwise be available to those additional insureds.

All policies of insurance required under this Agreement shall contain a waiver of subrogation in favor of the same parties shown as additional insureds above.

At the time of commencement of services under the Agreement, certificates of insurance evidencing compliance with the requirements in this Section shall be provided. The Contractor shall provide the Owner with updated certificates within five (5) days after the Owner's request.

Contractor will require the same insurance coverage and limits from its subcontractors as required of it, and upon request of USIP, will require its lower-tier subcontractors to certify insurance coverage to USIP.

USIP, by requiring the insurance coverage(s) listed above, in no way limits the obligations or liabilities of Contractor assumed elsewhere in this Agreement. Deductibles, if any, are for the account of Contractor.

21. Taxes

Contractor shall be responsible for the reporting and payment of all taxes which become payable by operation of law or contract and shall save USIP harmless from all liability, loss, and expense resulting from Contractor's failure to comply with all requirements of such laws or contracts.

22. Disputes, Continuation of Work

In the event a dispute arises between USIP and Contractor regarding the application or interpretation of any provision of the Agreement, or with respect to an alleged breach of the Agreement, the aggrieved party shall give notice in writing to the other party and the parties shall negotiate in good faith and attempt to resolve such dispute. If the parties fail to resolve the dispute within thirty (30) days after delivery of such notice, or during such longer period to which they may agree in writing, each party shall have the right to pursue any and all remedies available to it under the law.

Notwithstanding the existence of a dispute between USIP and the Contractor and regardless of whether such dispute is the subject of dispute resolution pursuant to this paragraph, Contractor shall not be entitled to suspend or otherwise delay its performance of the work.

23. Governing Law, Jurisdiction, and Venue

This Agreement, and any disputes arising under or related to this Agreement, shall be governed by and construed in accordance with the laws of the District of Columbia, excluding any provisions or principles thereof which would require the application of the laws of a different jurisdiction.

24. Force Majeure

If performance of any obligation hereunder by the Contractor or USIP is prevented, rendered impossible or unfeasible, by act of God (e.g., flood, earthquake, tornado, fire, etc.), an act or regulation of any public authority, civil disturbance, strike, lock-out or labor dispute (whether or not involving Contractor or USIP), epidemic, interruption or delay of transportation services, war conditions or emergencies, terrorism, or any cause beyond the control of the parties (collectively, "Force Majeure Occurrence"), such performance shall be required only up to the time of such Force Majeure Occurrence, and there shall be no claim for damage by Contractor or USIP arising from termination of this Agreement or a delay in work, and the contracted obligations of the parties from and following the Force Majeure Occurrence shall be deemed waived.

25. Anti-Deficiency

Contractor acknowledges that USIP is a quasi-official organization authorized by Congress under the U.S. Institute of Peace Act, 22 U.S.C. 4601-11, and that USIP is subject to statutory limits on its contracts and expenditures. Notwithstanding any other provision of this Contract, no payment owed by USIP under this Contract shall be due or made by USIP if no appropriation or appropriation authority exists for such payment.

26. Invoicing and Payments

An invoice with the contract number specified on the Purchase Order for this Agreement must be submitted by the Contractor to invoices@usip.org no later than one (1) year from the end date of this Agreement. Items or services must be accepted by USIP before invoices will be paid. Payment will be made within thirty (30) days of receipt and acceptance of a proper invoice as described in FAR 32.905(b).

27. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Contractor represents that it will not provide, whether directly or by subcontract or other arrangement, covered telecommunications equipment or services to USIP in the performance of this contract or in any extension or modification of this contract. Contractor further represents that it does not use anywhere in its business operations, whether directly or by subcontract or other arrangement, any equipment, system, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Contractor shall notify USIP within one business day of learning that covered telecommunications equipment or services have been provided to USIP or are being used by Contractor, whether directly or by subcontract or other arrangement.

For purposes of this section, “covered telecommunications equipment or services” means (1) telecommunication or video surveillance equipment or services produced or provided by Huawei Technologies Company or ZTE Corporation (including subsidiaries and affiliates of either); and (2) equipment or services used specifically for national security purposes provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (including subsidiaries and affiliated of any of them).

28. Contract Execution

This Agreement is considered executed and the terms are therefore legally binding for both parties once a Purchase Order has been issued by a USIP Authorized Representative and the Contractor begins providing services or goods.