

## INDIVIDUAL CONSULTANT PROCUREMENT NOTICE (ICPN)

### International Consultant Boundary Delimitation Evaluation (Open to Internationals Only)

Date: 22/08/ 2017

**PROCUREMENT NOTICE NO.:** SLE/IC/2017/038

**COUNTRY:** Sierra Leone

**DESCRIPTION OF THE ASSIGNMENT:** International Consultant Boundary Delimitation Evaluation

**PROJECT NAME:** Governance

**PERIOD OF ASSIGNMENT:** 30 days

Proposal should be submitted at the following address, UNDP, 55 Wilkinson Road, Freetown, Sierra Leone or by email to [procure.sle@undp.org](mailto:procure.sle@undp.org) no later than **10:00 hours, 9<sup>th</sup> Sep, 2017**.

Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail indicated above. UNDP Sierra Leone will respond in writing or by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of inquiry, to all consultants.

#### Background and Rationale

The National Electoral Commission (NEC) has, as part of its Constitutional mandate, the responsibility to carry out delimitation of wards and constituencies for conducting elections and referenda in Sierra Leone in line with necessary legal frameworks. The 1991 Constitution of Sierra Leone (Act No 6 of 1991) and the Ward Boundary Regulation, 2008, requires Constituencies and Wards to be "as nearly equal to the population quota as is reasonably practicable". Furthermore, the Constitution & Ward Regulations require the NEC-SL to review Constituency & Ward Boundaries at intervals of not less than 5 and not more than 7 years. The current 112 Constituencies were delimited in November 2006 for the 2007 Parliamentary Elections and the current 394 Wards were delimited in 2008 for the 2008 Local Council Elections.

The justification for drawing electoral boundaries of Constituencies and Wards for the 2018 elections was based on the following: a) the Constitutional obligation to redraw electoral districts in a timely manner; b) large population variations across the current constituencies and wards; and outdated population and other data. The current Constituency boundaries were drawn almost eleven years ago and the ward boundaries were drawn nine years ago. As a result, the constituencies and the wards vary dramatically in population. Constituency Boundaries and Ward Boundaries have neither been drawn nor reviewed for ten years (in the case of constituencies) and, eight years (in the case of wards). This is contrary to Section 38 (4) of the constitution, which requires NEC to review boundaries at intervals of between five to seven years. In 2015, Statistics Sierra Leone (SSL) conducted a national population and housing census. Sierra Leone, like many countries, delimits electoral boundaries after a national census, using the census data. This is because census population data provides reliable source of data for creating constituencies and wards that are relatively equal in population. Census data is also useful for planning voter registration exercises and locating polling centres. According to the provisional census data released by SSL in April 2016, the population of the current

constituencies and wards vary dramatically. And finally, administering an election effectively requires that the delimitation of electoral boundaries precede all other election-related tasks as it facilitates, among other things, the preparation of an accurate voters' register and the correct placement of polling stations.

In September 2016, UNDP and the Minister for Foreign Affairs and Trade of Ireland as represented by Irish Aid signed a Third-Party Cost Sharing Agreement to fund NEC to conduct delimitation under the "Support to Boundary Delimitation Project". The funds covered the following objectives: i) Institutional capacity of the NEC for effective boundary delimitation strengthened; ii) Stakeholders' participation in the boundary delimitation process promoted; iii) Public sensitizations on Boundary Delimitation promoted; and iv) Capacity of National and District Boundary Delimitation Monitoring Committees strengthened. Although the Project was expected to end in January 2017, due to unforeseen circumstances the Project end date has been extended to 31 December 2017. The passing into law of the Provinces Act (CAP 60) 2017 on 13 March 2017 resulted in creation of additional districts, provinces and localities. Subsequently, NEC had to incorporate the new districts, provinces and localities as defined in the Provinces Act (CAP 60) of 2017. Re-districting had a significant impact on the already tight electoral timeline and further delayed legislation of the delimitation report by Parliament. It is anticipated that Parliamentary will soon pass the delimitation report and this will result into creation of additional seats from 475 to 511. The passing of the delimitation statutory instrument will be followed by public sensitisation on the new electoral boundaries (Wards and Constituencies), which is scheduled to start in August 2017. Public sensitisation on the new electoral boundaries is the last activity to be implemented by the Project and this will immediately be followed by the conduct of the Project evaluation scheduled for September 2017.

UNDP is looking for an international consultant to evaluate the "Support to Boundary Delimitation Project". In addition to his/her practical experience in conducting external evaluations, the expert should have an extensive understanding of boundary delimitation and the social and political complexities associated with delimitation, and in post conflict countries.

## **II. Objectives of the Mission**

The objectives of the consultancy are:

i) to review the performance of the Project in achieving the outputs as per the Project Document and their contributions to outcome level goals; and ii) identify factors that facilitated or hindered or delayed the achievement of results, both in terms of the external and internal, and document lessons learned.

Specifically, the evaluation aims at accomplishing the following: assessing the delimitation process in terms of cost effectiveness; realistic timelines; nature of technology (GIS) and whether there was capacity to use the technology; location of the data base and if it can be accessed/updated on a regular basis; was there capacity building to ensure NEC would draw the boundaries themselves in the future other than contracting Statistics Sierra Leone; level of public participation and representation; independence and impartiality of the NEC in conducting delimitation; capacity of the NEC in conducting delimitation; impartiality of the legislative process; transparency of the delimitation process; the role of Government in the decision making process on matters concerning delimitation; re-districting and its impact on delimitation; the role of civil society in delimitation; and assessing the impact of delimitation on the overall electoral cycle.

In assessing the impact of the Project, the evaluation will take into consideration the relevance, effectiveness, efficiency, and sustainability of the Project.

## **III. Scope of Work**

Under the direct supervision of the UNDP Team Leader Governance, the IC will undertake the following:

1. Organize multi stakeholder consultations, bilateral meetings with individual stakeholders, and field trips to generate evidence that will be analyzed and used for writing the draft report;
2. Disseminate draft evaluation report and organize a validation workshop with Project stakeholders, and thereafter incorporate stakeholders' comments in the final evaluation report;
3. Organize a wrap up meeting with UNDP, NEC and Development Partners (DPs) to present final evaluation report;
4. Submit to UNDP final and approved evaluation report, including a 2-3 page executive summary, and with evidence based conclusions, lessons learned and key recommendations for future reference. Annexes including among others the Terms of Reference for the evaluation as well as methodology and list of questions used during the interviews and list of key informants.

#### **IV. Deliverables & Timelines**

1. Inception report on proposed evaluation methodology, work plan and proposed structure of the report. The inception report should also include an evaluation design matrix including clear methods for addressing each evaluation criteria and objectives (1<sup>st</sup> week);
2. Draft evaluation report based on multi stakeholder consultations (3<sup>rd</sup> week);
- Final evaluation report approved by the NEC and UNDP in consultation with Irish Aid (4<sup>th</sup> week).

#### **V. Management**

The consultant will report to the UNDP Team Leader Governance.

It is expected that the deliverables will be completed within 30 days effective 19<sup>th</sup> September 2017

#### **VI. Recruitment Qualifications**

Education:	<p>Masters' Degree in the relevant area</p> <p>Proven qualification, knowledge or equivalent professional qualifications in Boundary Delimitation.</p>
Experience:	<ul style="list-style-type: none"> <li>• At least 10 years of experience in conducting complex evaluations;</li> <li>• Proven expertise at international level in boundary delimitation.</li> </ul>
Competences	<ul style="list-style-type: none"> <li>• Professionalism and Integrity</li> <li>• Promotes knowledge sharing and learning</li> <li>• Display cultural, gender, religion, race, nationality and age sensitivity and adaptability;</li> <li>• Build strong relationships with clients, focuses on impact and result for the client and responds positively to feedback;</li> <li>• Demonstrate good oral and written skills;</li> <li>• Demonstrate openness to change and ability to manage complexities</li> <li>• Ability to work with national counterparts in building individual and institutional capacity.</li> </ul>
Language Requirements:	<ul style="list-style-type: none"> <li>• Fluency in written and spoken English</li> </ul>

#### **Deliverables**

SLE/IC/2017/038 - International Consultant Boundary Delimitation Evaluation

No.	Deliverable	Instalment Payment
1	Inception report on proposed evaluation methodology, work plan and proposed structure of the report. The inception report should also include an evaluation design matrix including clear methods for addressing each evaluation criteria and objectives.	1 <sup>st</sup> week
2	Draft evaluation report based on multi stakeholder consultations	3 <sup>rd</sup> week
3	Final evaluation report approved by the NEC and UNDP in consultation with Irish Aid.	4 <sup>th</sup> Week
<b>IX. Evaluation Criteria and Payment Modalities</b>		
<p><b>Payment Modalities</b></p> <p>Payments shall be based on satisfactory and approved deliverables by both NEC and UNDP, and certification of the IC's work by UNDP as per the terms of reference.</p> <p><b>Evaluation of Criteria and Weighting</b></p> <p>The consultant will be evaluated against a combination of technical and financial criteria. Maximum score is 100% out of a total score for technical criteria equals 70% and 30% for financial criteria.</p> <p>The technical evaluation will include the following:</p> <ul style="list-style-type: none"> <li>• Background and minimum educational qualification as defined above-10%</li> <li>• Substantial professional knowledge and specific technical skills in evaluations - 30%;</li> <li>• Demonstrable experience in conducting evaluations, and where possible elections related project evaluation (with the aspect of boundary delimitation) -30%</li> </ul> <p><b>Application Procedure</b></p> <p>Qualified and interested candidates are hereby requested to apply. The application should contain the following:</p> <p>Brief proposal addressing the requirement (Methodology)</p> <p>Filled P11 form - <a href="http://sas.undp.org/Documents/P11_personal_history_form.doc">http://sas.undp.org/Documents/P11_personal_history_form.doc</a></p> <ul style="list-style-type: none"> <li>• Detailed achievement based CV</li> <li>• NOTE: - The Financial proposal should indicate consultancy fee in Leones (with a breakdown) or unit price together with any other expenses related to the assignment.</li> </ul>		

ANNEX 1 - TERMS OF REFERENCE (TOR)  
ANNEX 2 - INDIVIDUAL CONSULTANT'S GENERAL TERMS AND CONDITIONS

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**Carine Yengayenge**  
Deputy Country Director (Operations)

UNITED NATIONAL DEVELOPMENT PROGRAMME  
Terms of Reference



Empowered lives.  
Resilient nations.

### I. Position Information

Post Title:	International Consultant Boundary Delimitation Evaluation
Contract type:	Individual Contract
Duration:	30 days effective 19 <sup>th</sup> September 2017
Duty Station:	Freetown with field trips
Supervisor:	Team Leader Governance

### II. Background

The National Electoral Commission (NEC) has, as part of its Constitutional mandate, the responsibility to carry out delimitation of wards and constituencies for conducting elections and referenda in Sierra Leone in line with necessary legal frameworks. The 1991 Constitution of Sierra Leone (Act No 6 of 1991) and the Ward boundary Regulation, 2008, requires Constituencies and Wards to be "as nearly equal to the population quota as is reasonably practicable". Furthermore, the Constitution & Ward Regulations require the NEC-SL to review Constituency & Ward Boundaries at intervals of not less than 5 and not more than 7 years. The current 112 Constituencies were delimited in November 2006 for the 2007 Parliamentary Elections and the current 394 Wards were delimited in 2008 for the 2008 Local Council Elections.

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### **III. Objectives**

The objectives of the consultancy are: i) to review the performance of the Project in achieving the outputs as per the Project Document and their contributions to outcome level goals; and ii) identify factors that facilitated or hindered or delayed the achievement of results, both in terms of the external and internal, and document lessons learned.

Specifically, the evaluation aims at accomplishing the following: assessing the delimitation process in terms of cost effectiveness; realistic timelines; nature of technology (GIS) and whether there was capacity to use the technology; location of the data base and if it can be accessed/updated on a regular basis; was there capacity building to ensure NEC would draw the boundaries themselves in the future other than contracting Statistics Sierra Leone; level of public participation and representation; independence and impartiality of the NEC in conducting delimitation; capacity of the NEC in conducting delimitation; impartiality of the legislative process; transparency of the delimitation process; the role of Government in the decision making process on matters concerning delimitation; re-districting and its impact on delimitation; the role of civil society in delimitation; and assessing the impact of delimitation on the overall electoral cycle.

In assessing the impact of the Project, the evaluation will take into consideration the relevance, effectiveness, efficiency, and sustainability of the Project.

#### IV. Functions

Under the direct supervision of the UNDP Team Leader Governance, the IC will undertake the following:

5. Organize multi stakeholder consultations, bilateral meetings with individual stakeholders, and field trips to generate evidence that will be analyzed and used for writing the draft report;
6. Disseminate draft evaluation report and organize a validation workshop with Project stakeholders, and thereafter incorporate stakeholders' comments in the final evaluation report;
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#### V. Deliverables:

3. Inception report on proposed evaluation methodology, work plan and proposed structure of the report. The inception report should also include an evaluation design matrix including clear methods for addressing each evaluation criteria and objectives (1<sup>st</sup> week);
4. Draft evaluation report based on multi stakeholder consultations (3<sup>rd</sup> week);
5. Final evaluation report approved by the NEC and UNDP in consultation with Irish Aid (4<sup>th</sup> week).

#### VI. Reporting Mechanism

The consultant will report to the UNDP Team Leader Governance

#### VII. Duration

It is expected that the deliverables will be completed within 30 days effective 9<sup>th</sup> September 2017

#### VIII. Recruitment Qualifications

Education:	Masters' Degree in the relevant area Proven qualification, knowledge or equivalent professional qualifications in Boundary Delimitation
Experience:	<ul style="list-style-type: none"><li>• At least 10 years of experience in conducting complex evaluations;</li><li>• Proven expertise at international level in boundary delimitation</li></ul>
Competences	<ul style="list-style-type: none"><li>• Professionalism and Integrity</li><li>• Promotes knowledge sharing and learning</li><li>• Display cultural, gender, religion, race, nationality and age sensitivity and adaptability;</li></ul>

	<ul style="list-style-type: none"> <li>• Build strong relationships with clients, focuses on impact and result for the client and responds positively to feedback;</li> <li>• Demonstrate good oral and written skills;</li> <li>• Demonstrate openness to change and ability to manage complexities</li> <li>• Ability to work with national counterparts in building individual and institutional capacity.</li> </ul>
Language Requirements:	<ul style="list-style-type: none"> <li>• Fluency in written and spoken English</li> </ul>
<b>IX. Application, Evaluation Criteria and Payment Modalities</b>	
<b>Payment Modalities</b> Payments shall be based on satisfactory and approved deliverables by both NEC and UNDP, and certification of the IC's work by UNDP as per the terms of reference.	
<b>Evaluation of Criteria and Weighting</b> The consultant will be evaluated against a combination of technical and financial criteria. Maximum score is 100% out of a total score for technical criteria equals 70% and 30% for financial criteria. The technical evaluation will include the following: <ul style="list-style-type: none"> <li>• Background and minimum educational qualification as defined above-10%</li> <li>• Substantial professional knowledge and specific technical skills in evaluations - 30%;</li> <li>• Demonstrable experience in conducting evaluations, and where possible elections related project evaluation (with the aspect of boundary delimitation) -30%</li> </ul>	





## **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.

#### **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:**

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.

**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.

**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 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 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.

**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.

**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.