UN
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REQUEST FOR QUOTATION (RFQ)

To:	DATE: 29th September 2017
Interested Bidders	
	REFERENCE: RFQ/UNDP/PLJ/064/2017 – Provision of Marine Vessel Automatic Identification System Data

Dear Sir / Madam:

We kindly request you to submit your quotation for **Provision of Marine Vessel Automatic Identification System Data** as detailed in **Annex 1** of this RFQ. When preparing your quotation, please be guided by the form attached hereto as **Annex 2.**

Quotations may be submitted on or before **13th October at 16.00 (Jakarta Local Time, GMT +7)** and via courier or *e-mail* to the address below:

United Nations Development Programme
Menara Thamrin Building, 7th Floor
Jl. M.H. Thamrin, Kav. 3
Jakarta 10250, Indonesia
Tel: 021- 29802300 ext 835
Attn: Procurement Unit

Via email :
bids.id@undp.org

And should be marked / titled:
RFQ/UNDP/PLJ/064/2017 – Provision of Marine Vessel Automatic Identification System Data

Quotations submitted by email must be limited to a maximum of 4MB per email and it should be virus-free. They must be free from any form of virus or corrupted contents, or the quotations shall be rejected.

It shall remain your responsibility to ensure that your quotation will reach the address above on or before the deadline. Quotations that are received by UNDP after the deadline indicated above,

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for whatever reason, shall not be considered for evaluation. If you are submitting your quotation by email, kindly ensure that they are signed and in the .pdf format, and free from any virus or corrupted files.

Please take note of the following requirements and conditions pertaining to the supply of the abovementioned good/s:

Delivery Terms	☑DDP local delivery
Customs clearance[1], if needed, shall be done by:	☑Supplier/Offeror
Exact Address/es of Delivery Location/s	Annex 1
UNDP Preferred Freight Forwarder, if any[2]	N/A
Distribution of shipping documents	N/A
Latest Expected Delivery Date and Time	☑ 4 (four) weeks from the issuance of the Purchase Order (PO) *(if delivery time exceeds this, please advise the delivery schedule)*
Delivery Schedule	☑Required
Packing Requirements	Yes to ensure that all goods are packed based on the delivery place and that they are all arrived safely.
Mode of Transport	☐ AIR ☐LAND ☐SEA ☑OTHER based on quotation from bidders which should meet the delivery time
Preferred Currency of Quotation[3]	☑ United States Dollars (US$) Or; ☑ Local Currency for company registered/have branches/representative in Indonesia
Value Added Tax on Price Quotation[4]	☑Must be exclusive of VAT and other applicable indirect taxes
After-sales services required	☑ Based on ANNEX 2
Deadline for the Submission of Quotation	**13th October at 16.00 (Jakarta Local Time, GMT +7)**
All documentations, including catalogs, instructions and operating manuals, shall be in this language	☑ English

Documents to be submitted[5]	☑ Duly Accomplished Form as provided in Annex 2, and in accordance with the list of requirements in Annex 1; ☑Written Self-Declaration of not being included in the UN Security Council 1267/1989 list, UN Procurement Division List or other UN Ineligibility List;
Period of Validity of Quotes starting the Submission Date	☑90 days In exceptional circumstances, UNDP may request the Vendor to extend the validity of the Quotation beyond what has been initially indicated in this RFQ. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Quotation.
Partial Quotes	☑ Not Permitted [*pls. provide conditions for partial quotes, and ensure that requirements are properly listed to allow partial quotes (e.g., in lots, etc.)]*
Payment Terms[6]	☑ 100% upon complete delivery and inspection of goods
Liquidated Damages	If the Supplier fails to supply the specified goods/services within the time period(s) stipulated by the purchase order, the UNDP shall, without prejudice to its other remedies under the contract, deduct from the Purchase Order price, as liquidated damages, a sum equivalent to 2 (two) percent of the delivered price of the delayed goods/services for each week of delay until actual delivery, up to a maximum deduction of 10 percent of the delayed goods/services Purchase Order price. Once the maximum is reached, the UNDP may consider termination of the Purchase Order
Evaluation Criteria	☑ Technical responsiveness/Full compliance to requirements and lowest price Comprehensiveness of after-sales services ☑Full acceptance of the PO/Contract General Terms and Conditions
UNDP will award to	☑One and only one supplier
Type of Contract to be Signed	☑ Purchase Order
Special conditions of Contract	☑ Cancellation of PO/Contract if the delivery/completion is delayed by one week
Conditions for Release of Payment	☑ Passing Inspection ☑ Passing all Testing which will be checked against the Technical Specification – Annex 1 ☑ Written Acceptance of Goods based on full compliance with RFQ requirements

Annexes to this RFQ[7]	☑ Specifications of the Goods Required (Annex 1)
	☑ Form for Submission of Quotation (Annex 2)
	☑ General Terms and Conditions / Special Conditions (Annex 3)
	Non-acceptance of the terms of the General Terms and Conditions (GTC) shall be grounds for disqualification from this procurement process.
Contact Person for Inquiries	**Regarding the tender in overall:**
	Teguh Santoso and Yusef Millah ,*UNDP Procurement Unit,*
	teguh.santoso@undp.org; Yusef.millah@undp.org
	Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.

Goods offered shall be reviewed based on completeness and compliance of the quotation with the minimum specifications described above and any other annexes providing details of UNDP requirements.

The quotation that complies with all of the specifications, requirements and offers the lowest price, as well as all other evaluation criteria indicated, shall be selected. Any offer that does not meet the requirements shall be rejected.

Any discrepancy between the unit price and the total price (obtained by multiplying the unit price and quantity) shall be re-computed by UNDP. The unit price shall prevail and the total price shall be corrected. If the supplier does not accept the final price based on UNDP's re-computation and correction of errors, its quotation will be rejected.

After UNDP has identified the lowest price offer, UNDP reserves the right to award the contract based only on the prices of the goods in the event that the transportation cost (freight and insurance) is found to be higher than UNDP's own estimated cost if sourced from its own freight forwarder and insurance provider.

At any time during the validity of the quotation, no price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the quotation. At the time of award of Contract or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

Any Purchase Order that will be issued as a result of this RFQ shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a quotation implies that the vendor accepts without question the General Terms and Conditions of UNDP herein attached as Annex 3.

UNDP is not bound to accept any quotation, nor award a contract/Purchase Order, nor be responsible for any costs associated with a Supplier's preparation and submission of a quotation, regardless of the outcome or the manner of conducting the selection process.

Please be advised that UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a purchase order or contract in a competitive procurement process. In the event that you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link: http://www.undp.org/procurement/protest.shtml .

UNDP encourages every prospective Vendor to avoid and prevent conflicts of interest, by disclosing to UNDP if you, or any of your affiliates or personnel, were involved in the preparation of the requirements, design, specifications, cost estimates, and other information used in this RFQ.

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its suppliers to adhere to the UN Supplier Code of Conduct found in this link: http://www.un.org/depts/ptd/pdf/conduct_english.pdf

Thank you and we look forward to receiving your quotation.

Sincerely yours,

John Benjamin
Procurement Specialist
29th September 2017

Terms of Reference
Marine Vessel Automatic Identification System Data

Background

Global Pulse is an innovation initiative in the Executive Office of the United Nations Secretary-General, harnessing today's new world of digital data and real-time analytics to gain a better understanding of changes in human well-being. Global Pulse hopes to contribute a future in which access to better information sooner makes it possible to keep international development on track, protect the world's most vulnerable populations, and strengthen resilience to global shocks. Global Pulse is being implemented as a global network of Pulse Labs, bringing together expertise from UN agencies, governments, academia, and the private sector to research, develop, test and share tools and approaches for harnessing real-time data for more effective and efficient policy action.

Pulse Lab Jakarta

Global Pulse established a Pulse Lab in Jakarta in 2012 in partnership with the Government of Indonesia. Pulse Lab Jakarta functions as an open innovation space where policy experts together with UN development practitioners and other partners can experiment with new types of data and emerging technologies and evaluate their potential to enhance both public policy decision-making and community resilience. Following the development of useful approaches, Pulse Lab Jakarta supports the institutional adoption of these innovations into policy and practice.

Marine Vessel AIS Research

Based on an initial analysis of port network connectivity using automatic identification system (AIS) data, Pulse Lab Jakarta wishes to conduct further analysis using the dataset with a view to informing development policy. As such, Pulse Lab Jakarta is looking to procure AIS data, with a global scope, from satellite and terrestrial coverage for January 2016 to December 2017, inclusive. More detailed technical specifications follow.

Technical Specifications

Items to be Supplied*	Quantity	Description / Specifications of Goods
Global AIS data set (Jan-2016 to Sept-2017)	1	AIS data set with global coverage of all vessel types including all AIS message types in a raw/unparsed format (e.g. raw NMEA AIS format) for the period of January 2016 to September 2017, inclusive.
Global AIS data set (Oct-Dec 2017)	1	AIS data set with global coverage of all vessel types including all AIS message types in a raw/unparsed format (e.g. raw NMEA AIS format) for the period of October 2017 to December 2017, inclusive.

Annex 2

RFQ/UNDP/PLJ/064/2017 – Provision of Marine Vessel Automatic Identification System Data

FORM FOR SUBMITTING SUPPLIER'S QUOTATION
(This Form must be submitted only using the Supplier's Official Letterhead/Stationery)

We, the undersigned, hereby accept in full the UNDP General Terms and Conditions, and hereby offer to supply the items listed below in conformity with the specification and requirements of UNDP as per RFQ Reference No. **RFQ/UNDP/PLJ/064/2017:**

TABLE 1 : Offer to Supply Goods Compliant with Technical Specifications and Requirements

Item No	Product Specifications/Description	Qty	Unit Price	Total Price
1	Global AIS data set (Jan-2016 to Sept-2017)	1		
2	Global AIS data set (Oct-Dec 2017)	1		

TABLE 2 : Offer to Comply with Other Conditions and Related Requirements

Other Information pertaining to our Quotation are as follows :	Your Responses		
	Yes, we will comply	*No, we cannot comply*	*If you cannot comply, pls. indicate counter proposal (IF YOU CAN NOT COMPLY, YOU WILL BE AUTOMATICALLY REJECTED).*
Delivery Lead Time – 4 weeks upon issuance of Purchase Order is mandatory			
Validity of Quotation 90days			
All Provisions of the UNDP General Terms and Conditions			

All other information that we have not provided automatically implies our full compliance with the requirements, terms and conditions of the RFQ.

[Name and Signature of the Supplier's Authorized Person]
[Designation/Name of the company]
[Date]

Annex 3

UNDP MODEL
SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement is made as of _____ ("**Effective Date**") by and between the United Nations Development Programme, a subsidiary organ of the United Nations, an international intergovernmental organization established by treaty, having its headquarters at 304 East 45th Street, New York, NY 10017 (**"UNDP"**)[1] and _____, a corporation organized under the laws of _____ and having its principal place of business at _____, (**"Licensor"**). UNDP and Licensor are hereinafter collectively referred to as the "Parties".

PART I
MASTER TERMS AND CONDITIONS

WHEREAS, the UNDP desires to obtain a reliable software system for the purposes of _____;

WHEREAS, Licensor agrees to furnish to the UNDP and the UNDP agrees to accept, on the terms and conditions set forth in this Agreement, a non-exclusive, non-transferable, royalty-free, perpetual license to use the _____ Software System(s) (**"Software"**) configured by the Licensor, as appropriate, to meet the UNDP requirements[2]; and

Whereas, Licensor represents that it possesses the requisite knowledge, skill, personnel, resources and experience and that it is fully qualified, ready, willing and able provide the Software, and such support, maintenance services and warranty services on the terms and conditions of this Software License and Services Agreement.

Now, Therefore, the Parties hereto agree as follows:

1. DEFINITIONS

(A)   **"Software"** means all or any portion of the binary computer software programs and related source code (except as otherwise provided in a Schedule), listed on Schedule 1 and subsequent schedules licensed by UNDP, which is delivered by Licensor to UNDP. Software also includes any updates, modifications and enhancements to, or derivative works of the foregoing.

(B)   **"Documentation"** means all technical publications relating to the Software, such as reference, user, installation, systems administrator and technical guides, all training materials, and all information delivered by Licensor to UNDP, reflected in Schedule 1 or subsequent schedules;

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[1] If the Software License and Services Agreement is also intended to extend to other UN bodies affiliated with UNDP, such as UNFPA, UNOPS, the following can be added: "For the purposes of this Agreement, the following UNDP affiliated bodies benefit from this Agreement _____."

[2] In special cases, upon OIST advice, the following can be added: "and operating on _____ platform or on any other platform which support _____."

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(C) **"Services"** means Support Services, Installation Services and training provided by Licensor to or for the benefit of UNDP pursuant to this Agreement and listed in Annex C;

(D) **"Site"** shall mean a computer system or systems comprised of one or more CPUs that are located at the same physical address;

(E) **"Territory"** means worldwide for purposes of this Agreement;[3]

(F) **"UN Convention"** shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations in 1946;

(G) **"Updates"** shall mean those subsequent releases and upgrades of current releases of the Software and Documentation which are generally made available to licensors of the Software which are similarly situated to UNDP, as part of Support Services at no additional charge, other than the fees for Support Services, media and handling charges. Updates are delivered only if and when available.

2. CONTRACT TERMS

This Software License and Services Agreement, together with the exhibits described below and which are or which shall be attached hereto, incorporated herein and made a part hereof (**"Contract Documents"**) constitute the entire contract between the Parties (**"Agreement"**). The documents comprising this Agreement are complementary of one another but in the case of any ambiguity, discrepancy, or inconsistency between or among the Contract Documents, the following order of precedence shall apply:

1. UNDP Special Conditions for Software Agreements (**"Annex A"**);
2. The UNDP General Conditions for Professional Services (**"Annex B"**);
3. This Software License and Services Agreement;
4. Schedule 1 and any other subsequent Schedule(s) to the Agreement;
5. Support Services, Installation Services, and Training (**"Annex C"**);
6. Software Source Code Escrow Agreement (**"Annex D"**);
7. UNDP's Request for Proposal dated _____;
8. The Licensor's Proposal dated _____.

PART II
LICENSE TO AND [CUSTOMIZATION OF,] [CONFIGURATION OF,] DELIVERY, INSTALLATION AND TESTING OF THE SOFTWARE SYSTEM(S)

3. SOFTWARE SYSTEM

(A) The Software, as described and as specified in Schedule 1, shall consist of a fully integrated set of computer software programs which shall operate on the Designated CPUs at the Sites set forth in the Schedule and which shall be the latest version of the Software that Licensor has made available to its customers as of the time of installation of the Software in accordance with this Agreement.

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[3] Depending on the case, territory may be defined differently.

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(B)   The Software delivered to the UNDP by the Licensor shall generally be capable of _____ in order to allow the UNDP to _____ and to _____.

4. LICENSE

(A)   Licensor grants UNDP a perpetual, nonexclusive, nontransferable license to make, use and run copies of the Software for access by UNDP for internal data processing operations, [including for its development projects,][4] on one or more servers and/or workstations located at facilities owned or leased by UNDP, in the Territory, subject to the limitations contained in this Agreement and the applicable Annexes and Schedule(s). The right to use the Software granted under this Agreement shall include the right to provide authorized users access to the Software from various remote locations worldwide. Licensor grants UNDP a nonexclusive, nontransferable license to: (i) modify or merge the Software with other software, and use such modified or merged software; (ii) make, modify and use an unlimited number of copies of the Documentation, and (iii) make a reasonable number of copies of the Software for testing, archival and backup purposes; in accordance with the terms of this Agreement. No modification or merger of the Software with other software or modification of the Documentation, however extensive, shall diminish Licensor's right, title or interest in the Software and Documentation. UNDP Modifications as defined herein shall not be deemed to be creation of new modules or new products.

(B)   Within _____ (_____) days of the Effective Date of this Agreement, Lice. isor shall provide UNDP with the number of copies of the Software in a readable format as specified in Schedule 1, and shall provide UNDP with an equal number of copies of the Documentation.

5. LIMITATIONS ON LICENSE

(A)   UNDP shall not:

    a. Access or use any portion of the Software not expressly licensed and paid for by UNDP;

    b. Invoke any Software, except through application program interfaces documented by Licensor;

    c. Cause or permit decompilation or reverse assembly of all or any portion of the Software, except as permitted by applicable law;

    d. Disclose or publish performance benchmark results for Software (as delivered or subsequently modified) without Licensor's prior written consent;

    e. Delete, fail to reproduce or modify any copyright, trademark or other proprietary rights notices which appear on or in the Software or Documentation; or

    f. Directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Software or any portion thereof, for third party use, training, facilities management, time-sharing, use as an application service provider, or for the purpose of operating a service bureau.

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[4] The bracketed text can be included if necessary or deleted.

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5.2   Licensor reserves all rights not expressly granted herein.

6.   **TRAINING:** Details regarding training at UNDP's site are reflected in the Training section of Annex C.

7. INSTALLATION

(A)   The Licensor shall supply, install and configure properly functioning and fully tested Software, in full conformity with the terms and conditions of this Agreement. The Software shall not be considered to have been installed unless and until all data sets or other information which is required for the Software to fully function in the UNDP's hardware and software environment have been fully configured by the Licensor in accordance with the Installation Services section of Annex C.

(B)   Within thirty (30) days[5] of the Effective Date, Licensor will install at the site defined in Schedule 1, the Software.

(C)   UNDP, at its sole discretion, may delay installation for up to ninety (90) days, upon written notice to the Licensor.

(D)   The Licensed Software shall be deemed to be installed upon UNDP's approval. The installation procedures are in addition to all acceptance test procedures required under Section 8.

8.   **ACCEPTANCE:**[6] For a period of ninety (90) days after the installation of the Software licensed herein ("**Acceptance Period**"), UNDP shall have the opportunity to load and run the Software in order to test that all Software licensed pursuant to this Agreement operates substantially in accordance with the Contract Documents. UNDP shall provide to Licensor a description of any deviation from the Contract Documents ("**Deviation List**") prior to the expiration of the Acceptance Period in accordance with the notice requirements set forth in this Agreement. Upon receipt of such notice, Licensor shall have thirty (30) days to cure any such deviation listed on the Deviation List such that the Software operates substantially in accordance with the Documentation ("**Cure Period**"). Notwithstanding the foregoing, any deviation that occurs as a result of UNDP's (1) not adhering to the guidelines and recommendations contained in the Licensor's written guidelines provided to UNDP hereunder; (2) not having CPU capacity which is sufficient to run all of the software loaded thereon, except where Licensor has represented that CPU capacity would be sufficient to run the software; (3) modifying the Software or the database on which it was designed to run in a manner inconsistent with this Agreement; or (4) not using workstations that meet minimal standards set for the workstation configuration; will not be considered deviations for purposes of non- acceptance of the Software. In the event that: (i) UNDP provides notice to Licensor that it has accepted the Software; or (ii) the Acceptance Period expires without UNDP providing Licensor a Deviation List; or (iii) Licensor is not able to reproduce any of the alleged deviations cited on the Deviation List; or (iv) Licensor cures the deviations cited

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[5] The installation period may be shorter or longer depending on the agreement.
[6] In some cases, a tailored Acceptance Plan may be required. If a tailored Acceptance Plan is required:
      1) Replace all provisions of this section with the following: "Details regarding the Acceptance Plan are included the Acceptance Plan section of Annex C."
      2) Include all details in Annex C section II.

on the Deviation List within the applicable cure period; UNDP shall be deemed to have accepted the Software ("**Acceptance**"). If Acceptance has not occurred by the final day of the cure period ("**Final Date**"), UNDP, at its sole discretion, may postpone the final date for Acceptance. Otherwise, UNDP shall have the option of terminating the license for the Software pursuant to this Agreement. Software licensed pursuant to this Agreement that fails to reach Acceptance may be terminated by doing the following, on or before the Final Date: (A) providing notice of such decision to Licensor; and (B) uninstalling and returning all copies of the concerned Software and Documentation, at the cost of the Licensor. Immediately upon receipt of such Software by Licensor, Licensor shall return to UNDP any license fees paid for such Software.

9. SOURCE CODE ESCROW

9.1 No later than the time of delivery of the Software and Documentation, the Licensor shall place the Escrow Material into escrow pursuant to the Source Code Escrow Agreement, as set forth in Annex D. The Licensor shall continuously and promptly improve, add to, or otherwise modify the Escrow Material placed in escrow prior to or at the same time any Updates, modifications or corrections to the Software are made available to the UNDP. Licensor shall maintain all Escrow Material for as long as the UNDP has the right to use the Software, including any and all Updates thereto, together with all Documentation in accordance with this Agreement.

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PART III
PRICE AND PAYMENT

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10. FEES AND PAYMENT TERMS

(A) UNDP shall pay Licensor, on the basis of original invoices with appropriate substantiating documentation, as provided for in the Invoicing section of the attached Price and Payment Schedule.

(B) The license fees shall be paid in accordance with the schedule set forth in the Payment Schedule section of the attached Price and Payment Schedule.

(C) All fees are payable in U.S. dollars[7] and shall be sent to the attention of _____.

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PART IV
LICENSOR'S WARRANTIES

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11. LIMITED WARRANTY

(A) This Software is subject to a limited warranty. Licensor warrants to UNDP that the Software, as delivered, for a period of _____ (_____) months from the date of Acceptance of the Software shall be free from material defects and under normal use the Software will perform substantially in accordance to the Documentation, provided that: (a) UNDP is using the Software in accordance with Licensor's hardware and software guidelines provided to the UNDP; (b) a. iy error or defect detected is

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[7] Change currency as appropriate.

reproducible by Licensor; (c) the performance issue, error or defect does not relate to Third Party Software which is not embedded in the Software; and (d) UNDP notifies Licensor of such nonconformance within the warranty period.

(B)   Licensor warrants to UNDP that the Documentation is accurate and conforms to the requirements of this Agreement and corresponds to the functions of the Software.

(C)   Licensor warrants to UNDP that Licensor has fully power and authority to grant rights under this Agreement to UNDP with respect to the Software, that neither the performance of any services or obligations by the Licensor in accordance with the Agreement nor the license to UNDP to and use of the Software and Documentation will in any way constitute an infringement or other violation of any rights of any third party, and that there is currently no actual or threatened violation of such right by Licensor.

(D)   Licensor warrants that any maintenance services or other services provided by Licensor hereunder shall be performed in a timely and professional manner by qualified professional personnel, that such services shall conform to the standards generally observed in the industry for similar services and that such services shall be sufficient to enable the Software to perform in accordance with the specifications.

(E)   Licensor warrants that the storage media on which the Software is furnished will be free from defects under normal use for a period of thirty (30) days, commencing on the delivery date of the Software.

(F)   Licensor warrants that the Software shall not contain any computer code (i) intentionally or unintentionally designed to disrupt, disable, harm, or otherwise impede in any manner the operation of the Software, or any associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"), (ii) that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding the authorized number of copies, or advancement to a particular date or other numeral, or (iii) that would permit Licensor to access the Software to cause such disablement or impairment, or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such Software to cease functioning or to damage or corrupt data, storage media, Software, equipment or communications, or otherwise interfere with operations.

(G)   In case of a breach of the Limited Warranty, Licensor shall:
   a. For Services, at the option of UNDP, (i) re-perform the Services which were not as warranted at no additional charge by Licensor to UNDP, or (ii) promptly refund the fees paid to Licensor for the Services which were not as warranted.
   b. For Software which does not conform to the warranties contained in this Agreement, Licensor will, at the sole discretion of UNDP, (i) repair or replace the nonconforming Software within a commercially reasonable time period of receiving notice from UNDP of such nonconformance, or (ii) refund the amounts paid by UNDP for the nonconforming Software module immediately

upon return of the Software, and promptly execute with UNDP an amendment to the Agreement for the nonconforming Software pursuant to which the license is terminated for the Software module for which UNDP is receiving a refund.

(H)   Licensor will pass through to UNDP, to the fullest extent possible, the warranties from Licensor's licensors as they relate to Third Party Software, if any.

(I)   EXCEPT AS EXPRESSLY STATED IN THIS SECTION ENTITLED "LIMITED WARRANTY", THERE ARE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION, OR ANY SERVICES OR SOFTWARE PROVIDED BY LICENSOR TO UNDP INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND LICENSOR EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES.

PART V
LIABILITY OF THE PARTIES

12. **LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES RESULTING FROM LOST PROFITS, HOWEVER ARISING, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION HEREIN SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS ARISING UNDER ARTICLE 1 OF ANNEX A, OR TO DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LICENSOR.

PART VI
OWNERSHIP

13. TITLE AND PROTECTION
(A)   The Software and Documentation contain valuable proprietary information. Licensor (or its licensors) retains title, copyright and other proprietary rights to all portions of the Software and Documentation, and all modifications and alterations thereto, and all copies thereof. If UNDP creates an enhancement, modification or alteration to the Software that remains after the Software, Documentation and the physical media on which they are contained have been separated out from the enhancements, modifications or alterations ("**UNDP Application**"), UNDP shall have a perpetual, royalty-free license to use the UNDP Applications in accordance with this Agreement. UNDP does not acquire any rights, express or implied, in the Software and Documentation, except as specified herein. No license, right, or interests in any Licensor trademark, trade name, or service mark is granted pursuant to this Agreement.

(B)   Title to the physical media for the Software vests in UNDP upon Licensor shipment to UNDP.

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PART VII
MISCELLANEOUS PROVISIONS

14. **TERM AND TERMINATION:** This Agreement will take effect on the Effective Date. This Agreement will remain in effect for as long as UNDP uses the contract, unless and until terminated pursuant to Article 15 of the General Conditions and Paragraph 2 of the Special Conditions.

15. **NOTICE:** All notices required by this Agreement shall be in writing and sent by overnight courier, personal delivery, or facsimile (if confirmed by overnight courier, or personal delivery) to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to Licensor shall be sent to the attention of _____ General Counsel. Notices to UNDP shall be sent to the attention of [UNDP's Chief Information Officer].[8] Notice will be effective on the date shown on the delivery receipt or facsimile confirmation or, where there is no written evidence of delivery, on actual receipt or refusal of receipt.

16. **SURVIVABILITY:** The terms of Sections herein entitled "Title and Protection", "Term and Termination", "Limited Warranty", "Limitation of Liability", "Notice", "Survivability", "Contract Terms", and "Definitions", as well as all Special Conditions of Annex A, and Sections entitled "Use of Name, Emblem or Official Seal of UNDP or the United Nations", "Privileges and Immunities", and "Settlement of Disputes" as set forth in the UNDP General Conditions for Professional Services of Annex B shall survive termination of this Agreement.

17. **EXPORT CONTROL:** The Parties acknowledge that the Software may be subject to export control laws and regulations. As used in this Section, the term "Controlled Material" means (a) the Software, any Updates, Documentation and (b) any related proprietary information of Licensor. The term "Controlled Material" does not include UNDP Applications to the extent that UNDP Applications do not contain the Software. Pursuant to Article II, Section 7(b) of the UN Convention, the United Nations, including its subsidiary organs such as UNDP, is exempt from customs duties and prohibitions and restrictions on exports in respect of articles imported or exported by the United Nations, including its subsidiary organs, for its official use. Accordingly, in light of the exemptions from export restrictions to which UNDP is entitled pursuant to the UN Convention, and without otherwise limiting or derogating from the privileges and immunities and exemptions of the United Nations, including its subsidiary organs, pursuant to the UN Convention, UNDP agrees and warrants that:

(A) UNDP shall comply with all export control laws and regulations of to the extent that such export control laws and regulations are applicable to UNDP;

(B) UNDP shall not directly or indirectly export or transmit any Controlled Material to any country, at any time and in any manner which would violate export control laws and regulations, to the extent that such export control laws and regulations are applicable to UNDP;

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[8] Insert title of authorized UNDP representative.

(C)   UNDP shall not export or re-export any Controlled Material other than for its official use; and

(D)   UNDP shall cooperate with Licensor to determine a mutually acceptable solution should any Governmental authority fail to recognize the UN's exemption from export restrictions set forth in the UN Convention.

18. **GENERAL:** The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party's right to exercise or enforce such right or any other right in the future. This Agreement may not be modified by custom and usage.   This Agreement replaces and supersedes any prior verbal or written understandings, communications, and representations between the parties. This Agreement may be amended only by a written document executed by [a duly authorized representative of each of the parties][9], unless expressly provided otherwise herein.   Transmitted copies are considered documents equivalent to original documents. Any refund made hereunder shall be made promptly and paid by check to the attention of [UNDP's Chief Information Officer][10], at [the address noted in the first paragraph herein][11].

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[9] Insert title of authorized representatives.
[10] Insert title of authorized UNDP representative.
[11] Change where appropriate.

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The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Software License and Services Agreement and to bind their respective party thereto.

UNITED   NATIONS   DEVELOPMENT PROGRAMME

[Licensor Name]

_____

Authorized Signature

_____

Authorized Signature

[Printed Name and Title]

[Printed Name and Title]

_____

_____

Date

Date

Annex A
SPECIAL CONDITIONS FOR SOFTWARE LICENSING AND SERVICES AGREEMENT

1.   ARTICLE 7 (INDEMNIFICATION) OF THE GENERAL CONDITIONS IS HEREBY REPLACED WITH THE FOLLOWING:

(a)   To the fullest extent permitted by law and as agreed hereunder, Licensor shall indemnify, defend and hold harmless, UNDP, at its own expense, against any claims, suits, proceedings, or demands that the Software, Services or Documentation infringes any copyright, trade secret, trademark, patent and other proprietary right. Licensor shall be given notice of such claim, suit, proceeding or demand, within a reasonable amount of time of UNDP receiving notice of such alleged infringement. Failure to give such notice shall not affect Licensor's obligation to indemnify UNDP to the extent that failure to give, or delay in giving such notice does not materially prejudice Licensor. Licensor shall be given information, reasonable assistance, and sole authority to defend or settle the claim, provided that Licensor's choice of counsel is acceptable to UNDP, and subject to the privileges and immunities of UNDP, which UNDP shall assert to the extent permitted by its regulations. In the event of any threatened claim, Licensor may, in its reasonable judgment and at its expense: (i) obtain for UNDP the right to continue using the Software; (ii) replace or modify the Software so that they become non-infringing; or (iii) terminate the license for the allegedly infringing Software, and upon receipt of the Software, return the license fees paid by UNDP for such Software, pro-rated over the term of the Agreement from the Acceptance of such Software. Licensor shall have no obligation to indemnify or defend UNDP for any liability arising out of or relating to any allegations or claims of infringement, to the extent the alleged infringement is based on: (a) a UNDP Modification; (b) use of the Software other than in accordance with the Documentation or the terms of this Agreement; (c) any Third Party Software, not embedded in the Software; or (d) in the event that UNDP agrees to settle any claim without the prior written consent of the General Counsel for _____, Inc. Licensor will pass through to UNDP, to the fullest extent possible, the copyright indemnifications from Licensor's licensors as they relate to Third Party Software. UNDP shall have the right to be represented in any suit or proceeding, at its own expense, by independent counsel of UNDP's own choosing.

(b)   In addition to (a) above, Licensor shall also pay UNDP promptly for all loss, destruction or damage to its property and to the fullest extent permitted by law, 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, including all litigation costs, attorney's fees, settlement payments and damages, arising out of Licensor's or Licensor's employees, officers, agents or sub-contractors, acts or omissions, including regarding workmen's compensation and products liability.

(c)   Licensor shall pay all fees arising under this section as they become due, including without limitation fees arising from any claim to enforce the indemnification obligations set forth herein.

2.   ARTICLE 15 (TERMINATION) OF THE GENERAL CONDITIONS IS HEREBY MODIFIED SUCH THAT THE FOLLOWING ADDITIONAL CLAUSES ARE INCORPORATED:

(A)   Effect of Termination: Upon termination, Licensor shall promptly refund to UNDP a commensurate pro-rata share of any pre-paid fees for the unexpired portion of the applicable payment period. Licensor shall also cease using and destroy or return to UNDP all UNDP confidential information. UNDP shall cease using and destroy or return to Licensor all copies of Licensor's Confidential Information, including, without limitation, Software and Documentation in any form, including partial copies and modified versions, and shall certify in writing to Licensor that all such copies have been destroyed or returned.

(B)   Remedies: Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it.

3.   ARTICLE 13.1 (CONFIDENTIALITY) OF THE GENERAL CONDITIONS IS HEREBY REPLACED WITH THE FOLLOWING:

(A)   During the course of the Parties' relationship, they may have access to confidential information of the other ("Confidential Information"). Licensor Confidential Information includes, without limitation, the Software and Documentation, information proprietary to Licensor, this Agreement and the terms, conditions and pricing contained herein.   UNDP's Confidential Information includes all maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents, and all other data received by Licensor under this Agreement. Confidential information shall not be disclosed, orally or in writing, to any third party without the prior written consent of the owner of such information, except as provided below.

(B)   The Parties shall protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the receiving party utilizes for its own information that it does not wish disclosed to the public.

(C)   This Agreement imposes no obligation upon either party ("Recipient") with respect to the other party's ("Discloser's") Confidential Information which Recipient can establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the possession of, or rightfully known by Recipient, without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement or without a violation of an obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality.

(D)   Recipient may provide access to and use of the Discloser's Confidential Information only to those third parties that: (a) provide services to Recipient concerning Recipient's use of the Discloser's Confidential Information; (b) have a need to use and access the Confidential Information; and (c) have agreed to substantially similar non-disclosure obligations as those contained herein. Disclosure

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of Discloser's Confidential Information by any such third party will be deemed a breach by Recipient hereunder. To the extent Recipient may be required to disclose Confidential Information in a legal proceeding (in the case that UNDP is the Recipient, any such disclosure in a legal proceeding would be subject to the privileges and immunities of UNDP), Recipient may make such disclosure, provided that Recipient notifies Discloser of such requirement prior to disclosure, and provided further that Recipient makes diligent efforts to avoid and/or limit disclosure.

4.   THE FOLLOWING PROVISIONS SHALL GOVERN THE LICENSOR'S PERSONNEL:

(A)   The Licensor shall be responsible for the professional and technical competence of its employees, and will select reliable and competent individuals who will perform effectively in the implementation of this Agreement, who will respect the local customs and who will conform to a high standard of moral and ethical conduct.

(B)   The Licensor's employees assigned to provide services or carry out any obligations hereunder shall be professionally qualified and must be able to work effectively with the staff of the UNDP. At the sole option of UNDP, any of the Licensor's employees may be interviewed by officials of UNDP and their qualifications may be reviewed by UNDP prior to the commencement of such services or carrying out of such obligations hereunder. UNDP reserves the right to refuse any employees assigned by the Licensor to provide services or carry out any obligations hereunder.

(C)   The qualifications of any employees whom the Licensor may assign to provide services or carry out any obligations hereunder shall be substantially the same, or better, [as the qualifications of those employees specified in the Proposal.][12]

(D)   The requirements for the number of the Licensor's employees assigned to provide services or carry out any obligations hereunder may change over time. Any changes in the number of the Licensor's employees assigned to provide services or carry out any obligations hereunder shall be agreed to by UNDP and shall be done only by means of an exchange of correspondence between the Parties.

(E)   Any employees assigned by the Licensor to provide services or carry out any obligations hereunder shall not be withdrawn or replaced without the prior written consent of UNDP, which consent shall not be unreasonably withheld. Where such withdrawal or replacement is intended by the Licensor, the Licensor will provide the UNDP with as much advanced written notice as possible of such intent to withdraw or replace an employee assigned to provide services or carry out any obligations hereunder. Replacement of any of the Licensor's employees assigned to provide services or carry out any obligations hereunder shall be effected in accordance with this Agreement and shall be done as quickly as possible by the Licensor and in a manner that will not adversely effect the performance of any services or obligations hereunder. All actual expenses related to withdrawal or

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[12] Ensure that such specifications exist in a Proposal, which should be clearly referenced and appended. Otherwise, all such specifications should be included in Annex C.

replacement of any employee assigned by the Licensor to provide services or carry out any obligations shall, in all case, be borne exclusively by the Licensor.

(F)   UNDP may, at any time, request, in writing, the withdrawal and replacement of any of the Licensor's employees performing any services or carrying out any obligations hereunder.

(G)   Any request by UNDP for withdrawal or replacement of any employee assigned by the Licensor to provide services or carry out any obligations hereunder shall not be considered as termination, in whole or in part, of this Agreement.

(H)   For the entire term of this Agreement, UNDP may, at the request of the Licensor, provide reasonable workspace for Licensor's personnel assigned to perform services hereunder. Access to and use of facilities in the UN's premises by personnel of the Licensor shall at all times be subject to rules and regulations of UNDP relating to such use, including, but not limited to, those relating to security. While present at UNDP's premises, personnel of the Licensor shall at all times obey and conform to all requests and instructions of UNDP officials, including security staff.

(I)   The Licensor shall be responsible for requiring all of its personnel, when entering, exiting or while within the UN's premises, to display such identification as may be approved and furnished by UNDP. Upon completion of Licensor's obligations under this Agreement or upon release of any personnel provided by the Licensor under this Agreement, all of such prescribed identification shall immediately be delivered to UNDP for cancellation.

(J)   All operations of the Licensor (including storage of equipment, materials, supplies and parts) within UNDP premises shall be confined to areas authorized or approved by UNDP. The Licensor and its personnel shall engage in no unauthorized or unwarranted entry within, passage through, or storage or disposal of equipment, materials, supplies or parts within, UNDP's premises.

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ANNEX B
UNITED NATIONS DEVLEOPMENT PROGRAMME GENERAL CONDITIONS OF CONTRACT

1. LEGAL STATUS

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis 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. 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, which may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

3. 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. 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. 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 with the provisions of this Contract.

6. 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. 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,

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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. 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 its 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:
   (i)   Name UNDP as additional insured;
   (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against UNDP;
   (iii) Provide that 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 UNDP with satisfactory evidence of the insurance required under this Article.

9. 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 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. 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.

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11. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

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, documentation, or modifications thereof, which are produced, prepared or collected in consequence of or in the course of the execution of this Agreement, excluding the Software and the Documentation. At the UNDP's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to UNDP in compliance with the requirements of the applicable law.

12. 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 the United Nations in connection with its business or otherwise.

13. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

13.1   All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of UNDP, shall be treated as confidential and shall be delivered only to UNDP authorized officials on completion of work under this Contract.

13.2   The Contractor may not communicate at any time to any other person, Government or authority external to UNDP, any information known to it by reason of its association with UNDP which has not been made public except with the authorization of UNDP; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

14. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

14.1   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 which are beyond the control of the Parties.

14.2   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 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 UNDP of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, 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.

14.3   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, 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.

15. TERMINATION

15.1   Either party may terminate this Contract for cause, in whole or in part, upon thirty days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Settlement of Disputes" 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. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimize losses and further expenditures.

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 appoin ed on account of the insolvency of the Contractor, UNDP may, without prejudice to any other right or remedy it may have, terminate this Contract forthwith. The Contractor shall immediately inform UNDP of the occurrence of any of the above events.

16. 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, or relating to 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

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

17. PRIVILEGES AND IMMUNITIES

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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. 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 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 UNDP before the payment thereof and 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 UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

19. 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. 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. 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.

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22. AUTHORITY TO MODIFY

No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with the Contractor shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the authorized official of UNDP.

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ANNEX C
SUPPORT SERVICES, INSTALLATION SERVICES AND TRAINING

[This Annex contains no model terms. Each of the following sections must be negotiated and filled out for the specific agreement. Provided below are example terms that may be incorporated as appropriate.]

I. Installation Services:

II. Acceptance Plan:
[Include this section only if a tailored acceptance plan is required and referenced in Article 8 of the Software License and Services Agreement]

III. Support Services:

IV. Training:

Example Terms:

Installation Services:

(A)   The Licensor shall deliver and install the Software in accordance with this Contract at [time], [place] and [order of delivery].

(B)   Without limiting the generality of the foregoing, when installing the Software, the Licensor shall ensure the:

(1)   Conversion of data maintained by UNDP from both existing live-production and from archives to formats capable of being processed by the Software as well as configuration of the Software System to operate in the UNDP hardware and software environment;

(2)   Conversion of and development of all reports currently used by UNDP;

(3)   Integration of data processed by the Software with standard applications of the UNDP such as, but not limited to_____; and

(4)   Integration of the Software for operation on a _____ platform.

(C) The Licensor shall be responsible for ensuring that the Software, and Installation Services accurately reflect the requirements of the UNDP.

Support Services:

(A)   General

(1)   Commencing upon the expiration of the relevant Warranty Period governing the Software, and for the full Maintenance Period specified herein, the Licensor shall provide full, on-site maintenance and support services ("**Maintenance Services**") for the Software, and any updates to or subsequent changes thereof provided by the Licensor in accordance with this Agreement. Such Maintenance Services shall be in addition to the Licensor's warranty obligations in accordance with this Agreement.

(2)   The Licensor shall maintain the Software so that it, at a minimum, it operates in accordance with the requirements of this Agreement and with all descriptions and specifications herein.

(3)   Without limiting the generality of the foregoing, the Maintenance Services to be provided by the Licensor include, but are not limited to, the following:

(a) Periodic, preventive maintenance, Software improvements and other Updates according to the specific requirements of the Software;

(b) Unscheduled, remedial maintenance and support services for any Errors, defects or problems experienced by UNDP in the use of the Software, including, but not limited to, making necessary adjustments, corrections, alterations, improvements or modifications thereto;

(c) Restoring, from regular back-ups maintained by UNDP, damaged data files in the Software;

(d) Maintaining and providing a comprehensive "help-desk" facility accessible by UNDP end-users by telephone and via remote communications (e.g., modem, e-mail, etc.) during Licensor's Regular Hours of Service as specified herein;

(e) Providing advice to UNDP end-users regarding the proper and efficient use of the Software and any feature thereof;

(f) Providing, and installing on the Software, Updates and any Subsequent Changes to the Software; and

(g) As necessary, or as required by UNDP, making all arrangements with any of the Licensor's sub-contractors for the provision of any of the Maintenance Services.

(B)   Exclusions:

The Maintenance Services to be provided by the Licensor in accordance with this Agreement shall not include support or services that have been made necessary solely by any unreasonable alteration of the Software by UNDP without the knowledge or authorization of the Licensor. Additionally, the Licensor shall not be responsible for the restoration of damaged or lost data that cannot be restored solely because of UNDP's failure to properly conduct a regularly scheduled back-up.

(C)   Hours of Service:

(1)   The Licensor shall provide the Maintenance Services between the hours of _____ and _____, Monday through Friday, except on those days observed as holidays by the Licensor. ("**Regular Hours of Service**").

(2)   Solely upon the written authorization of UNDP, the Licensor shall provide the Maintenance and Services for the Software after Regular Hours of Service, during weekends or on holidays at the Time and Materials Rate set forth in Schedule 1 or subsequent schedules hereof.

(D)   Scheduled Maintenance Services:

(1)   The Licensor shall prepare and deliver to UNDP a schedule of services to be rendered by the Licensor pursuant to this Article for periodic, preventive maintenance and support of the Software. The Schedule shall be subject to approval in writing by UNDP and incorporated herein by reference. At the request of UNDP, or as may be necessary, the Licensor shall update the schedule to meet the requirements for the Maintenance Services in accordance with this Agreement.

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(2)   On a monthly basis, the Licensor shall provide UNDP with a detailed list of known or suspected problems relating to or in connection with the operation of the Software.

(E)   Unscheduled Maintenance Services:

(1)   All remedial actions undertaken by the Licensor in respect of the Software shall be completed as soon as possible. The timeliness of remedial action for problems shall be determined according to the following two (2) levels of problem severity:

(a) Problem Severity Level One: If UNDP notifies the Licensor that it is experiencing a problem with the Software, or any feature or module thereof, and that such problem is preventing day-to-day normal user access to data from or input to the Software, the Licensor shall use its best efforts to remedy the problem within two (2) to four (4) hours following notification by UNDP.

(b) Problem Severity Level Two: If UNDP notifies the Licensor that it is experiencing a problem that impairs the functionality of the Software in a non-immaterial manner but is not preventing day-to-day, normal user access to data from or input to the Software, the Licensor shall remedy the problem within five (5) business days of receipt by the Licensor of notification from UNDP, unless otherwise mutually agreed by both Parties.

(2)   In resolving problems or performing any Maintenance Services, the Licensor may, if appropriate and adequate under the circumstances, correct the problem or perform the Maintenance Service by providing a "patch," as a temporary solution, but only until an upgraded version of the corrected module of the Software is available for installation at the UNDP site.

(3)   It is understood by the Parties that the Licensor may require access to the Software, the UNDP hardware and software and the Sites in order to correct a problem and that if all information necessary to diagnose the cause of the problem is not available upon notification to the Licensor, or if the Licensor cannot readily obtain suitable materials or supplies required to remedy a problem, the Licensor will have an additional reasonable period of time to remedy the problem.

(F)   Maintenance Log:
The Licensor shall keep a separate log for all of the Maintenance Services rendered in accordance with this Agreement. The log shall at all times be available for inspection by UNDP at its request.

(G)   Maintenance of Documentation:
The Licensor shall provide all enhancements, modifications, corrections, updates and new releases of the Documentation for the Software in connection with the provision of the Maintenance Services in accordance with this Agreement. At the request of UNDP, the Licensor shall make changes to the Documentation in order to correct any discrepancies between such Documentation and the functioning of the Software.

Training:

(A)   Within _____(____) days following the delivery and installation of the Software in accordance with the Agreement, the Licensor shall provide training to not less than _____(___) end-users designated by the UNDP, as follows:

(1)   The training conducted by the Licensor shall provide the UNDP end-users with instructions necessary for fully utilizing all of the functions and specifications of the Software as described herein.

(2)   The training provided by the Licensor to the UNDP in accordance with the Agreement shall be done without additional cost to the UNDP beyond the maximum contract price set forth herein and the itemized price for training services set forth herein. At the sole option of the UNDP and upon written request by the UNDP, the Licensor shall provide additional training (i.e., such training as is beyond the scope of the training which the Licensor is required to provide in accordance with this Contract) to UNDP end-users at the Licensor's standard prices then in effect for such training services.

(B)   Once the Software has been delivered and installed at the UNDP site and has been made fully operational by the Licensor and after the training has been completed in accordance with this Contract, the Licensor shall notify the UNDP that the Software is installed and fully operational and is ready for acceptance testing.

ANNEX D
SOURCE CODE ESCROW AGREEMENT

This SOURCE CODE ESCROW AGREEMENT dated as of _____, by and among (i) the United Nations Development Programme, a subsidiary organ of the United Nations, an international intergovernmental organization created pursuant to the Charter of the United Nations signed in San Francisco on 26 June 1945 and having its Headquarters in New York, New York 10017, ("**UNDP**") and (ii) _____, a corporation organized under the laws of _____ and having its principal place of business at _____, ("**Licensor**"); and _____, a corporation organized and existing under the laws of the State of _____ and having its principal offices at _____ (hereafter the "**Escrow Agent**").

WITNESSETH

WHEREAS, the Licensor and the UNDP have entered into a software license and services agreement dated _____ (the "Software License and Services Agreement"), a copy of which is appended hereto and made part hereof, pursuant to which the Licensor has licensed to the UNDP certain computer software, including all updates, improvements, enhancements thereof from time to time developed by the Licensor, and such additional program changes as the UNDP may order from Licensor from time to time, and all documentation therefore developed by the Licensor (hereinafter collectively referred to as the "**Product**");

WHEREAS, it is the policy of the Licensor not to disclose the source codes and related documentation for the Product to its customers except as provided in an applicable Escrow Agreement;

WHEREAS, Licensor or UNDP agree that upon the occurrence of certain events described herein, the UNDP shall be able to obtain the source code, related documentation, and all revisions thereof, and accordingly, the Licensor agrees to deliver said materials to the Escrow Agent; and

NOW, THEREFORE, in consideration of the mutual covenants exchange herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Licensor, the UNDP and the Escrow Agent hereby act and agree as follows:

1. **DEFINITIONS**
   Except as provided herein, the parties agree that the words and phrases set out herein shall have the same meanings as set forth in Article 1 of the Software License and Services Agreement. The following additional terms shall have the following meanings (the definitions to be applicable to both the singular and the plural forms of each term defined in this Escrow Agreement):

   (a)   "**Escrow Material**" shall refer to all materials required to be delivered into Escrow under this Annex and Article 9 of the Software License and Services Agreement, including materials

required for the Initial Escrow Deposit under Article 2(a), and for Escrow Material Updates under Article 2(b).

(b)　**"Source Code Copy"** shall mean a sealed package containing the source code form of the Product and related documentation on reliable media. Included therein shall be a fully commented and documented copy of the source code form of the Product, all relevant commentary, including explanation, flow charts, algorithms and subroutine descriptions, memory and overlay maps, and other documentation of the source code.

2.　DEPOSITS

(a)　**Initial Escrow Deposit:** Licensor agrees to place a Source Code Copy into escrow pursuant to Section 9 of the Software License and Services Agreement. Licensor shall deliver to Escrow Agent the Source Code Copy after Licensor has demonstrated to the UNDP's satisfaction that the Source Code Copy is a true and accurate copy of the Product.

(b)　**Escrow Material Updates:** Prior to or at the same time as software updates, improvements or enhancements are delivered to the UNDP pursuant to the Agreement, Licensor shall deliver to and deposit with Escrow Agent, at Licensor's expense:

　　　(1)　A revised Source Code Copy for such Product, which includes and incorporates such updates, improvements or enhancements;

　　　(2)　A written explanation or listing of the changes made to such Product by such updates, improvements or enhancements; and

　　　(3)　Revised Documentation (if any);

So that the Source Code Copy constitutes a readable program for the current release of the Product utilized by the UNDP. Upon the UNDP's written request, Licensor shall demonstrate that the Source Code Copy is a true and accurate copy of the updated Source Code for the Product.

3.　MAINTENANCE OF THE ESCROW MATERIAL

The Escrow Agent will hold the Escrow Material in a safe place. The Escrow Agent will retain the Escrow Material until such time as it receives notice pursuant to the terms of this Escrow Agreement that the Escrow Agent is to deliver the Escrow Material to the UNDP or until this Escrow Agreement is terminated pursuant to Section 9 below. The Escrow Agent is authorized to deliver a copy of the Escrow Material to the UNDP provided the UNDP has given an affidavit to Escrow Agent stating that

the UNDP has demanded the Escrow Material from Licensor, which has not provided the Escrow Material within three (3) days of the UNDP's demand, and that any one or more of the following events has occurred:

    (a)   Licensor is unable or unwilling to discharge any of its obligations (including but not limited to maintenance) with respect to the Product in accordance with the warranties, representations or other standards set forth in the Agreement and/or Purchase Order; and/or

    (b)   The sale, assignment or other transfer by Licensor of such of Licensor's rights in the Product as would prevent Licensor from discharging its obligations with respect to the performance of the Product or from discharging its maintenance obligations under the Agreement and/or Purchase Order; and/or

    (c)   Licensor ceases to market the Product; and/or

    (d)   A trustee of Licensor or receiver of Licensor's assets is appointed by any court, or Licensor:

    (1) makes an assignment for the benefit of creditors;

    (2) is unable to pay debts as they mature;

    (3) is designated the debtor in any proceeding instituted under any provision of any bankruptcy or similar code;

    (4) undergoes a change which is in essence one of ownership or control, including but not limited to, merger, asset sale, transfer of a substantial portion of business, or sale of a substantial share of Licensor's general voting securities; or

    (5) voluntarily ceases to be active in developing, marketing or maintaining computer software services to the commercial market.

4.   RELIANCE ON AFFIDAVIT OF UNDP

The parties hereto agree that the Escrow Agent shall rely upon the affidavit provided by the UNDP without any requirement to ascertain the facts or the veracity of any of the statements contained therein.

5.   LIABILITY OF THE ESCROW AGENT

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Escrow Agent shall not be liable or responsible for any transactions between Licensor and the UNDP or for any loss or damage to any of the Escrow Material. Licensor agrees to defend and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, actions and suits and from and against any and all loss (including, but not limited to settlement costs) incurred by Escrow Agent on account of any act or omission of Escrow Agent in respect of or with regard to this Escrow Agreement or the Escrow Material as contemplated herein. In no event shall Escrow Agent be liable for consequential or special damages.

6. NOTICE OF TERMINATION

Upon the termination of the Agreement, Licensor may obtain the return of the Escrow Materials by furnishing written notice of the termination, agreed to by authorized and notarized signature of the UNDP.

7. DISPUTES

(a)   In the event that Licensor and UNDP have a valid dispute concerning the release of the Escrow Material, the Escrow Agent shall not release the Escrow Materials to either party except in accordance with (i) a final decision of the arbitration panel as hereinafter provided, or (ii) receipt of an agreement with authorized and notarized signatures of both Licensor and UNDP, authorizing the release of the Source Code to one of the parties hereto.

(b)   Any dispute, controversy or claim between the Parties arising out of or relating to this Escrow Agreement or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The number of arbitrators shall be three (3), unless the parties mutually agree that there shall be only one (1) arbitrator. The arbitral tribunal shall have no authority to award punitive damages nor to award interest in excess of six percent (6.0 %) per annum, such interest being simple interest only. The parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such dispute, controversy or claim.

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

8. PAYMENT TO ESCROW AGENT

As payment for its services hereunder, the Escrow Agent shall receive a fee in an amount agreed to by both parties or, if there is no agreement, by the arbitration panel, to be paid by the Licensor.

9. TERMINATION

This Escrow Agreement shall terminate on the delivery of the Escrow Materials to either party in accordance with the terms of this Agreement.

10. WAIVER, AMENDMENT OR MODIFICATION; SEVERABILITY

This Escrow Agreement shall not be waived, amended, or modified except by the written agreement of all the parties hereto. Any invalidity, in whole or in part, of any provision of this Escrow Agreement shall not affect the validity of any other of its provisions.

11. NOTICES

All notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses hereinabove written, or at such other address as shall be specified hereinabove in writing to all other parties.

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SCHEDULE 1
Price and Payment

[This Schedule should list the Software and Documentation that UNDP is licensing, as well as the pricing information, including for training, support, etc. The Licensor should provide specifications of the Software and Documentation as part of this Schedule. UNDP must ensure that requirements stipulated in the Request For Proposal and the Proposal are duly reflected here and other exhibits as appropriate. Provided below are example terms that should be incorporated as appropriate. Additional Schedules may be included as needed or appended by later amendment to extend the contract term.]

I. Software

[List Software and Documentation and unit prices.]

II. Contract Price

III. Payment Schedule

IV. Invoicing

Example Terms:

Contract Price

(A) Maximum Contract Price:

In full consideration of the provision and license by the Licensor of the Software and the satisfactory performance by the Licensor of all the services and all obligations in accordance with the Agreement, the UNDP shall pay to the Licensor a Maximum Contract Price of US $_____ (US $_____). Actual payments by the UNDP to the Licensor shall be made in amounts and at times required by or which are otherwise in accordance with the Agreement. The Licensor shall not do any work, provide any goods or materials or perform any Services which would result in any payment or payments by the UNDP of any amount in excess of the Maximum Contract Price without a valid amendment of the Agreement or otherwise without written authorization therefore in accordance with the Agreement by the UNDP.

(B) Itemized Prices:

> (1) Actual payments made by the UNDP to the Licensor hereunder shall reflect the following amounts in respect of the following items:

> (2) For the License to the UNDP to use the Software, US $_____ ("License Fee");

> (3) For the delivery and installation of the Software in accordance with the Agreement, US $_____;

> (4) For all training of the UNDP's end-users in the use of the Software to be provided by the Licensor to the UNDP in accordance with the Agreement, US $_____; and

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(5) For the Maintenance Services to be provided to the UNDP by the Licensor in accordance with the Agreement, US $_____ annually/semi-annually ("Maintenance Fee").

(C) Time and Materials Rate:

(1) The Time and Material Rate for Licensor's services shall be _____ per hour.

(D) Escalation of Rates Upon Renewal or Extension:

(1) Upon any renewal of the Agreement or any extension of the term hereof, the Parties shall agree in writing to the Maintenance Fee and the Time and Materials Rate applicable to the period of such renewal or extension.

(2) It is agreed and understood by the parties that, for and during the period of any such renewal or extension, the Licensor shall not propose and the UNDP shall not be liable to pay any increase in the Maintenance Fee and the Time and Materials Rate, which is greater than _____ percent (_____%) more than the Maintenance Fee and the Time and Materials Rate during the previous period of the term of the Agreement (or a renewal or extension thereof), as adjusted for inflation, in accordance with [_____][13].

Payment Schedule:

(A)   Payment of the Contract Price shall be made by the UNDP to the Licensor in accordance with the following Payment Schedule, showing when payments are due:

(B)   Upon Notification of Delivery and Installation of the Software,[14] _____ percent (_____%) of the License Fee, or US $_____;

(C)   Upon Final Acceptance of the Software, the remaining balance of the License Fee, or US $_____;

(D)   Upon completion of the training in accordance with the Agreement, the amount of US $ _____;

(E)   Monthly, in arrears, for the fees payable for the performance of services, for the integration of the Software, or for the fees payable in respect of any other services at the Time and Materials Rate; and

(F)   Annually/semi-annually upon expiration of the Licensor's Warranty Period in accordance with the Agreement, the Maintenance Fee set forth in Article 10.2.5 hereof.

Invoicing:

(A)   All payments made by the UNDP to the Licensor shall be payable by the UNDP only in response to the Licensor's original invoice therefore and certification by the UNDP that the materials or services reflected in such invoice have been provided by the Licensor in accordance with the Agreement.

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[13] Example: "the Consumer Price Index (calculated for the New York City metropolitan statistical area) of the United States Department of Labor, as of the date of the renewal or extension."

[14] It is preferred that contracts be entered into with no up-front payment. However, in order to receive the best deal, on a case-by-case basis, ACP can approve an initial payment "upon signature."
For example: "Upon the effective date of the Agreement, _____ percent (_____%) of the License Fee, or US $_____;"

(B)   The Licensor's invoices shall contain, at a minimum, the Agreement number and a complete description of the item provided or the Service performed in accordance with the Agreement. The Licensor shall be solely responsible for ensuring that all supporting documentation sufficient for the UNDP to identify the payment requested in relation to the relevant provision(s) of the Agreement accompanies each invoice. The Agreement shall submit its invoices in triplicate (an original and two (2) copies) to:

_____
_____
_____
_____

(C)   The UNDP shall notify the Licensor within fifteen (15) days following receipt of any of Licensor's invoices, if the UNDP intends to dispute any such invoice or any portion thereof. Such notification shall include a brief explanation of the reasons why the UNDP disputes the invoice. The UNDP and the Licensor shall consult in good faith to promptly resolve outstanding issues with respect to any such disputed invoice.

(D)   The UNDP shall make full payment against the Licensor's invoice within thirty (30) days of the receipt of the invoice, unless the UNDP disputes the invoice or a portion thereof.

(E)   In cases of disputes regarding only a portion of a Licensor's invoice, the UNDP shall pay the Licensor the amount of the undisputed portion within thirty (30) days of the receipt thereof.

(F)   Once a dispute regarding an invoice or a portion thereof has been resolved, the UNDP shall pay the Licensor within thirty (30) days following the resolution of such dispute.

(G)   It is acknowledged and agreed by the Licensor that each invoice paid by the UNDP shall be subject to a post-payment audit by the UNDP's auditors (whether internal or external) and, further, that, at any time during the term of the Agreement and for a period of two (2) years following the expiration or prior termination of the Agreement, the UNDP may be entitled to a refund from the Licensor of any amounts shown by such audits to have been unauthorized or not in accordance with this Agreement.