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United Nation Development Programme

TERMS OF REFERENCE

Location Eritrea
Title: Consultancy with Two International and One National Consultants (expertise in agriculture and macro-economics, soil fertility, social impact investment) to conduct a Social Impact Study into the Potential of Colluli Potash Project for Social Impact and SDG Contribution – A Model of Shared Value in Mineral Extraction.

Contract: IC/RLA

Language English

Expected Duration of Assignment: 60 days spread over 2.5 months (1 August 2017-16 October 2017)

1. Background

UNDP seeks to recruit an International Consulting Firm to conduct a Social Impact Study into the Potential of Colluli Potash Project for Social Impact and SDG Contribution – A Model of Shared Value in Mineral Extraction.

The goal of the Study is to establish the social impact credentials of Colluli Potash Project and map it's potential to deliver on the following UN SDGs: -

1. SDG 1 - No Poverty
2. SDG 2 - Zero Hunger
3. SDG 8 - Decent work and Economic Growth
4. SDG 9 - Industry, Innovation and Infrastructure
5. SDG 13 - Climate Action

The final outputs of the Social Impact Study will be: a document which identifies clear and measurable impact which the Colluli Potash Project can potentially deliver against the specific UN goals and targets, considering also potentially adverse impact emanating from the project. The study will form a key evidential document in the design, funding and implementation of the Colluli Potash Project, providing clear pathways for collaboration and partnership so as to deliver tangible results on SDGs as well as on COP 21 climate action targets. The Study will also identify risks and mitigating actions which can ensure that the Colluli Potash Projects avoiding traditional pitfalls of the extractive industries in terms of negative impact at local and national level.

Eritrea, a young nation in the Horn of Africa, is focused on the development of the Colluli Potash Project as it pursues its own model of development and vision of a nation. Colluli Potash Project is a Tier One Asset located in the Danakali region of Eritrea, East Africa and owned by the Colluli Mining Share Company (CMSC). CMSC (hereafter called the Colluli Potash Project) is a 50:50 Joint Venture, between Danakali, a junior exploration company and the Government-owned Eritrean National Mining Company (ENAMCO).

The Joint Venture partners Danakali Limited and ENAMCO wish to develop Colluli Potash Project as a model shared value mining project; delivering value to investors whilst providing farmers in Eritrea



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and Africa with enhanced food security and making a central contribution to economic opportunity and national development.

The United Nations Development Programme (UNDP) is one of the largest UN development partners in Eritrea, working on capacity development, poverty reduction, environmental protection and renewable energy programmes in partnership with the Eritrean Government. UNDP has identified Colluli Potash Project as a strategic opportunity to enhance the delivery of the 2030 Agenda and the UN Sustainable Development Goals (SDGs). UNDP has conducted a recent study entitled: “Mapping Mining to the Sustainable Development Goals – An Atlas” which charts ways in which mining project can contribute to delivering on SDGs.

Potash and particularly Sulphate of Potash is one of the key ingredients in soil fertility and both in Eritrea and Africa. In absence of potash soils are depleted. This impinges on crop yield and quality, food security and incomes of smallholder farmers. The operation of Africa’s first potash mine has potential for positive impact on food security and agriculture while also potentially supporting job creation, enterprise development as well as economic development at national level. It’s unique characteristics make Colluli Potash Project potentially as much a next-generation food security enterprise as a traditional mining project.

2. Scope of work

The Social Impact Study will focus primarily on the expected benefits of the Colluli Project to Eritrea’s people’s life and livelihoods improvements and more widely to Africa. In addition, it will also factor in potential negative impacts both within the project locality of Danakil and more widely in Eritrea. The proposed study will examine how the Colluli Potash Project can, by implementing a shared value approach, deliver tangible social impact in terms of food security and poverty reduction. The study will attempt to measure Colluli's potential contribution towards the 2030 agenda for sustainable agenda and the 17 UN SDG goals and related targets.

The Study will initially provide an analysis of the socio-economic context of Colluli Potash Project in recently independent Eritrea, with a focus on the current state of food security and economic opportunity for rural communities and youth. This analysis will also cover the fiscal and budgetary context affecting Eritrea’s economic development.

The Study will then examine the core attributes and outputs which feature in the Colluli Potash Project. It will examine their potential role in bringing change both in Eritrea and more widely in Africa. The study will develop a theory of change mapping expected impact within the SDG framework and measuring these against specific goals, targets and indicators in the SDGs. Particular focus will be on SDG 1 on Poverty, SDG 2 on Hunger, SDG 8 on Decent Work and Economic Growth , SDG 9 on Infrastructure, Innovation and Industrialization and SDG 13 on climate action

The Study will also focus on risks and constraints associated with the Colluli Potash Project which may lead to negative impact on the local communities and the nation. This will include an analysis of the Social and Environment Impact Assessment carried out by the Colluli Project and approved by the Eritrean Ministry of Energy and Mines. Such analysis will help inform the recommendations and ensure that all aspects are addressed and a balance of positive and negative impacts are reflected in the findings and recommendations.



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Core Questions and Issues which the Social Impact Study will address will include:

- How can potash products distributed locally be accessed to maximum benefit by Eritrean farmers?
- What are the likely outcomes to Eritrean farmers and wider communities in terms of addressing hunger and poverty which will result from the distribution of potash products?
- How can potash products distributed by the Colluli Potash Project under off-take agreements within Africa, particularly Eastern, Southern and Western Africa, bring benefit to African farmers?
- What agriculture and food security outcomes can result from provision of potash products in Africa?
- How are revenue benefits to the Eritrean Government through income from taxes, royalties and dividends likely to contribute to economic resilience and development in Eritrea?
- What will be the contribution of such revenue streams in terms of fiscal stability and management of budgets and balance of payments including impact on Eritrean GDP?
- What specific development projects and outcomes are envisaged which may be funded from revenue streams emanating from the Colluli Project?
- How can the Colluli Potash Project address environmental sustainability, including its carbon footprint?

Additional factors for the Social Impact Study to examine are:

Are there potential side or spin-off benefits that could emerge from the Colluli Project?

- Shared use infrastructure
- Supply chain development
- Value addition to core and secondary products – fertiliser blending
- International trade benefits and spin-offs from enhanced trade
- Joint export arrangements
- Side products and residual products
- Best practice in mining

Is there potential for wider change that may emerge?

- Reduced irregular migration resulting from employment and livelihood opportunities
- Capacity building, technology and skills development
- Opening of space for civil society and peace-building
- Benefits from enhanced international trade and cooperation
- Enhanced political outcomes within the region
- Climate change mitigation and potential for a zero carbon mine

The Social Impact Study will include:

- a. Examination of key constraints impinging on agriculture productivity and food, and the income security of rural Eritrean households with a focus on soil fertility.
- b. Evidence based and high-level assessment of the role of potash and potash bi-products in enhancing the soil fertility, crop yields and rural incomes relating to relevant crops.



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- c. Overview of Eritrea's macro-economic and fiscal context and how this impacts on economic development, private enterprise, balance of payments etc.
- d. Brief analysis of the wider context in Eastern and Southern Africa regions and the role of potash products in addressing the soil nutrition needs and yield gaps in selected cash crops.
- e. Detailed assessment on how the Colluli Potash Project can deliver results to address constraints and deliver positive change in terms of agriculture productivity, macro-economic and fiscal situation, economic development and opportunity and climate change

3. Key deliverables of the Social Impact Consultancy include:

- a. The Consultants will present a high-level but wide-ranging analysis of the potential for social impact of the Colluli Potash Project under specific SDG goals and targets but also considering social impact more widely, while also considering risks of
- b. The Consultants will make recommendations for the Colluli Potash Project on what actions could be taken to maximise possible social positive impact as well to address negative impact and mitigate against risks.
- c. The Consultants will recommend appropriate programmes and collaborations with government and civil society which will promote positive social impact.
- d. The Consultants will also identify the financing opportunities which the shared value model can open up and which can further enhance both the economic and social outcome of the Colluli Potash Project. It will also assess the costs potentially associated with non-financing of the project and possible sale to third parties.

4. Consultant Team Composition

The study team will be composed of 2- international and 1 national experts.

The Team Leader will perform the following tasks:

- Lead and manage the study;
- Assume overall leadership and responsibility for the analysis, quality and timely submission of the final report to the UNDP Country Office;
- Desk review of documents, development of draft methodology, detailed work plan and study matrix/outline;
- Briefing with UNDP, agreement on the scope of the study, methodology and approach, including the methods for data collection and analysis; and outline of the study report;
- Prepare, finalize, and lead the presentation of the inception report;
- Decide the work specification for members of the study team; ensure efficient division of tasks between the study team members;
- Interviews with project /owners/implementing partners, relevant government bodies, experts, local communities etc.;
- Field visit to the project sites and conduct interviews with local stakeholders;
- Carry out analysis of macro-economic context including fiscal,
- Analyse key development challenges and constraints and how these can be addressed within a social impact framework by the Colluli Project
- Analyse potential financing sources which can support the social impact approach
- Elaboration of a summary key findings based on interviews and site visits performed;



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- Debriefing with UNDP, Colluli, project implementing partners etc;
- Conduct the study in accordance with the proposed objective and scope of the study;
- Development and submission of the first study report draft. The draft will be shared with the UNDP CO office, Colluli and key project stakeholders for review and comment;
- Present draft findings in the stakeholder workshop;
- Finalization and submission of the final study report through incorporating suggestions received on the draft report;
- Responsible for and finalize the entire study report and lessons learned report in English and submit it to UNDP CO, Colluli project, ENAMCO Eritrea

Required Qualifications of the Team Leader

- PhD or Masters in social sciences, macro-economic, political sciences, public administration and/or international relations, in relevant natural sciences/Environmental Science, Natural Resources Management.

Experience

- Minimum 10 years of demonstrable experience in preparing high quality project documents
- Work experience in in the Horn Africa and or/Sub-Saharan Africa/African countries preferred;
- Experience of private sector and shared value and contribution to SDGs
- Experience of large complex funding projects including UN and EU funding environments

Competency requirements of the Team leader

- Good analytical and strategic thinking skills;
- Extensive knowledge of methodological frameworks for impact studies including qualitative and quantitative study methods;
- Strong understanding off UN Sustainable Development Goals and related targets and indicators including role of private sector
- Sound knowledge of results-based management systems, and monitoring and study methodologies; including experience in applying SMART indicators;
- Strong working knowledge of the UN and its mandate region, and more specifically the development practices within the programmes of UN and similar organisations
- Ability to meet tight deadlines;
- Excellent written and spoken English and presentational capacities

The Supporting/Associate International Consultant (Natural Resources, Agriculture and soil fertility expert) will perform the following tasks:

- Support the Team Leader in all aspects;
- Interviews with project /owners/implementing partners, relevant government bodies, experts, local communities etc.;
- analyse existing policies and regulatory and institutional frameworks for the agriculture sector
- Detailed analysis of agriculture sector in Eritrea including soil fertility, soil management,
- Assess and document the agricultural system and activities of communities within the broader influence area of the project;
- Provide a profile of soil fertility/condition in the country in general and of the area within the broader influence area of the project;



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- Support the lead International Consultant and the National Consultant in conducting analysis of macro-economic context including fiscal;
- Support the lead International Consultant and the National Consultant in the analysis of key development challenges and constraints and how these can be addressed within a social impact framework by the Colluli Project;
- Support the lead International Consultant in the analysis of potential financing sources which can support the social impact approach;
- Support the Lead Consultant in briefing with UNDP as the Study unfolds.

Required Qualifications of the Support Consultant

- PhD or Masters in the areas of relevant natural sciences/Environmental Science, Soil sciences, agriculture, agricultural marketing, Natural Resources Management.

Experience

- Minimum 8 years of demonstrable experience in preparing high quality project documents
- Work experience in in the Horn Africa and or/Sub-Saharan Africa/African countries preferred;
- Experience of private sector and shared value and contribution to SDGs

Competency requirements of the Support Consultant

- Good analytical and strategic thinking skills;
- Extensive experience in the development sector in Africa
- Extensive experience of industrial or mining projects within the African development context
- Strong understanding off UN Sustainable Development Goals and related targets and indicators including role of private sector
- Sound knowledge of results-based management systems, and monitoring and study methodologies; including experience in applying SMART indicators;
- Experience of large complex funding projects Understanding of the multi-lateral and bilateral funding environments including UN, EU
- Excellent inter-personal, communication, and teamwork skills;
- Ability to meet tight deadlines;
- Excellent written and spoken English and presentational capacities

The National Consultant will undertake the following tasks

- Coordination and engagement with local partners, stakeholders and informants of the study
- Interviews with project /owners/implementing partners, relevant government bodies, experts, local communities etc.;
- Field visit to the project sites and conduct interviews with local stakeholders;
- Review and analyse existing policies and regulatory and institutional frameworks for the agriculture sector
- Assist in the assessment and documentation of soil fertility/condition in the country in general and of the area within the broader influence area of the project;
- Assist in in conducting analysis of macro-economic context including fiscal;
- Assist in the analysis of key development challenges and constraints and how these can be addressed within a social impact framework by the Colluli Project;
- Detailed analysis of agriculture sector in Eritrea including soil fertility, soil management,

Required Qualifications of the National Consultant



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- Masters/bachelor in agricultural economics, agricultural engineering/irrigation and water, Natural and environmental sciences, Soil science/management, or, studies of crop science, soil science,

Experience

- Minimum 10 years of demonstrable experience in preparing high quality project documents
- Work experience in Eritrea or in the Horn Africa and or/Sub-Saharan Africa preferred;

Competency requirements of the National Consultant

- Good analytical and strategic thinking skills
- Excellent inter-personal, communication, and teamwork skills
- Excellent written and spoken English and presentational capacities including experience working with multilateral development agencies such as UN, EU etc.
- Extensive knowledge of qualitative and quantitative assessment/study methods
- Excellent oral and written communications skills in English, especially in drafting and editing reports
- Experience of working with UNDP / UN agencies in Eritrea on project design
- Understanding of soil fertility in the Eritrean / African context
- Experience and reputation of working with the Eritrean Ministry of Agriculture and other Eritrean Ministries
- Experience of Eritrean agriculture and soil fertility and geology, if possible in mining / potash sector
- Strong track record working with multi-lateral institutions such as EU and UN
- Strong knowledge of Eritrean development landscape and actors
- Experience of consulting and studies for UNDP or other UN programmes in Eritrea in such areas as policy environment, socio-economic context, environmental sustainability, sustainable land management, climate change, solar energy

REQUIRED COMPETENCIES AND EXPERIENCE FOR THE STUDY TEAM

- Appropriate blend of international and Eritrean consultants
- Strong knowledge of Eritrean development landscape and actors
- Experience of working with UNDP / UN agencies in Eritrea on project design and/or study
- Experience in Eritrea agriculture and macro-economics
- Understanding of soil fertility in the Eritrean / African context
- Experience and reputation of working with the Eritrean Ministry of Agriculture and other Eritrean Ministries
- Strong track record working with multi-lateral institutions such as EU and UN
- Clear demonstration of added value

5. Payment modalities and specifications

%	Milestone
10%	Upon submission of inception report
30%	Following submission and approval of the 1ST draft study report
60%	Following submission and approval (UNDP-CO and....) of the final study report



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6. Time frame of deliverables

The study team expected to deliver the following:

Deliverable	Content	Timing	Responsibilities
Inception Report	Evaluator provides clarifications on timing and method	No later than 2 weeks before the Study Mission.	Study report submits to UNDP CO
Presentation	Initial Findings	At end of Study Mission	To project management, UNDP CO/Colluli/MoEM/MoA/ENAMCO
Draft Final Report	Full report, (per annexed template) with annexes	Within 5 weeks of the study mission	
Final Report*	Revised report	Within 1 week of receiving UNDP/MoEM/MoA/ENAMCO comments on draft	.

7. Remuneration

The financial proposal of costs must be expressed in Lump Sum Amount and “all-inclusive”¹ for each of the three consultants (2 International and 1 National) . Payments are based upon output, i.e. upon delivery of the services specified in the TOR. To assist the requesting unit in the comparison of financial proposals, the financial proposal will include a breakdown of this lump sum amount (including professional fees, travel—air tickets, and per diems/DSA). Transport facilities for fieldwork and workshops shall be supported and organized by UNDP/MoA.

8. Implementation arrangements

The principal responsibility for managing this study resides with the UNDP CO in Eritrea. The UNDP CO will contract the experts. The Project Team/ISDU will be responsible for liaising with the Study team to set up stakeholder interviews, arrange field visits, coordinate with the Government etc.

9. Study timeframe

The total duration of the study will be 60 days according to the following plan:

Activity	Timing	Completion Date
Preparation	10 days	10 August
Study Mission	25 days	10 September
Draft study Report	20 days	20 September
Final Report	5 days	30 September
Contingency	5 days	

10. Annex 1: Report Outline

¹ The term “all inclusive” implies that all costs (professional fees, travel costs/air tickets, DSA/living allowances, communications, consumables, etc.) that could possibly be incurred by the Contractor are already factored into the final amounts submitted in the proposal.



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1. Executive Summary
2. Background to Study
3. Study Methodology and Framework
4. Context Analysis and Findings
5. Summary of Findings
6. Conclusions and Recommendations

11. Annex 2:

- Bibliography and reference materials.
- List of people interviewed and site visited.



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UNDP GENERAL CONDITIONS OF CONTRACT FOR SERVICES

1.0 LEGAL STATUS:

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP). The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

2.0 SOURCE OF INSTRUCTIONS:

The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its services under this Contract. The Contractor shall refrain from any action that may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

4.0 ASSIGNMENT:

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNDP.

5.0 SUB-CONTRACTING:

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNDP for all sub-contractors. The approval of UNDP of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

6.0 OFFICIALS NOT TO BENEFIT:

The Contractor warrants that no official of UNDP or the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.



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7.0 INDEMNIFICATION:

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:

8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.

8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

8.4.1 Name UNDP as additional insured;

8.4.2 Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;

8.4.3 Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

8.5 The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

9.0 ENCUMBRANCES/LIENS:



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The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the UNDP against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

10.0 TITLE TO EQUIPMENT: Title to any equipment and supplies that may be furnished by UNDP shall rest with UNDP and any such equipment shall be returned to UNDP at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNDP for equipment determined to be damaged or degraded beyond normal wear and tear.

11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

11.1 Except as is otherwise expressly provided in writing in the Contract, the UNDP 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 UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.

11.2 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 Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP 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 Contract.

11.3 At the request of the UNDP; 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 UNDP in compliance with the requirements of the applicable law and of the Contract.

11.4 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 Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.



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12.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or THE United Nations, or any abbreviation of the name of UNDP or United Nations in connection with its business or otherwise.

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

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

13.1 The recipient (“Recipient”) of such information shall:

13.1.1 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,

13.1.2 use the Discloser’s Information solely for the purpose for which it was disclosed.

13.2 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 Contract and this Article 13, the Recipient may disclose Information to:

13.2.1 any other party with the Discloser’s prior written consent; and,

13.2.2 the Recipient’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, 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 Contract, provided that, for these purposes a controlled legal entity means:

13.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,

13.2.2.2 any entity over which the Party exercises effective managerial control; or,

13.2.2.3 for the UNDP, an affiliated Fund such as UNCDF, UNIFEM and UNV.



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13.3 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 United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

13.4 The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General.

13.5 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.

13.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

14.4 The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged



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in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

15.0 TERMINATION

15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 (“Arbitration”), below, shall not be deemed a termination of this Contract.

15.2 UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

15.3 In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

16.0 SETTLEMENT OF DISPUTES

16.1 Amicable Settlement: The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

16.2 Arbitration: Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential



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information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim Measures of Protection”) and Article 32 (“Form and Effect of the Award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

17.0 PRIVILEGES AND IMMUNITIES:

Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18.0 TAX EXEMPTION

18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.

18.2 Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

19.0 CHILD LABOUR

19.1 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.



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19.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, at no cost to UNDP.

20.0 MINES:

20.1 The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

20.2 Any breach of this representation and warranty shall entitle UNDP to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNDP.

21.0 OBSERVANCE OF THE LAW:

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

22.0 SEXUAL EXPLOITATION:

22.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle UNDP to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

22.2 The UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.



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23.0 AUTHORITY TO MODIFY:

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this 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 this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Agreement signed by the Contractor and jointly by the UNDP Authorized Official.