

Annex E

(I) Agreement for Performance of Work



WORLD HEALTH ORGANIZATION

GENERAL CONDITIONS

1. It is understood that the execution of the work does not create any employer/employee relationship. In this respect, the contractual partner shall be solely responsible for the manner in which the work is carried out. Thus, WHO shall not be responsible for any loss, accident, damages or injury suffered by any person whatsoever arising in or out of the execution of this work, including travel.
2. All rights in the work, including ownership of the original work and copying thereof, shall be vested in WHO, which reserves the right (a) to revise the work after consultation with you, (b) to use the work in a different way from that originally envisaged, or (c) not to publish or use the work.
3. If the option, on the face of this agreement, for payment of a fixed sum applies, that sum is payable in the manner provided, subject to proper performance of the work. If the option for payment of a maximum amount applies, the funds shall be used exclusively for the work specified in this agreement and any unspent balance shall be refundable to WHO. In this latter case, any financial statement required shall reflect expenditures according to the relevant main categories of expenditure.
4. If the work is not satisfactorily completed (and, where applicable, delivered) by the date fixed in this agreement, WHO may specify an additional period within which this agreement must be satisfactorily performed. Normally such additional period should be of at least one week duration, unless it is clear from the agreement that it was particularly important that the performance be completed on the date specified, in which case WHO may specify a shorter period or refuse to grant any additional period at all. In the event that the work is not satisfactorily performed on the date fixed, or any additional period granted by WHO, WHO may rescind this agreement (in addition to other remedies), subject to an equitable arrangement being made in the case of delay by force majeure.
5. Any technical report or financial statement required shall be submitted upon completion of the work and, at the latest, within 90 days of the normal date for completion.
6. Any dispute relating to the interpretation or execution of this agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the Rules of Arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

(II) Technical Services Agreement



WORLD HEALTH ORGANIZATION

GENERAL CONDITIONS GOVERNING TECHNICAL SERVICE AGREEMENTS

The following are the general conditions governing Technical Service Agreements on WHO support for research or other technical services. The purpose of such support is to assist an Institution to undertake for WHO investigations on a particular problem or other work which has been agreed upon by the Institution and WHO.

1. INSTITUTION AND PRINCIPAL INVESTIGATOR

The Institution and the Principal Investigator (or responsible Technical Officer), who must be an employee of the Institution, shall be jointly responsible for all the technical and administrative aspects of the work referred to in this Agreement.

The Institution is required to notify WHO immediately of knowledge that the Principal Investigator will cease or ceases to be an employee of the Institution or is no longer continuing the responsibilities covered by this Agreement. Under such circumstances WHO has the right to:

- a. Cancel this agreement, or
- b. Agree to continue the project under a new Principal Investigator proposed by the Institution and approved by WHO.

2. FINANCIAL ARRANGEMENTS

- 2.1 Payments shall be made into the bank accounts(s) of the Institution as specified in this Agreement and in accordance with the schedule of payments contained therein. If, after the submission of the final financial report referred to in paragraph 4.3 below, there remains an unused balance of funds with the Institution, this balance shall be due to WHO. In the event of this Agreement being cancelled under any circumstances, the institution shall refund to WHO the balance of uncommitted funds. The funds provided under this agreement shall be expended only in accordance with its terms
- 2.2 The funds transferred to the Institution under this Agreement may not be used to meet any form of emoluments, travel costs or any other reimbursements of expenditure to a staff member of WHO.
- 2.3 Unless otherwise provided in this Agreement the funds may not be used to cover
 - a. normal administrative and overhead expense of the Institution;
 - b. cost of maintenance, repair, running or insurance of existing equipment and machinery belonging to the institution;
 - c. cost of construction of new buildings or alterations and modifications of existing buildings and premises;
 - d. salary support of the Principal Investigator.

3. EQUIPMENT AND SUPPLIES

- 3.1 Unless otherwise agreed, and subject to subparagraph 3.2 below, any equipment acquired under this Agreement shall become the property of the institution. The institution and the Principal Investigator shall be jointly responsible for the proper safeguard, maintenance and care of all equipment acquired under this Agreement.
- 3.2 Notwithstanding subparagraph 3.1 above, the institution shall transfer ownership of any equipment acquired under this Agreement to WHO, if so requested by WHO, upon termination or expiry of this agreement. In such cases the Institution shall dispatch the equipment to any destination chosen by WHO, the cost of which will be borne by WHO.

4. REPORTS

- The Institution shall submit technical and financial reports to WHO on the work as required, or at least annually, in accordance with the following provisions:
- 4.1 Technical reports shall be prepared by the Principal Investigator and forwarded through and countersigned by the authorized official of the Institution or his authorized representative. Each annual report shall summarize the results of the project and give in sufficient detail its positive and negative findings so that the value of the work can be assessed.
 - 4.2 Financial reports shall be forwarded after being jointly certified by the Institution's chief financial officer and the Principal Investigator, using form WHO 782. The reports must show the use of the funds provided by WHO compared with the original budget expenditure pattern agreed between the Institution and WHO.
 - 4.3 All financial and technical reports are subject to audit by WHO's auditors, including examination of supporting documentation and relevant accounting entries in the Institution's books. In order to facilitate such reporting and audit, the Institution shall ensure that accurate and systematic accounts and records are kept in respect of the project. The final technical and financial reports must be submitted within 90 days after the expiry of this Agreement.

5. RELATIONSHIP AND RESPONSIBILITY OF PARTIES

The relationship of the institution to WHO shall be that of an independent contractor. The employees of the Institution are not entitled to describe themselves as staff members of WHO. The Institution shall be solely responsible for the manner in which work on the project is carried out and accordingly shall assume full liability for any damage arising from research or other technical services under this Agreement. No liability shall attach to WHO, its advisers, agents or employees.

6. USE OF RESULTS, EXPLOITATION OF RIGHTS, AND PUBLICATION

- 6.1 The results of the project funded under this Agreement may be freely used or disclosed by either party provided that, without the consent of the other party, no use may be made for commercial purposes, and confidentiality shall be maintained with respect to results that may be eligible for protection by proprietary rights. The Institution shall provide WHO with the results, in the form of relevant know how and other information, and to the extent feasible, tangible products.
- 6.2 The industrial or commercial exploitation of any intellectual property rights, including the ownership of know-how, arising from the project shall be designed to achieve, in so far as circumstances permit, the following objectives in the following order of priority:
- a. the general availability of the products of creative activity;
 - b. the availability of those products to the public health sector on preferential terms, particularly in developing countries;
 - c. the grant to each party of additional benefits, including royalties, account being taken of the relative value of each party's financial intellectual and other contribution to the research.
- 6.3 The right referred to in paragraph 6.2 shall belong to the Institution, or to the Principal Investigator if the Institution and WHO so agree. To the extent that the former do not intend to exercise them, the rights shall be promptly transferred to WHO if it so requests. Each party shall provide the other with its full cooperation to permit the effective exercise of the rights. The party in which the corresponding rights are vested may file applications for industrial property protection promptly furnishing copies of the applications and other patent documents to other party. All rights other than the right to file applications shall be negotiated in good faith between the Institution and WHO.
- 6.4 In any publication by the Institution or the Principal Investigator relating to the results of the project, the responsibility for the direction of the work shall not be ascribed to WHO. Unless WHO advises otherwise, all publications shall include a notice indicating that the underlying investigation received financial support from WHO. Two off-prints or copies shall be sent to WHO unless another number is stipulated. WHO funds may not be used for publication costs unless specifically authorized.
- 7. RESEARCH INVOLVING HUMAN SUBJECTS**
- 7.1 **Ethical Aspects:**
It is the responsibility of the Institution and the Principal Investigator to safeguard the rights and welfare of human subjects involved in research supported in whole or in part by funds from WHO, in accordance with the appropriate national code of ethics, or legislation if any, and in the absence thereof, the Helsinki Declaration and any subsequent amendments. Such funds may be used only to support investigations where (a) the rights and welfare of the subjects involved in the research are adequately protected, (b) freely given informed consent has been obtained, (c) the balance between risk and potential benefits involved has been assessed and deemed acceptable by a panel of independent experts appointed by the Institution and (d) any special national requirements have been met.
- 7.2 **Regulatory Requirements:**
It is the responsibility of the Institution and the Principal Investigator to comply with the relevant national regulations pertaining to research involving human subjects.
- 7.3 **Protection of Subjects:**
Without prejudice to obligations under applicable laws, the institution shall make appropriate arrangements to eliminate or mitigate the consequence to subjects or their families in the case of death injury or illness resulting from the conduct of research referred to in paragraph 7.1. Such arrangements shall, to the extent feasible, include medical treatment and financial relief. The Institution and Principal Investigator shall undertake to protect the confidentiality of the information relating to the possible identification of subjects involved in the research involving human subjects conducted under the auspices of this Agreement.
- 8. RESEARCH INVOLVING THE USE OF LABORATORY ANIMALS**
The Institution undertakes that living vertebrate animals, required for use as laboratory animals for the research to be carried out under this Agreement, shall be handled in accordance with generally accepted principles for the humane treatment of such animals and the avoidance of unnecessary suffering.
- 9. RESEARCH SAFETY**
It is the responsibility of the Institution to establish and implement policies and practices to assure and provide for the safety of its employees, the public, and the environment during the conduct of the supported research; If the supported research involves the use of dangerous biological agents, the institution shall establish and implement an appropriate safety plan
- 10. PUBLICITY**
The Institution and the Principal Investigator shall not refer to the relationship of WHO to the Project, or to products or processes connected with the project, in any statement or material of a publicity or promotional nature issued for commercial purposes, or with a view to financial benefit.
- 11. CHOICE OF LAW AND SETTLEMENT OF DISPUTE**
The agreement shall be constructed in accordance with the law of Switzerland. Any dispute relating to the interpretation of execution of this Agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the Rules of Arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.