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REQUEST FOR QUOTATION

Development of a data monitoring tracker for Sri Lanka

(RFQ/COM/SDG/2018)

The United Nations Development Programme (UNDP) in Sri Lanka wishes to Request for Quotation from qualified service providers to develop a **data monitoring tracker for Sri Lanka**.

The full Terms of Reference and all solicitation documents can be downloaded free of charge from www.lk.undp.org (Operations > Procurement > Procurement Notices) till Tuesday **03 April 2018**. All proposals must be clearly marked with RFQ/COM/SDG/2018 on the top left corner of the envelope. Any bidder who submits a proposal without conforming to the solicitation document and terms and conditions will be considered as technically non-compliant, and the quotation will be rejected.

The *deadline* for submission of the quotation is 2.00 p.m. Sri Lanka time on Tuesday 03 April 2018. All quotations must be delivered via email or courier/hand delivery to the address below: ***All late*** offers will be rejected.

Head of Procurement/Administration

United Nations Development Programme (UNDP)
202-204, Bauddhaloka Mawatha
Colombo 07, Sri Lanka.
procurement.lk@undp.org

UNDP reserves the right to accept or reject any quotation. The procurement process will be governed by the rules and regulations of the United Nations Development Programme (UNDP).



REQUEST FOR QUOTATION (RFQ)

	DATE: March 27, 2018
	REFERENCE: RFQ/COM/SDG/2018

Dear Sir / Madam:

We kindly request you to submit your quotation for development of a data monitoring tracker for Sri Lanka, 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 April 3, 2018 and via email, courier/hand delivery to the address below:

Head of Procurement/Administration
United Nations Development Programme
202-204, Bauddhaloka Mawatha, Colombo 07, Sri Lanka.
procurement.lk@undp.org

Quotations submitted by email must be limited to a maximum of 8 MB, virus-free and no more than 1 email transmissions. 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, 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 services:

Delivery Terms [INCOTERMS 2010] (Pls. link this to price schedule)	<input checked="" type="checkbox"/> Not applicable
Customs clearance, if needed, shall be done by:	<input checked="" type="checkbox"/> Not applicable

Exact Address/es of Delivery Location/s (identify all, if multiple)	<input checked="" type="checkbox"/> Not applicable
UNDP Preferred Freight Forwarder, if any	<input checked="" type="checkbox"/> Not applicable
Distribution of shipping documents (<i>if using freight forwarder</i>)	<input checked="" type="checkbox"/> Not applicable
Latest Expected Delivery Date and Time (<i>if delivery time exceeds this, quote may be rejected by UNDP</i>)	<input checked="" type="checkbox"/> As per proposed Delivery Schedule attached
Delivery Schedule	<input checked="" type="checkbox"/> Required
Packing Requirements	<input checked="" type="checkbox"/> Not applicable
Mode of Transport	<input checked="" type="checkbox"/> Not applicable
Preferred Currency of Quotation	<input checked="" type="checkbox"/> United States Dollars
Value Added Tax on Price Quotation ¹	<input checked="" type="checkbox"/> Must be exclusive of VAT and other applicable indirect taxes
After-sales services required	<input checked="" type="checkbox"/> Technical Support
Deadline for the Submission of Quotation	COB, <i>Tuesday, April 03, 2018 and 02.00pm Sri Lanka Time</i>
All documentations, including catalogs, instructions and operating manuals, shall be in this language	<input checked="" type="checkbox"/> English
Documents to be submitted ²	<input checked="" type="checkbox"/> Form for submitting proposal (Annex 2); A. Qualifications of the service provider B. Proposed Methodology for the Completion of Services C. Qualifications of Key Personnel D. Cost Breakdown per Deliverable E. Cost Breakdown by Cost Component <input checked="" type="checkbox"/> Quality Certificates (ISO, etc.); <input checked="" type="checkbox"/> List of previous clientele; <input checked="" type="checkbox"/> Latest Business Registration Certificate ; <input checked="" type="checkbox"/> Written Self-Declaration of not being included in the UN Security

¹ This must be reconciled with the INCO Terms required by the RFQ. Furthermore, VAT exemption status varies from one country to another. Pls. tick whatever is applicable to the UNDP CO/BU requiring the goods.

² First 2 items in this list are mandatory for the supply of imported goods

	Council 1267/1989 list, UN Procurement Division List or other UN Ineligibility List;
Period of Validity of Quotes starting the Submission Date	<input checked="" type="checkbox"/> 120 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	<input checked="" type="checkbox"/> Not permitted
Payment Terms ³	<input checked="" type="checkbox"/> Based on deliverables
Liquidated Damages	
Evaluation Criteria <i>[check as many as applicable]</i>	Criteria for the Assessment of Quotations: <u>Technical Proposal (70%)</u> <input checked="" type="checkbox"/> Consultancy Firms' experience and requirements (29%) <input checked="" type="checkbox"/> Proposed methodology, work plan and approach (29%) <input checked="" type="checkbox"/> Resource team capacity (42%) <u>Financial Proposal (30%)</u> To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.
UNDP will award to:	<input checked="" type="checkbox"/> One and only one Service Provider
Type of Contract to be Signed	<input checked="" type="checkbox"/> Software license and service agreement
Special conditions of Contract	<input checked="" type="checkbox"/> Cancellation of Contract if the delivery/completion is delayed by 10 days
Conditions for Release of Payment	<input checked="" type="checkbox"/> Upon successful completion of each deliverable

³ UNDP preference is not to pay advanced amount upon signing of contract. If vendor strictly requires advanced payment, it will be limited only up to 20% of the total price quoted. For any higher percentage, or advanced payment of \$30,000 or higher, UNDP shall require the vendor to submit a bank guarantee or bank cheque payable to UNDP, in the same amount as the advanced payment made by UNDP to the vendor.

Annexes to this RFQ	<input checked="" type="checkbox"/> Detailed Terms of Reference (Annex 1) <input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2) <input checked="" type="checkbox"/> General Terms and Conditions (Annex 3) <input checked="" type="checkbox"/> Model Contract (Annex 4) 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 (Written inquiries only)	Gemunu Premarathna Data Specialist gemunu.premarathna@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.

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

The quotation that complies with all of the specifications, requirements and highest cumulative score, 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 services 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,

Chanaka Liyanage
March 27, 2018



Terms of Reference (TOR)

Assignment	: Development of a data monitoring tracker for Sri Lanka
Reports to	: Data Scientist, Citra Social Innovation Lab
Overall Supervision	: Partnerships Development Analyst
Language required	: English

1. BACKGROUND

The Sustainable Development Goals (SDGs), otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. These 17 Goals build on the successes of the Millennium Development Goals while including new areas such as climate change, economic inequality, innovation, sustainable consumption, peace and justice, among other priorities. The goals are interconnected – often the key to success on one will involve tackling issues more commonly associated with another.

The SDGs came into effect in January 2016, and they will continue to guide UNDP policy and funding for the next 15 years. As the lead UN development agency, UNDP is uniquely placed to help implement the Goals through our work in some 170 countries and territories. UNDP provides support to governments to integrate the SDGs into their national development plans and policies. UNDP's track record working across multiple goals provides us with valuable experience and proven policy expertise to ensure we all reach the targets set out in the SDGs by 2030. Achieving the SDGs requires the partnership of governments, the private sector, civil society and citizens alike to make sure we leave a better planet for future generations.

CITRA is Sri Lanka's first Social Innovation Lab which was the primary outcome of the Foresight and Innovation Summit held in May 2016. The Lab will be aligned to support national development priorities and economic policies through rapid prototyping of development ideas to complement accelerated initiatives. Not to be mistaken with a policy or idea implementing agency, the Lab will be able to comprehensively test an initial idea within a given timeline. The Lab can tackle efforts in the form of an idea, a problem or a solution.

2. Scope and Objectives

The Government of Sri Lanka anticipates achieving the SDGs by working towards the provision of basic needs of the people, progressive alleviation of poverty, elimination of all forms of discrimination and inequalities, and establishing a society based on social justice and human security.

Based on the request made by the Government of Sri Lanka through the Department of Census and Statistics and based on the request made by the UNSDF Driver Group on Data, the Citra Social Innovation Lab wants a service provider to develop a prototype online data monitoring tool for SDGs for the Lab to test and validate prior to full development.

The Service Provider is expected to develop a prototype online data monitoring tool to streamline the coordination and monitoring of all initiatives contributing towards achieving the 2030 Agenda in Sri Lanka jointly with CITRA, Social innovation Lab. The development of this tool will fall under the standard UNDP Software License and Services Agreement which will have to be signed by both UNDP and the Service Provider at the time of signing the contract, upon selection.

3. Expected Outputs

DELIVERABLES:

The key deliverables are as follows:

1. One-time overall base setup and navigation design of the overall (17 goals) platform/tool
2. Overall access and ownership (source code) of the technical tool/platform developed as the prototype to be provided to Citra Lab/UNDP.
3. Initial customization of the overall tool/platform to fit the local context. Including relevant SDG customizations covering homepage for goals, targets and interlinkages.
4. Customization for Goal 3 as part of the prototype. Goal 3 customization to include the Goal, Target and Indicator workflow to be completed for a maximum of 44 indicators under Goal 3 Health customization.

Following the successful completion of phase 1, the service provider may be considered for phase 2 development of the full platform for the remaining or selected goals, following a review based on availability of indicators and successful delivery of phase 1. Variables identified in the financial proposal will have to be in line with the costing for phase 1 when considering for phase 2. One-time payments made in phase 1 cannot be included for phase 2 as those payments will be valid for phase 2 consideration as well.

RESPONSIBILITIES:

Thus, the Service Provider will;

- Ensure support is provided on time with each deliverable being achieved in accordance with the pre-planned timeline
- Share initial prototype design by 6th of April and revise according to the feedback received by various stakeholders
- Allow the CITRA Lab team to access the dashboard throughout the development phase
- Transfer of the prototype developed to Citra's or relevant cloud hosting server.
- Attend meetings/ tests and stakeholder meetings as required.
- Follow strict data security measures and ensure the confidentiality of the data provided for prototype development.

4. Consultancy Firms' experience and requirements

- The Service Provider should hold a valid registration in their respective country.
- Availability (on-site / off-site) during the entire time frame of the assignment.
- A minimum of three years' relevant experience carrying out assignments of similar scope.
- Experience in working with multiple partners/stakeholders across various sectors
- Experience in similar kind of developments in Asia Pacific countries.

5. Team experience and requirements

- Minimum of 1 team leader (Degree in web application development, user interface, data science) and 1 team member (Bachelor's Degree in data science, data analytics, web application development) as part of the team
- The Team Leader to have a minimum of three years' relevant experience carrying out assignments of a similar scope
- Experience in working with multiple partners/stakeholders from different cultural backgrounds
- Availability (on-site/ off-site) of all team members during the time frame of the assignment
Proven ability of building strong relationships with partners, teams and stakeholders, focuses on creating positive impact and results for the organization and responds positively to feedback.

6. Implementation Arrangements

The Service Provider will be contracted by the United Nations Development Programme (UNDP) Sri Lanka.

UNDP will ensure the following responsibilities:

- Provide assistance in connecting various agencies which will provide the data for relevant goals
- Provide any relevant background information/details required to successfully complete the above mentioned deliverables.
- Facilitate prototype testing when required.
- Provide end user feedback, so that customizations can be made to the solution.

7. Payment for Services

- 25% of payment upon receiving workplan and suggested visualizations
- 50% of payment after delivering of first version of the prototype for Goal 3
- 25% of payment after delivering of final version of the prototype for Goal 3

8. SELECTION OF SERVICE PROVIDER

Overall technical evaluation criteria:

Summary of Technical Proposal	Total Points
Part 1: Consultancy Firms' experience and requirements	200

<u>Part 2:</u> Proposed methodology, work plan and approach	200
<u>Part 3:</u> Resource team capacity	300
Total	700

Details of evaluation criteria and marking scheme:

Part 1: Competence/expertise of the organisation:

No	Criteria	Points
1.1	Previous experience in undertaking similar services	100
1.2	Previous experience working on similar type of software development	50
1.3	Previous clients and partners	50

Part 2: Proposed methodology, work plan and approach

No	Criteria	Points
2.1	Methodology and approach (based on an understanding of the objectives, sound methodology, and realistic approach)	100
2.2	Realistic work plan, including details on specific tasks and timeline as well as contingency measures	100

Part 3: Resource team

No	Criteria	Points
3.1	Previous work experience of resource team	100
3.2	Sufficient human resources to undertake scope of work and deliverables	150
3.3	Relevant academic and professional qualifications of resource team	50

FORM FOR SUBMITTING SERVICE PROVIDER'S QUOTATION

(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery⁴)

Sri Lanka
[insert: Date]

To: Head of Procurement/Administration

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated [specify date] , and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions :

A. Qualifications of the Service Provider

The Service Provider must describe and explain how and why they are the best entity that can deliver the requirements of UNDP by indicating the following :

- a) *Profile – describing the nature of business, field of expertise, licenses, certifications, accreditations;*
- b) *Business Licenses – Registration Papers, Tax Payment Certification, etc.*
- c) *Latest Audited Financial Statement – income statement and balance sheet to indicate its financial stability, liquidity, credit standing, and market reputation, etc. ;*
- d) *Track Record – list of clients for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contract references;*
- e) *Certificates and Accreditation – including Quality Certificates, Patent Registrations, Environmental Sustainability Certificates, etc.*
- f) *Written Self-Declaration that the company is not in the UN Security Council 1267/1989 List, UN Procurement Division List or Other UN Ineligibility List.*

B. Proposed Methodology for the Completion of Services

The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the work.

C. Qualifications of Key Personnel

⁴ *Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes*

If required by the RFP, the Service Provider must provide :

- a) Names and qualifications of the key personnel that will perform the services indicating who is Team Leader, who are supporting, etc.;
- b) CVs demonstrating qualifications must be submitted if required by the RFP; and
- c) Written confirmation from each personnel that they are available for the entire duration of the contract.

D. Cost Breakdown per Deliverable*

	Deliverables	Percentage of Total Price (Weight for payment)	Price (Lump Sum, All Inclusive)
	One-time		
1	Tracker base setup	25%	
2	Overall SDGs customization	20%	
3	Overall access and ownership (source code) of the technical tool/platform developed	25%	
4	Other (please specify)		
	Variables		
5	Goal 3 Health Indicator Customization	20%	
6	Project management	5%	
7	Other (please specify)	5%	
	Total	100%	

**This shall be the basis of the payment tranches*

E. Cost Breakdown by Cost Component [This is only an Example]:

Description of Activity	Remuneration per Unit of Time	Total Period of Engagement	No. of Personnel	Total Rate
I. Personnel Services				
1. Services from Home Office				
a. Expertise 1				
b. Expertise 2				
2. Services from Field Offices				
a. Expertise 1				

b. Expertise 2				
3. Services from Overseas				
a. Expertise 1				
b. Expertise 2				
II. Out of Pocket Expenses				
1. Travel Costs				
2. Daily Allowance				
3. Communications				
4. Reproduction				
5. Equipment Lease				
6. Others				
III. Other Related Costs				

**This can be adjusted based on the specific areas you wish to quote.*

- a) Any and all incidental out of pocket expenses (OPE) must be included in the overall “all-inclusive” fees submitted to the UNDP.
- b) The fees proposed must be a total “fixed price” quotation indicating the overall total amount in Sri Lanka Rupees. The total fees as quoted by your firm to UNDP for the purpose of the present RFP shall be firm and final.
- c) All prices quoted must be exclusive of all taxes, since the UNDP is exempt from taxes.
- d) No amount other than the proposed total “all inclusive price” fees shall be paid by UNDP for the provision of the External Review of the Implementation and Progress of the Beijing Platform for Action, which is the subject of the present RFP.
- e) The costs of preparing a proposal and of negotiating a contract are not reimbursable by UNDP.

*[Name and Signature of the Service Provider's
Authorized Person]
[Designation]
[Date]*



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Resilient nations.*

GENERAL TERMS AND CONDITIONS FOR INSTITUTIONAL (DE MINIMIS) CONTRACTS (FOR CONTRACTS LESS THAN US\$ 50,000)

This Contract is between the United Nations Development Programme, a subsidiary organ of the United Nations established by the General Assembly of the United Nations (hereinafter “UNDP”), on the one hand, and a company or organization indicated in the Face Sheet of this Contract (hereinafter the “Contractor”), on the other hand.

1. LEGAL STATUS OF THE PARTIES: UNDP and the Contractor shall be referred to as a “Party” or, collectively, “Parties” hereunder, and:

1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* UNDP, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. OBLIGATIONS OF THE CONTRACTOR:

2.1 The Contractor shall perform and complete the services described in the Terms of Reference and Schedule of Payments (hereinafter the “Services”), with due diligence and efficiency, and in accordance with this Contract. The Contractor shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory performance of the Services.

2.2 The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract, in accordance with the highest industry and professional standards.

2.3 All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the provision of the Services.

3. LONG TERM AGREEMENT: If the Contractor is engaged by UNDP on the basis of a long-term agreement (“LTA”) as indicated in the Face Sheet of this Contract, the following conditions shall apply:

3.1 UNDP does not warrant that any quantity of Services shall be ordered during the term of the LTA.

3.2 Any UNDP business unit, including, but not limited to, a Headquarters unit, a Country Office or a Regional Centre, as well as any United Nations entity, may benefit from the retainer and order Services from the Contractor hereunder.

3.3 The Contractor shall provide the Services, as and when requested by UNDP and reflected in a purchase order, which shall be subject to the terms and conditions stipulated in this Contract. For the avoidance of doubt, UNDP shall acquire no legal obligations towards the Contractor unless and until a purchase order is issued.

3.4 The Services shall be at the Discount Prices annexed hereto. The prices shall remain in effect for a period of three years from the Starting Date stated in the Face Sheet of this Contract.

3.5 In the event of any advantageous technical changes and/or downward pricing of the Services during the term of the retainer, the Contractor shall notify UNDP immediately. UNDP shall consider the impact of any such event and may request an amendment to the retainer.

3.6 The Contractor shall report semi-annually to UNDP on the Services provided, unless otherwise specified in the Contract. Each report should be submitted to the UNDP Contact Person indicated in as indicated in the Face Sheet hereto, as well as to a UNDP business unit that has placed a purchase order for the Services during the reporting period.

3.7 The LTA shall remain in force for the maximum period of two years and may be extended by UNDP for one additional year by mutual agreement of the Parties.

4. PRICE AND PAYMENT:

4.1 FIXED PRICE: If Fixed Price is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory provision of the Services, UNDP shall pay the Contractor a fixed amount indicated in the Face Sheet of this Contract.

4.1.1 The amount stated in the Face Sheet of this Contract is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the Contract.

4.1.2 UNDP shall effect payments to the Contractor in the amounts and pursuant to the schedule of payments set forth in the Terms of Reference and Schedule of Payments, upon completion by the Contractor of the corresponding deliverable(s) and upon acceptance by UNDP of the original invoices submitted by the Contractor to the UNDP Contact Person indicated in the Face Sheet of this Contract, together with whatever supporting documentation that may be required by UNDP:

4.1.3 Invoices shall indicate a deliverable completed and the corresponding amount payable.

4.1.4 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor’s provision of the Services.

4.2 COST REIMBURSEMENT: If Cost Reimbursement is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory provision of the Services under this Contract, UNDP shall pay the Contractor an amount not exceeding the total amount stated in the Face Sheet of this Contract.

4.2.1 The said amount is the maximum total amount of reimbursable costs under this Contract. The breakdown of costs contained in the Financial Proposal, referred to in the Face Sheet to this Contract shall specify the maximum amount per each cost category that is reimbursable under this Contract. The Contractor shall specify in its invoices or financial reports (as required by UNDP) the amount of the actual reimbursable costs incurred in the provision of the Services.

4.2.2 The Contractor shall not provide the Services or equipment, materials and supplies that may result in any costs in excess of the amount stated in the Face Sheet of this Contract, or of the maximum amount per each cost category specified in the breakdown of costs contained in the Financial Proposal, without the prior written agreement of the UNDP Contact Person.

4.2.3 The Contractor shall submit original invoices or financial reports (as required by UNDP) for the Services provided in accordance with the schedule set forth in the Terms of Reference and Schedule of Payments. Such invoices or financial reports shall indicate a deliverable or deliverables completed and the corresponding amount payable. They shall be submitted to the UNDP Contact Person, together with whatever supporting documentation of the actual costs incurred that is required in the Financial Proposal, or may be required by UNDP.

4.2.4 UNDP shall effect payments to the Contractor upon completion by the Contractor of the deliverable(s) indicated in the original invoices or financial reports (as required by UNDP) and upon acceptance of these invoices or financial reports by UNDP. Such payments shall be subject to any specific conditions for reimbursement specified in the breakdown of costs contained in the Financial Proposal.

4.2.5 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's performance of the Services.

5. ADVANCE PAYMENT:

5.1 If an advance payment is due to the Contractor pursuant to the Face Sheet of this Contract, the Contractor shall submit an original invoice for the amount of that advance payment upon signature of this Contract by the Parties.

5.2 If an advance payment representing 20% or more of the total contract value, or amounting to US\$30,000 or more, is to be made by UNDP upon signature of the Contract by the Parties, such payment shall be contingent upon receipt and acceptance by UNDP of a bank guarantee or a certified cheque for the full amount of the advance payment, valid for the duration of the Contract, and in a form acceptable to UNDP.

6. SUBMISSION OF INVOICES AND REPORTS:

6.1 All original invoices, financial reports and any other reports and supporting documentation required under this Contract shall be submitted by mail by the Contractor to UNDP Contact Person. Upon request of the Contractor, and subject to approval by UNDP, invoices and financial reports may be submitted to UNDP by fax or email.

6.2 All reports and invoices shall be submitted by the Contractor to the UNDP Contact Person specified in the Face Sheet of this Contract.

7. TIME AND MANNER OF PAYMENT:

7.1 Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an original invoice or advise the Contractor of its non-acceptance within a reasonable time from receipt.

7.2 Where the Services are to be provided, in addition to an invoice, the Contractor shall submit to UNDP a report, describing in detail the Services provided under the Contract during the period of time covered in each report. All reports shall be written in the English language.

8. RESPONSIBILITY FOR EMPLOYEES:

8.1 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.

8.2 The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property. The Contractor shall (i) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the Services are being provided; and (ii) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan. UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth above.

9. 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.

10. SUBCONTRACTING: 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.

11. 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 worker'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.

12. INSURANCE AND LIABILITY:

12.1 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.

12.2 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, disability or death in connection with this Contract.

12.3 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.

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

12.4.1 Name UNDP as additional insured;

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

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

12.5 The Contractor shall, upon request, provide UNDP with satisfactory evidence of the insurance required under this Article 12.

13. ENCUMBRANCES AND 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 to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNDP.

14. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR: Title to any equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the 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, and the Contractor shall be liable to compensate UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

15. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

15.1 Except as is otherwise expressly provided in writing in the Contract, 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 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP.

15.2 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, UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to 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.

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

15.4 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 UNDP, shall be made available for use or inspection by 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.

16. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS: The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship 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 without the written permission of UNDP.

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

17.1 The Recipient shall:

17.1.1 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*,

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

17.2 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 17, the Recipient may disclose Information to:

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

17.2.2 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:

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

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

17.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

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

17.4 UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

17.5 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.

17.6 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.

18. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

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

18.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 19, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

18.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which 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.

19. TERMINATION:

19.1 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 22.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.

19.2 UNDP may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNDP may terminate the Contract without having to provide any justification therefor.

19.3 In the event of any termination of the Contract, no payment shall be due from UNDP to the Contractor except for the Services satisfactorily provided to UNDP in accordance with the requirements of the Contract.

19.4 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, 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 UNDP of the occurrence of any of the above events.

19.5 The provisions of this Article 19 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

20. NON-WAIVER OF RIGHTS: The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

21. NON-EXCLUSIVITY: Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

22. SETTLEMENT OF DISPUTES:

22.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the 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 Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

22.2 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 22.1, 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. 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”) and Article 34 (“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.

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

24. TAX EXEMPTION:

24.1 Article II, 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 restrictions, 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 exemptions of UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

24.2 The Contractor authorizes UNDP to deduct from the Contractor's invoices 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 written 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, and UNDP shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNDP and paid by the Contractor under written protest.

25. MODIFICATIONS: No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing by the duly authorized representatives of the Parties.

26. AUDITS AND INVESTIGATIONS:

26.1 Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by UNDP other than in accordance with the terms and conditions of the Contract.

26.2 UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

26.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

26.4 UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. The Contractor also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the procurement of Goods and/or Services which are the subject of this Contract, shall have direct recourse to the Contractor for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Contract.

27. LIMITATION ON ACTIONS:

27.1 Except with respect to any indemnification obligations in Article 11, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 22.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

27.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

28. ESSENTIAL TERMS: The Contractor acknowledges and agrees that each of the provisions in Articles 29 to 35 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

29. SOURCE OF INSTRUCTIONS: The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all reasonable assistance required by UNDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

30. STANDARDS OF CONDUCT: The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract, or the award thereof, to any representative, official, employee or other agent of UNDP. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In addition, in the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth in the Secretary General's Bulletin ST/SGB/2002/9 of 18 June 2002, entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following:

30.1 The UN Supplier Code of Conduct;

30.2 UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");

30.3 UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

30.4 UNDP Vendor Sanctions Policy; and

30.5 All security directives issued by UNDP.

The Contractor acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at www.undp.org or at <http://www.undp.org/content/undp/en/home/operations/procurement/business/>. In making such

acknowledgement, the Contractor represents and warrants that it is in compliance with the requirements of the foregoing, and will remain in compliance throughout the term of this Contract.

31. OBSERVANCE OF THE LAW: The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNDP, as such obligations are set forth in UNDP vendor registration procedures.

32. CHILD LABOR: The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) 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.

33. MINES: The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

34. SEXUAL EXPLOITATION:

34.1 In the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth in the Secretary-General's bulletin ST/SGB/2003/13 of 9 October 2003, concerning "Special measures for protection from sexual exploitation and sexual abuse." In particular, the Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

34.2 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled 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 reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

34.3 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.

35. ANTI-TERRORISM: The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under the Contract is used to provide support to individuals or entities associated with terrorism and that recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list. This provision must be included in all sub-contracts or sub-agreements entered into under the Contract.



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 requirements²; 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;

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 _____."



- (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.

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



- (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, Licensor 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.

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



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) days⁵ 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

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.

PART III PRICE AND PAYMENT

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. dollars⁷ and shall be sent to the attention of _____.

PART IV LICENSOR'S WARRANTIES

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) any error or defect detected is

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.



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;

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.

⁹ Insert title of authorized representatives.

¹⁰ Insert title of authorized UNDP representative.

¹¹ Change where appropriate.



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, Licensors shall promptly refund to UNDP a commensurate pro-rata share of any pre-paid fees for the unexpired portion of the applicable payment period. Licensors shall also cease using and destroy or return to UNDP all UNDP confidential information. UNDP shall cease using and destroy or return to Licensors all copies of Licensors' Confidential Information, including, without limitation, Software and Documentation in any form, including partial copies and modified versions, and shall certify in writing to Licensors 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"). Licensors Confidential Information includes, without limitation, the Software and Documentation, information proprietary to Licensors, 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 Licensors 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

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

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.



*Empowered lives.
Resilient nations.*

GENERAL TERMS AND CONDITIONS FOR INSTITUTIONAL (DE MINIMIS) CONTRACTS (FOR CONTRACTS LESS THAN US\$ 50,000)

This Contract is between the United Nations Development Programme, a subsidiary organ of the United Nations established by the General Assembly of the United Nations (hereinafter “UNDP”), on the one hand, and a company or organization indicated in the Face Sheet of this Contract (hereinafter the “Contractor”), on the other hand.

1. LEGAL STATUS OF THE PARTIES: UNDP and the Contractor shall be referred to as a “Party” or, collectively, “Parties” hereunder, and:

1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* UNDP, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. OBLIGATIONS OF THE CONTRACTOR:

2.1 The Contractor shall perform and complete the services described in the Terms of Reference and Schedule of Payments (hereinafter the “Services”), with due diligence and efficiency, and in accordance with this Contract. The Contractor shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory performance of the Services.

2.2 The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract, in accordance with the highest industry and professional standards.

2.3 All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the provision of the Services.

3. LONG TERM AGREEMENT: If the Contractor is engaged by UNDP on the basis of a long-term agreement (“LTA”) as indicated in the Face Sheet of this Contract, the following conditions shall apply:

3.1 UNDP does not warrant that any quantity of Services shall be ordered during the term of the LTA.

3.2 Any UNDP business unit, including, but not limited to, a Headquarters unit, a Country Office or a Regional Centre, as well as any United Nations entity, may benefit from the retainer and order Services from the Contractor hereunder.

3.3 The Contractor shall provide the Services, as and when requested by UNDP and reflected in a purchase order, which shall be subject to the terms and conditions stipulated in this Contract. For the avoidance of doubt, UNDP shall acquire no legal obligations towards the Contractor unless and until a purchase order is issued.

3.4 The Services shall be at the Discount Prices annexed hereto. The prices shall remain in effect for a period of three years from the Starting Date stated in the Face Sheet of this Contract.

3.5 In the event of any advantageous technical changes and/or downward pricing of the Services during the term of the retainer, the Contractor shall notify UNDP immediately. UNDP shall consider the impact of any such event and may request an amendment to the retainer.

3.6 The Contractor shall report semi-annually to UNDP on the Services provided, unless otherwise specified in the Contract. Each report should be submitted to the UNDP Contact Person indicated in as indicated in the Face Sheet hereto, as well as to a UNDP business unit that has placed a purchase order for the Services during the reporting period.

3.7 The LTA shall remain in force for the maximum period of two years and may be extended by UNDP for one additional year by mutual agreement of the Parties.

4. PRICE AND PAYMENT:

4.1 FIXED PRICE: If Fixed Price is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory provision of the Services, UNDP shall pay the Contractor a fixed amount indicated in the Face Sheet of this Contract.

4.1.1 The amount stated in the Face Sheet of this Contract is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the Contract.

4.1.2 UNDP shall effect payments to the Contractor in the amounts and pursuant to the schedule of payments set forth in the Terms of Reference and Schedule of Payments, upon completion by the Contractor of the corresponding deliverable(s) and upon acceptance by UNDP of the original invoices submitted by the Contractor to the UNDP Contact Person indicated in the Face Sheet of this Contract, together with whatever supporting documentation that may be required by UNDP:

4.1.3 Invoices shall indicate a deliverable completed and the corresponding amount payable.

4.1.4 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor’s provision of the Services.

4.2 COST REIMBURSEMENT: If Cost Reimbursement is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory provision of the Services under this Contract, UNDP shall pay the Contractor an amount not exceeding the total amount stated in the Face Sheet of this Contract.

4.2.1 The said amount is the maximum total amount of reimbursable costs under this Contract. The breakdown of costs contained in the Financial Proposal, referred to in the Face Sheet to this Contract shall specify the maximum amount per each cost category that is reimbursable under this Contract. The Contractor shall specify in its invoices or financial reports (as required by UNDP) the amount of the actual reimbursable costs incurred in the provision of the Services.

4.2.2 The Contractor shall not provide the Services or equipment, materials and supplies that may result in any costs in excess of the amount stated in the Face Sheet of this Contract, or of the maximum amount per each cost category specified in the breakdown of costs contained in the Financial Proposal, without the prior written agreement of the UNDP Contact Person.

4.2.3 The Contractor shall submit original invoices or financial reports (as required by UNDP) for the Services provided in accordance with the schedule set forth in the Terms of Reference and Schedule of Payments. Such invoices or financial reports shall indicate a deliverable or deliverables completed and the corresponding amount payable. They shall be submitted to the UNDP Contact Person, together with whatever supporting documentation of the actual costs incurred that is required in the Financial Proposal, or may be required by UNDP.

4.2.4 UNDP shall effect payments to the Contractor upon completion by the Contractor of the deliverable(s) indicated in the original invoices or financial reports (as required by UNDP) and upon acceptance of these invoices or financial reports by UNDP. Such payments shall be subject to any specific conditions for reimbursement specified in the breakdown of costs contained in the Financial Proposal.

4.2.5 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's performance of the Services.

5. ADVANCE PAYMENT:

5.1 If an advance payment is due to the Contractor pursuant to the Face Sheet of this Contract, the Contractor shall submit an original invoice for the amount of that advance payment upon signature of this Contract by the Parties.

5.2 If an advance payment representing 20% or more of the total contract value, or amounting to US\$30,000 or more, is to be made by UNDP upon signature of the Contract by the Parties, such payment shall be contingent upon receipt and acceptance by UNDP of a bank guarantee or a certified cheque for the full amount of the advance payment, valid for the duration of the Contract, and in a form acceptable to UNDP.

6. SUBMISSION OF INVOICES AND REPORTS:

6.1 All original invoices, financial reports and any other reports and supporting documentation required under this Contract shall be submitted by mail by the Contractor to UNDP Contact Person. Upon request of the Contractor, and subject to approval by UNDP, invoices and financial reports may be submitted to UNDP by fax or email.

6.2 All reports and invoices shall be submitted by the Contractor to the UNDP Contact Person specified in the Face Sheet of this Contract.

7. TIME AND MANNER OF PAYMENT:

7.1 Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an original invoice or advise the Contractor of its non-acceptance within a reasonable time from receipt.

7.2 Where the Services are to be provided, in addition to an invoice, the Contractor shall submit to UNDP a report, describing in detail the Services provided under the Contract during the period of time covered in each report. All reports shall be written in the English language.

8. RESPONSIBILITY FOR EMPLOYEES:

8.1 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.

8.2 The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property. The Contractor shall (i) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the Services are being provided; and (ii) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan. UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth above.

9. 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.

10. SUBCONTRACTING: 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.

11. 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 worker'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.

12. INSURANCE AND LIABILITY:

12.1 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.

12.2 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, disability or death in connection with this Contract.

12.3 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.

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

12.4.1 Name UNDP as additional insured;

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

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

12.5 The Contractor shall, upon request, provide UNDP with satisfactory evidence of the insurance required under this Article 12.

13. ENCUMBRANCES AND 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 to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNDP.

14. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR: Title to any equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the 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, and the Contractor shall be liable to compensate UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

15. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

15.1 Except as is otherwise expressly provided in writing in the Contract, 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 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP.

15.2 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, UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to 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.

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

15.4 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 UNDP, shall be made available for use or inspection by 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.

16. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS: The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship 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 without the written permission of UNDP.

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

17.1 The Recipient shall:

17.1.1 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*,

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

17.2 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 17, the Recipient may disclose Information to:

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

17.2.2 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:

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

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

17.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

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

17.4 UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

17.5 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.

17.6 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.

18. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

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

18.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 19, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

18.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which 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.

19. TERMINATION:

19.1 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 22.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.

19.2 UNDP may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNDP may terminate the Contract without having to provide any justification therefor.

19.3 In the event of any termination of the Contract, no payment shall be due from UNDP to the Contractor except for the Services satisfactorily provided to UNDP in accordance with the requirements of the Contract.

19.4 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, 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 UNDP of the occurrence of any of the above events.

19.5 The provisions of this Article 19 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

20. NON-WAIVER OF RIGHTS: The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

21. NON-EXCLUSIVITY: Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

22. SETTLEMENT OF DISPUTES:

22.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the 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 Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

22.2 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 22.1, 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. 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”) and Article 34 (“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.

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

24. TAX EXEMPTION:

24.1 Article II, 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 restrictions, 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 exemptions of UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

24.2 The Contractor authorizes UNDP to deduct from the Contractor's invoices 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 written 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, and UNDP shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNDP and paid by the Contractor under written protest.

25. MODIFICATIONS: No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing by the duly authorized representatives of the Parties.

26. AUDITS AND INVESTIGATIONS:

26.1 Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by UNDP other than in accordance with the terms and conditions of the Contract.

26.2 UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

26.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

26.4 UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. The Contractor also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the procurement of Goods and/or Services which are the subject of this Contract, shall have direct recourse to the Contractor for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Contract.

27. LIMITATION ON ACTIONS:

27.1 Except with respect to any indemnification obligations in Article 11, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 22.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

27.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

28. ESSENTIAL TERMS: The Contractor acknowledges and agrees that each of the provisions in Articles 29 to 35 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

29. SOURCE OF INSTRUCTIONS: The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all reasonable assistance required by UNDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

30. STANDARDS OF CONDUCT: The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract, or the award thereof, to any representative, official, employee or other agent of UNDP. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In addition, in the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth in the Secretary General's Bulletin ST/SGB/2002/9 of 18 June 2002, entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following:

30.1 The UN Supplier Code of Conduct;

30.2 UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");

30.3 UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

30.4 UNDP Vendor Sanctions Policy; and

30.5 All security directives issued by UNDP.

The Contractor acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at www.undp.org or at <http://www.undp.org/content/undp/en/home/operations/procurement/business/>. In making such

acknowledgement, the Contractor represents and warrants that it is in compliance with the requirements of the foregoing, and will remain in compliance throughout the term of this Contract.

31. OBSERVANCE OF THE LAW: The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNDP, as such obligations are set forth in UNDP vendor registration procedures.

32. CHILD LABOR: The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) 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.

33. MINES: The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

34. SEXUAL EXPLOITATION:

34.1 In the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth in the Secretary-General's bulletin ST/SGB/2003/13 of 9 October 2003, concerning "Special measures for protection from sexual exploitation and sexual abuse." In particular, the Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

34.2 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled 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 reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

34.3 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.

35. ANTI-TERRORISM: The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under the Contract is used to provide support to individuals or entities associated with terrorism and that recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list. This provision must be included in all sub-contracts or sub-agreements entered into under the Contract.

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.



(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

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.

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



(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.

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.