

**ATTACHMENT G**

**GENERAL CONDITIONS**

**OF THE**

**AGREEMENT FOR THE IMPLEMENTATION OF THE OASCORE BUSINESS MODERNIZATION**

**PLATFORM PROGRAM (“AGREEMENT”)**

**1. Legal Status of the Parties:**

The General Secretariat of the Organization of American States (GS/OAS) and the Contractor shall also each be referred to as a “Party” hereunder, and:

- 1.1. The Organization of American States (OAS) is a public international organization. Pursuant, inter alia, to the Charter of the OAS and the Agreement on the Privileges and Immunities of the OAS, the OAS, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes. The GS/OAS is the central and permanent organ of the OAS.
- 1.2. The Contractor shall have the legal status of an independent contractor vis-à-vis the GS/OAS, and nothing contained in or relating to the Agreement shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. Contractor does not legally represent GS/OAS, shall not hold itself out as having such powers of representation, and shall not sign commitments binding the GS/OAS. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

**2. Responsibility for Employees:**

- 2.1 Because Contractor is an independent contractor, GS/OAS is not responsible for providing social security, workmen's compensation, health, accident and life insurance, vacation leave, sick leave, or any other such emoluments for Contractor and his employees under the Agreement. Contractor is solely responsible for providing those benefits, and the Parties have agreed upon the Gross Compensation hereunder to enable Contractor to satisfy that responsibility. At the request of GS/OAS, the Contractor will provide satisfactory evidence of workman's compensation and other insurance coverage that may be required for all its employees.
- 2.2 Contractor warrants that its performance under the Agreement will not violate applicable immigration laws, and Contractor shall not employ any person for the performance of this Contract where such employment would violate those laws.
- 2.3 Unless otherwise specified in the Agreement, Contractor shall have the sole responsibility for making Contractor’s travel, visa, and/or customs arrangements related to and/or required for the performance of the Agreement, and GS/OAS shall have no responsibility for making or securing such arrangements.

- 2.4 This Contract shall be null and void in the event the Contractor is unable to obtain a valid visa and other permits or licenses necessary to complete its obligations under the Agreement in the United States of America.
- 2.5 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Agreement and will select reliable and competent individuals who will be able to effectively perform the obligations under the Agreement and who, while doing so, will conform to a high standard of moral and ethical conduct.
- 2.6 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of the GS/OAS, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Agreement shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.
- 2.7 The GS/OAS may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor. The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Agreement. All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
- 2.8 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Agreement and who may have access to any premises or other property of the GS/OAS shall comply with security screening requirements made known to the Contractor by the GS/OAS Department of General Services.
- 2.9 Contractor shall not employ a staff member of GS/OAS or a relative of a staff member<sup>1</sup> to perform the work, nor shall Contractor permit any staff member of GS/OAS or any relative of the staff member to receive any personal financial benefit deriving from the Agreement or the Contractor's contractual relationship with GS/OAS.

### **3. Source of Instructions:**

Unless otherwise specified in the Agreement, Contractor shall neither seek nor accept instructions regarding the work from any government or from any authority external to the GS/OAS. During the period of the Agreement, Contractor may not engage in any activity that is incompatible with the discharge of Contractor's obligations under the Agreement. Contractor must exercise the utmost discretion in all matters of official business for the GS/OAS. Contractor may not communicate at any time to any other person, government, or authority external to GS/OAS any information known to Contractor by reason of its association with the GS/OAS which has not been made public, except in the course of the performance of Contractor's obligations under the Agreement or by written authorization of the Secretary General or his designate; nor

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<sup>1</sup> The term "relative" includes spouse, son or daughter, stepson or stepdaughter, father or mother, stepfather or stepmother, brother or sister, half brother or half sister, stepbrother or stepsister, father or mother-in-law, son or daughter-in-law, brother or sister-in-law.

shall Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of the Agreement. Failure to comply with these obligations is cause for termination of the Agreement.

**4. Indemnification:**

- 4.1 Contractor shall fully indemnify and hold harmless the OAS, GS/OAS, and its officials, employees, agents, affiliates, successors and assigns from and against: (i) all claims, damages, actions, liabilities, losses, fines and penalties, and expenses, including but not limited to attorneys' fees, arising out of or resulting from Contractor's negligence or deliberate wrongful acts in relation to the Agreement, and (ii) worker compensation claims and actions presented by Contractor's employees and agents.
- 4.2 GS/OAS shall notify Contractor as soon as reasonably practicable after any claim covered by this article is made against it or, with respect to any such claim made against any other person or identity entitled to indemnification under the Agreement, within a reasonably practicable time after having been notified of that claim.
- 4.3 Contractor is liable to GS/OAS and shall indemnify GS/OAS for losses to GS/OAS' property sustained through any acts committed by Contractor's employees, agents, and/or subcontractor acting alone or in collusion. Such acts include, but are not limited to, actual destruction, disappearance, or wrongful abstraction of property, money, or securities.
- 4.4 The provisions of this article shall not be so construed as to affect any waiver of subrogation rights on the part of any insurance company, as provided in any policy of insurance covering GS/OAS.

**5. Insurance:**

- 5.1. For the duration of the Agreement, Contractor shall purchase and maintain in a company or companies, to which the GS/OAS has no reasonable objection, such insurance as will protect the Contractor, the GS/OAS, and the OAS, from claims set forth below, which may arise from operations under the Agreement by Contractor or by a subcontractor of Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. Contractor is required to carry insurance with limits equal to or greater than those set forth in the table below:

Commercial General Liability	USD 1,000,000 Personal/Bodily Injury.
	USD 1,000,000 Each Occurrence.
	USD 2,000,000 Products/Completed Operations Aggregate.
	USD 2,000,000 General Aggregate, per premises aggregate.
Business Automobile	USD 1,000,000 Each Accident.
Worker's Compensation	Statutory Limits or USD 500,000, whichever is greater, based on the benefits levels of the deemed state of hire.

Employer's Liability	USD 1,000,000 Bodily Injury by Accident Per Employee.
	USD 1,000,000 Bodily Injury by Disease Per Employee.
	USD 1,000,000 Bodily Injury by Disease Policy Limit.
Umbrella/Excess Liability	USD 5,000,000 Each Occurrence.
	USD 5,000,000 Aggregate, per Project.
Technical Errors & Omissions (Cyber Security) Liability	USD 1,000,000 Each Occurrence.

- 5.2. Contractor shall name the General Secretariat of the Organization of American States (GS/OAS) as an additional insured, and shall provide the GS/OAS with a certificate evidencing the above insurance coverage, including Waiver of Subrogation and state retention amounts.
- 5.3. Should any of the above-described insurance policies be cancelled before the expiration date indicated in the respective certificate provided to the GS/OAS, the Contractor should give to the GS/OAS written notice and provide a new certificate of insurance that evidences the coverages required.
- 5.4. Contractor shall require all subcontractors to have insurance having the same or similar coverage as that specified above. Contractor is required to provide GS/OAS a Certificate of Insurance as proof of those coverages on request.
- 5.5. Contractor's liability insurance shall include contractual liability insurance sufficient to cover Contractor's obligations.

**6. Warranties:**

- 6.1. Contractor shall be liable for improper or incorrect use of the data collected or information disclosed to Contractor by GS/OAS in connection with its proposal, and/or in connection with any subsequent contract negotiations between GS/OAS and the Contractor.
- 6.2. The data and related information are legal documents and are intended to be used as such.
- 6.3. Contractor takes full responsibility for any errors or mistakes with respect to its proposal. Contractor has used its best efforts to ensure the accuracy, reliability and completeness of its proposal, and agrees that any cost of any modification of proposal or contract terms based on Contractor's error in the information it has provided with its proposal shall be borne solely by Contractor.

**7. Subcontracting:**

In the event that the Contractor requires the services of subcontractors to perform any obligations under the Agreement, the Contractor shall obtain the prior written approval of the GS/OAS. The GS/OAS shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the GS/OAS reasonably considers is not qualified to perform obligations under the Agreement. The GS/OAS shall have the right to

require any subcontractor's removal from GS/OAS premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Agreement, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Agreement.

## **8. Intellectual Property Rights:**

- 8.1. The GS/OAS shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the GS/OAS under the Agreement. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the GS/OAS.
- 8.2. To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Agreement, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Agreement, the GS/OAS does not and shall not claim any ownership interest thereto, and the Contractor grants to the GS/OAS a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Agreement.
- 8.3. At the request of the GS/OAS, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the GS/OAS.  
Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Agreement shall be the property of the GS/OAS, shall be made available for use or inspection by the GS/OAS at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to the GS/OAS authorized officials on completion of work under the Agreement.

## **9. Confidential Nature of Documents and Information:**

Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Agreement, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

- 9.1. The Recipient shall:
  - 9.1.1. Use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,
  - 9.1.2. Use the Discloser's Information solely for the purpose for which it was disclosed.

- 9.2. Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Agreement and this Article 9, the Recipient may disclose Information to:
- 9.2.1. Any other party with the Discloser's prior written consent; and,
  - 9.2.2. The Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Agreement, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Agreement, provided that, for these purposes a controlled legal entity means:
    - i. a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
    - ii. any entity over which the Party exercises effective managerial control; or,
    - iii. for the GS/OAS, an organ of the OAS established in accordance with the Charter of the OAS.
- 9.3. The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the GS/OAS, the Contractor will give the GS/OAS sufficient prior notice of a request for the disclosure of Information in order to allow the GS/OAS to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 9.4. The GS/OAS may disclose Information to the extent as required pursuant to the Charter of the OAS, or pursuant to resolutions of the General Assembly or the Permanent Council or rules promulgated thereunder.
- 9.5. The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 9.6. These obligations and restrictions of confidentiality shall be effective during the term of the Agreement, including any extension thereof, and, unless otherwise provided in the Agreement, shall remain effective following any termination of the Agreement.

#### **10. Publicity and Use of the Name or Logo of the OAS:**

Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the GS/OAS, nor shall the Contractor, in not in any manner whatsoever use the name or logo of the OAS in connection with its business or otherwise without the written permission of the GS/OAS.

#### **11. Force Majeure and Other Changes in Conditions:**

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in

part, to perform its obligations and meet its responsibilities under the Agreement. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Agreement. Not more than fifteen (15) days following the provision of such notice of force majeure or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of force majeure. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting force majeure shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Agreement.

If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Agreement, the GS/OAS shall have the right to suspend or terminate the Agreement on the same terms and conditions as are provided for in Article 12 (Termination), except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the GS/OAS shall be entitled to consider the Contractor permanently unable to perform its obligations under the Agreement in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor.

## **12. Termination:**

- 12.1. Either Party may terminate the Agreement for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party.
- 12.2. The GS/OAS may terminate the Agreement at any time by providing written notice to the Contractor in any case in which the mandate of the GS/OAS applicable to the performance of the Agreement or the funding of the GS/OAS applicable to the Agreement is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Agreement, upon sixty (60) day's advance written notice to the Contractor, the GS/OAS may terminate the Agreement without having to provide any justification therefor.
- 12.3. In the event of any termination of the Agreement, upon receipt of notice of termination that has been issued by the GS/OAS, the Contractor shall, except as may be directed by the GS/OAS in the notice of termination or otherwise in writing:
  - 12.3.1 Take immediate steps to bring the performance of any obligations under the Agreement to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
  - 12.3.2 Refrain from undertaking any further or additional commitments under the Agreement as of and following the date of receipt of such notice;

- 12.3.3 Place no further subcontracts or orders for materials, services, or facilities, except as the GS/OAS and the Contractor agree in writing are necessary to complete any portion of the Agreement that is not terminated;
  - 12.3.4 Terminate all subcontracts or orders to the extent they relate to the portion of the Agreement terminated; transfer title and deliver to the GS/OAS the work in process, completed work, supplies, and other material produced or acquired for the portion of the Agreement terminated;
  - 12.3.5 Deliver all completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the GS/OAS thereunder;
  - 12.3.6 Complete performance of the work not terminated; and,
  - 12.3.7 Take any other action that may be necessary, or that the GS/OAS may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Agreement that is in the possession of the Contractor and in which the GS/OAS has or may be reasonably expected to acquire an interest.
- 12.4. In the event of any termination of the Agreement, the GS/OAS shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Agreement. In addition, the GS/OAS shall not be liable to pay the Contractor except for those goods delivered and services provided to the GS/OAS in accordance with the requirements of the Agreement, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from the GS/OAS or prior to the Contractor's tendering of notice of termination to the GS/OAS.

### **13. Assignment:**

The Contractor may not assign, transfer, pledge or make any other disposition of the Agreement, of any part of the Agreement, or of any of the rights, claims or obligations under the Agreement except with the prior written authorization of the GS/OAS. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the GS/OAS. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Agreement, except with the prior written consent of the GS/OAS. Any such unauthorized delegation, or attempt to do so, shall not be binding on the GS/OAS.

### **14. Non-Exclusivity:**

Unless otherwise specified in the Agreement, the GS/OAS shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the GS/OAS shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Agreement, from any other source at any time.



## **15. Audits and Investigations:**

- 15.1. Each invoice paid by the GS/OAS shall be subject to a post-payment audit by auditors, whether internal or external, of the GS/OAS at any time during the term of the Agreement and for a period of years mutually agreed by the parties following the expiration or prior termination of the Agreement. The GS/OAS shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the GS/OAS other than in accordance with the terms and conditions of the Agreement.
- 15.2. The GS/OAS may conduct investigations relating to any aspect of the Agreement or the award thereof, the obligations performed under the Agreement, and the operations of the Contractor generally relating to performance of the Agreement at any time during the term of the Agreement and for a period of mutually agreed by the parties years following the expiration or prior termination of the Agreement.
- 15.3. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the GS/OAS hereunder.

## **16. Observance of the Law:**

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Agreement. In addition, the Contractor shall maintain compliance with all obligations relating to its condition as an independent contractor of the GS/OAS, which includes: Administrative Memorandum No. 90 "Information Systems Security Policy", and Executive Order No. 15-02 "Policy and Conflict Resolution System for Prevention and Elimination of All Forms of Workplace Harassment". Those documents are readily available at <http://www.oas.org/legal/english/gensec/EXOR1502.htm>, respectively. Contractor certifies that he has read those documents and agrees to comply fully with them.

## **17. Human Trafficking:**

The Contractor warrants that neither it, its parent entities nor subsidiaries or affiliated entities (if any) is engaged in any practice inconsistent with international human rights laws and standards that prevent child labor, sexual exploitation and trafficking in human beings. Contractor shall take all appropriate measures to prevent its personnel from engaging in sexual exploitation, child labor and trafficking in human beings.

## **18. Modifications:**

- 18.1. Only the Secretary for Administration of Finance, or such other contracting authority as the GS/OAS has made known to the Contractor in writing, possesses the authority to agree

on behalf of the GS/OAS to any modification of or change in the Agreement, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in the Agreement shall be valid and enforceable against the GS/OAS unless provided by a valid written amendment to the Agreement signed by the Contractor and the Secretary for Administration of Finance or such other contracting authority.

- 18.2. If the Agreement shall be extended for additional periods in accordance with the terms and conditions of the Agreement, the terms and conditions applicable to any such extended term of the Agreement shall be the same terms and conditions as set forth in the Agreement, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 18.1, above.

### **19. Privileges and Immunities:**

Nothing in this Agreement constitutes an express or implied waiver of the privileges and immunities of the OAS, the GS/OAS, their personnel, and their assets, in accordance with Articles 133, 134, and 136 of the OAS Charter, whose instrument of ratification was deposited by the Government of the United States of America on June 19, 1951; the International Organizations Immunities Act (22 U.S.C. §§ 288 *et seq.*); the Headquarters Agreement between the Organization of American States and the Government of the United States of America signed on May 14, 1992; any other applicable U.S. laws and the general principles and practices of international law.

### **20. Dispute Resolution:**

- 20.1. Any dispute or complaint that may arise in conjunction with the application or interpretation of this Agreement, or the execution of the Project, shall be settled by direct negotiations between the Parties. If a solution satisfactory to both Parties cannot be reached then the Parties shall submit their differences to arbitration pursuant to the Arbitration Rules of the GS/OAS Commission on International Trade Law (UNCITRAL) or of the Inter-American Commercial Arbitration Commission ("IACAC") currently in effect. The place of arbitration shall be Washington D.C, U.S.A. The language in the proceedings shall be English unless the Parties agree otherwise. The three arbitrators or, as the case may be, the one arbitrator shall decide the dispute as *amiable compositeur* or *ex aequo et bono*. The arbitrator's decision shall be final, binding and not subject to appeal.
- 20.2. The law applicable to the arbitration proceedings and to this Agreement shall be the law of the District of Columbia, U.S.A.