

REQUEST FOR PROPOSAL (RFP)

Ref.: RFP/KRT/18/008

Date: 16 April 2018

RFP: Provision of Internet Services on Long Term Agreement (LTA) Basis .

Dear Sir / Madam:

We kindly request you to submit your Proposal for Provision of Internet Services on Long Term Agreement (LTA) Basis. Please be guided by the form attached hereto as Annex 2, in preparing your Proposal.

Proposals may be submitted on or before the deadline indicated by UNDP in the e-tendering system in the following link: <https://etendering.partneragencies.org>

using your username and password. If you have not registered in the system before, you can register now by logging in using:

Username: event.guest

Password: why2change

.....and follow the registration steps as specified in the system user guide.

You are kindly requested to indicate whether your company intends to submit a Proposal by clicking on "Accept Invitation".

In the course of preparing and submitting your quotation, it shall remain your responsibility to ensure that it submitted into the system by the deadline. The system will automatically block and not accept any bid after the deadline. Kindly ensure that supporting documents required are signed and in the .pdf format, and free from any virus or corrupted files.

Proposals Must be submitted using e-tendering system on or before 08:00 Hours, May 6, 2018,GMT (3+)

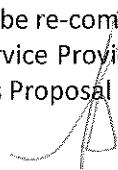
Your Proposal must be expressed in the English, and valid for a minimum period of **90 days**.

In the course of preparing your Proposal, it shall remain your responsibility to ensure that it reaches the address above on or before the deadline. Kindly ensure that they are signed and in the pdf format, and free from any virus or corrupted files.

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements.

The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract. Any offer that does not meet the requirements shall be rejected.

Any discrepancy between the unit price and the total price shall be re-computed by UNDP, and the unit price shall prevail and the total price shall be corrected. If the Service Provider does not accept the final price based on UNDP's re-computation and correction of errors, its Proposal will be rejected.



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 Proposal. 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 Contract or Purchase Order that will be issued as a result of this RFP shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a Proposal implies that the Service Provider accepts without question the General Terms and Conditions of UNDP, herein attached as Annex 5.

Please be advised that UNDP is not bound to accept any Proposal, nor award a contract or Purchase Order, nor be responsible for any costs associated with a Service Providers preparation and submission of a Proposal, regardless of the outcome or the manner of conducting the selection process.

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:

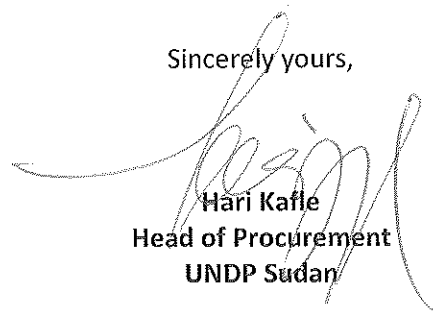
<http://www.undp.org/content/undp/en/home/operations/procurement/protestandsanctions/>

UNDP encourages every prospective Service Provider to prevent and avoid 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, cost estimates, and other information used in this RFP.

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers 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 Proposal.

Sincerely yours,



Hari Kalle
Head of Procurement
UNDP Sudan

Annex 1

Description of Requirements

Context of the Requirement	Provision of Internet Services on Long Term Agreement (LTA) Basis
Implementing Partner of UNDP	UNDP and its projects
Brief Description of the Required Services	Provision of Internet Services on Long Term Agreement (LTA) Basis
List and Description of Expected Outputs to be Delivered	Please see detailed TOR attached to this RFP as <u>Annex 3</u> .
Person to Supervise the Work/Performance of the Service Provider	Requesting units from across UNDP Sudan
Frequency of Reporting	As prescribed in the TOR
Progress Reporting Requirements	Realtime during the service engagement/delivery
Location of work	Khartoum, Sudan, however, occasionally the service provider shall render the services in the field (state) as may be requested.
Expected duration of work	LTA will be signed with the selected service provider for a period of one year, extendable for additional two years, subject to satisfactory performance.
Deadline for Proposal Submission	Saturday, May 05, 2018, before 14: 00 Hrs GMT (3+)
Target start date	01 June 2018
Latest completion date	01 June 2021
Travels Expected	No
Special Security Requirements	The security requirements such as equipment, staff, etc. related to this RFP/assignment will be the sole responsibility of the contractor and shall be included in the Price proposal accordingly.
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	N/A
Implementation Schedule indicating breakdown and timing of activities/sub-activities	After signing of the LTA, Call -offs will be made from LTA each time UNDP requires the services and PO will be issued for each request.
Names and curriculum vitae of individuals who will be involved in completing the services	<ul style="list-style-type: none"> - CVs of proposed staffs, including Team lead for the technical team coordinator who is the focal point from company's side; and - Names of the employees and their role in this project.

Currency of Proposal	<p>USD or SDG, left to the discretion of the bidder to choose from. <u>Note:</u> Payment will be made in the currency in which bid price is quoted</p> <p><u>Exchange Rate for the currency conversion:</u> UN Exchange rate prevailing on the last date of bid closure</p>
Validity Period of Proposals (<i>Counting for the last day of submission of quotes</i>)	<p>90 days</p> <p>In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.</p>
Partial Quotes	Not permitted
Payment Terms	Payment will be made on monthly basis upon satisfactory provision of services in the TOR. The Contractor will submit a monthly invoice and a service report. This monthly invoice and report will be certified by UNDP for effecting payment.
Condition for Payment Release	<p>Within thirty (30) days from the date of meeting the following conditions:</p> <ol style="list-style-type: none"> UNDP's written acceptance (i.e., not mere receipt) of the quality of the outputs; and Receipt of invoice from the Service Provider.
Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	Representative of Requesting unit- UNDP
Type of Contract to be Signed	<p>Long Term Agreement (LTA).</p> <p>Purchase Order (PO) will be issued for service request as necessary serving as a binding document for work order and payment processing.</p>
Criteria for Contract Award	<p><input checked="" type="checkbox"/> Technically Qualified Lowest Bid (applying the criteria for the assessment of Proposal); and</p> <p><input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criterion and cannot be deleted regardless of the nature of services required. Non-acceptance of the GTC may be grounds for the rejection of the Proposal.</p>
Criteria for the Assessment of Proposal	<p>TOTAL MARKS = 1,000 (pass marks = 700 marks)</p> <p><u>Technical Proposal (1,000 points)</u></p> <p><input checked="" type="checkbox"/> As stated in the Evaluation Criteria</p> <p><u>Financial Proposal (no points)</u></p> <p>No marks. Lowest Bidder from among the technically qualified bid will be selected.</p>
UNDP will award the contract to:	<input checked="" type="checkbox"/> One or more than one Service Provider who is/are the most responsive bidders and whose proposal meets the UNDP need.
Annexes to this RFP	<p><input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2)</p> <p><input checked="" type="checkbox"/> Detailed TOR (Annex 3)</p> <p><input checked="" type="checkbox"/> Price Schedule (Annex 4)</p> <p><input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 5)</p>

Address and manner for submission	<p>Proposals must be submitted using e-tendering system</p> <p>Website:</p> <p>https://etendering.partneragencies.org</p> <p>Event ID: 0000002244</p>
Contact Person for Inquiries (Written inquiries only)	<p>Bidders requesting clarification of any of the items, technical requirements, or conditions stipulated in this RFP shall communicate in writing with UNDP office at inquiry.procurement.sd@undp.org</p> <p>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.</p>
Document Requirement	<ul style="list-style-type: none"> ✓ Company Profile, which should not exceed fifteen (15) pages, including printed brochures and product catalogues relevant to the goods/services being procured ✓ Certificate of Registration of the business, including License/approval for operating in Sudan for international bidders; ✓ List of top 3 Clients currently being served; ✓ Audited Financial Reports of the company for the last 2 years ✓ Team Structure of the company that is dedicated to UNDP Internet Service provision
Other documents that may be Submitted to Establish Eligibility	<p>License/Permit obtained from the Government of Sudan to operate in the Country [It is a MUST for International Bidders]</p>
Other Information	<p>Provide all information regarding any past and current litigation during the past 3 years, in which the Bidder is involved, indicating the parties concerned, the subject of litigation, the amount, and the final resolution of already concluded, if any.</p>



FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL

(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery¹)

[insert: Location].

[insert: Date]

To: Head of Procurement Unit

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 _____, 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) Company Profile – describing the nature of business, field of expertise, licenses, certifications, accreditations - **Mandatory**;*
- b) Business Licenses – Registration Papers/Certificate, **Mandatory***
- c) Track Record – list of clients (3 top clients) for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contact references- **Mandatory**;*
- d) Certificates and Accreditation – including Quality Certificates, Patent Registrations...etc., if any*
- e) 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, **Mandatory**.*
- f) Joint Venture Agreement: In case the offer is proposed by more than one company: **Mandatory if JV is an applicant, no need if single company applies***

B. Proposed Methodology for the Completion of Services

The Service Provider must describe how it will address/deliver the demand 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

It is required by the RFP, the Service Provider must provide:

- a) Names and qualifications of the key personnel, i.e. Interpreters and Coordinator, that will perform the services indicating their titles in accordance with the attached ToR;*
- b) CVs of the proposed team, i.e. Interpreters and Coordinator demonstrating their qualifications must be submitted;*
- c) Written confirmation from each personnel that they are available for the entire duration of the contract.*

¹ Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

Annex 3
Terms of Reference (TOR)
Internet Service Provision UNDP Sudan Sub/project Offices
On Long Term Agreement (LTA) Basis

BACKGROUND:

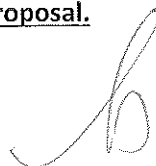
The Terms of Reference aims to provide a framework for full TCP/IP Dedicated Internet Service Provision for the UNDP Sudan Country Office. The internet should be CIR on fixed monthly fee. Connection should be fiber-optic; *wireless solutions will not be accepted*. The service is expected to be **highly stable and reliable**. The successful provider must have (24/7/365) coverage for technical assistance and/or helpdesk facilities.

OBJECTIVE:

The objective of the RFP is to identify the internet service provider who will be able to render the 24/7 uninterrupted internet services to UNDP Sudan, whose main office is located in Gama's Avenue, Khartoum Sudan but the services can be extended to other UNPP and other UN agencies locations within Sudan. The service standards shall meet the specifications mentioned in the ToR.

TECHNICAL REQUIREMENT:

- Connection should be of cable type fiber-optic; wireless solutions will not be accepted;
- No limitations on traffic/ports; bandwidth capacity should be ensured through direct IP connection; no intermediate proxy servers and firewalls;
- One subnets of static public IP addresses is required: one subnet with at least 126 addresses;
- Speed requirement: Providers to quote for the different internet speed in Table-A;
- Service reliability must be ensured. Overall uptime should not be less than 99%. Vendor is responsible to ensure alternative backup connection if primary Internet link fail;
- All necessary software should be provided and configured/setup by the successful bidder.
- The successful bidder must have (24/7/365) coverage for technical assistance and/or helpdesk facilities.
- Under the normal circumstances all problems should be resolved within maximum 24 hours after the notification from UNDP received;
- The successful bidder is also responsible for contacting designated UNDP network specialist(s) for both scheduled and un-scheduled downtime. Detailed description of the helpdesk support must be included in proposal;
- The bidder is required to describe what alternate routing or fallback arrangements for continuity of service he/she has in place (if any), should the primary link(s) to the Internet backbone become non-operational;
- The selected provider must provide a web interface facility for UNDP to retrieve real time and historical information on network performance, utilization, and usage analysis. **Samples of the web statistics to be provided must be included in the Proposal.**



COMMERCIAL REQUIREMENTS:

- Internet service should be based on fixed monthly fee payment plan with no additional payment or limitation by traffic amount and time.
- All necessary hardware, cabling and software (if required for Internet service) should be provided and set up by the provider;
- The successful provider must have (24/7/365) coverage for technical assistance and/or helpdesk facilities. Under the normal circumstances all problems should be resolved within maximum 24 hours after the notification from UNDP received. The provider is also responsible for contacting designated UNDP network specialist(s) for both scheduled and un-scheduled downtime. Detailed description of the helpdesk support must be included in Proposal.
- The successful bidder should ensure the satisfactory performance and stability of the connectivity at all times (24 hrs.) and seasons regardless of the security situation.
- Provider to fully detail the One Time Cost (OTC) if any.

All installation works should be accomplished and connection, if needed, launched within 15 days after the signing of the Contract.

QUALIFICATION REQUIREMENTS:

Company: To meet the technical evaluation criteria in the Technical Evaluation Matrix (Form 1 and Form 2) above.

UNDP needs the following qualifications from the potential service provider:

Proposed Technical Staff (Technical Evaluation Matrix (Form 3) above:

- Qualified and experienced experts in system administration, working under the general supervision and guidance of the department and / or company manager and in cooperation and under the guidance of UNDP assigned focal point.
- Solid experience of 5 years in the provision of internet services in Sudan with proven track record of providing satisfactory services to its clients in Sudan. Evidences of contracts are required; references from other clients are welcome.

Table-A: Internet Bandwidth should be CIR and symmetric for the following speed:

Speed
1Mbps
2Mbps
4Mbps
6Mbps
8Mbps
10Mbps
12Mbps
14Mbps
16Mbps
18Mbps
20Mbps
22Mbps
24Mbps

1. Monitoring and reporting:

The successful bidder must provide a web interface facility for UNDP to retrieve real time and historical information on network performance, utilization, and usage analysis. Samples of the web statistics to be provided must be included in the Proposal.

2. Additional Notes

- UNDP may wish to visit the vendor's Network Operations Centre;
- Based on the Trend Analysis of the Past, maximum expenditure expected over the entire period of LTA (3 years) is around SDG 1,728,000 or USD 278,710.00 This figure is provided to the bidders to understand the scope of the work and to be able to calculate the actual price offer. This is not the LTA or Contract price but rather an indicative figure to guide the bidders to derive their price proposal. This is NOT LTA or Contract Price.

A. Duration of the Contract:

LTA: UNDP will sign a Long-term Agreement initially for a period of one year. Depending on the performance standards, it may be extended for maximum of 3 years if performance of contractor is found to be satisfactory;

Contract: From the Long-Term Agreement (LTA), the initial contract will be signed for a period of 1 year, which will be professional Services Contract. Depending on the quality standard and satisfactory performance both of the company and its staff, contract may be extended for further period of 2 years.

B. Selection Criteria of the Company:

UNDP evaluates the proposal based on the evaluation criteria mentioned in the Bid Data Sheet, Serial Number 32 of the Request for Proposal, of which the ToR is a part. The offers will be evaluated using Technically Qualified Lowest Priced Bid, (Bid Data Sheet Serial Number 25).

Award Criteria:

- Technically Qualified Lowest Priced Bid. Proposal shall be considered technically qualified if it achieves minimum 70% or more;
- Financial proposals of only technically qualified bidders will be opened and evaluated.
- Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criterion and cannot be deleted regardless of the nature of services required. Non-acceptance of the GTC may be grounds for the rejection of the Proposal.



KEY PERFORMANCE INDICATORS:

Performance Indicators	Excellent	Satisfactory	Unsatisfactory	Minimum Acceptable Standard
DURING LTA VALIDITY:				
Vendors Performance	Vendor is readily available for discussions at all times and is able to fulfill the conditions of LTAs smoothly	Vendor is normally available for discussions and most of the times is able to fulfill the conditions of LTA smoothly	Vendor is normally unavailable for discussions and most of the times unable to fulfill the conditions of LTAs	Satisfactory
DURING CONTRACT IMPLEMENTATION:				
Complaint Handling (<i>in line with those mentioned in Technical criteria</i>)	The technical staffs are available to fix the complained problem within 1 hour from complaints lodging during the month	The technical staffs are generally available to fix the problem lodged with one or two exceptions where follow up needed during the month	The technical staff are available to fix the problem only upon too many follow up calls/email during the month	Satisfactory
Internet Connectivity and Speed Standards	There is no connectivity problem encountered during the month, speed is in commensurate with the one specified in the TOR	There is only one or two connectivity problem encountered during the month, speed is in commensurate with the one specified in the TOR, problem rectified within 1 hour from complaints lodging	There is frequent problem in the internet connectivity during the month, with low speed and too many follow ups required to correct the problem.	Satisfactory
Skills of the Company Technical staff	Right technical skills, knowledge, tools and techniques applied at all times, with no complaints by UNDP ICT Unit during the month	Right technical skills, knowledge, tools and techniques applied most of the times, with an exception to one or two instances during the month	Appropriate technical skills, knowledge, tools and techniques applied only in few instances, with an exception of one or two instances during the month.	Satisfactory
Repetition of unsatisfactory performance for more than 3 times a month despite feedback during the contract management meeting may lead to LTA/Contract termination.				

Technical Evaluation Criteria

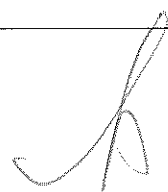
Summary of Technical Proposal Evaluation Forms		Score Weight	Points Obtainable
Form 1.	Expertise of Firm / Organization submitting Proposal	40	400
Form 2.	Proposed Work Plan and Approach	45	450
Form 3.	Management Structure and Key Staff	15	150
		Total	1,000

Technical Proposal Evaluation		Maximum Obtainable Points
Form 1: Expertise of firm / organization submitting Proposal		
1.1	The bidders should provide the company registration and should be licensed from National Telecommunication Corporation Sudan (NTC) to operate such service in Sudan. 1. Company registration: 50 2. Is the company permitted to operate such services in Sudan by NTC: - Yes: 100 points - No: 0 point	150
1.2	Company's reputation. Competence, reliability and experience	50
1.3	Similar contracts (similar by scope, nature and amount), preferably with UN, international/ intergovernmental organizations. Evidences of contracts are required; references from other clients are highly welcomed. 1. Number of contracts - Number of contract 3 or more: 70 points - Number of contract 1-2: 40 points 2. UN or Equivalent organization experience - Work for UN/major multilateral/or bilateral programs: 30 points	100
1.4	Company profile showing company's facilities, equipment, resources, offices/agents/affiliates, network and services	50
1.5	Quality assurance procedures (please demonstrate how your organization will achieve quality)	50
Total		400

Technical Proposal Evaluation		Maximum Obtainable Points
Form 2: Proposed Work Plan and Approach		
2.1	To what degree does the Offeror understand the task?	50
2.2	Have the important aspects of the task been addressed in sufficient detail? Yes: 50 points No: 0 point	50
2.3	Is the scope of task well defined and does it correspond to the TOR? Yes: 100 points No: 0 point	100
2.4	Providing web interface facility for UNDP to retrieve real time and historical information on network performance, utilization and usage analysis. <u>Samples of the web statistics to be provided must be included in the Proposal.</u>	70

2.5	No limitations on traffic/ports; bandwidth capacity should be ensured through direct IP connection; no intermediate proxy servers and firewalls Yes: 100 points No: 0 point	100
2.6	Allow full read only access to SNMP to all equipment that relates to UNDP. Yes: 50 points No: 0 point	50
2.7	Installation timeline - 15 Days or less: 30 points - More than 15 days: 0 point	30
Total		450

Technical Proposal Evaluation		Maximum Obtainable Points
Form 3: Management Structure and Key Staff		
3.1	Management Structure: Please include an Organization Chart for the management of the project describing the relationship of key positions and designations within your Organization	50
3.2	Helpdesk/Call Centre Staff: - Number of staff 3-5: 50 points - Number of staff 1-2 : 25 points	50
3.3	Technical support staff: - Number of staff 5-10: 50 points - Number of staff 3-5 : 25 points Number of staff 1-2: 10 points	50
Total		150



Price Proposal

[Please quote the price in the choice of your currency (USD or SDG). Also note that UNDP makes the payment to the selected contractor in the same contract currency as of the bid currency].

The Proposer is required to prepare the Financial Proposal in separate attached from the rest of the RFP as indicated in the Instruction to Proposers.

The Price Schedule must provide separately a detailed cost breakdown for 1 (one) year. Provide separate figures for each functional grouping or category.

If proposal submission in hard copy, please also provide the information in soft copy (CD)

Cost Breakdown by CIR and Bandwidth:

The Proposers are requested to provide the cost breakdown based on the format provided below in Table-A. The internet should be CIR and Symmetric.

Table-A: Price Proposal Matrix:

Internet Speed	Price (Amount)	
	(Sudanese Pound)	US Dollar
1Mbps		
2Mbps		
4Mbps		
6Mbps		
8Mbps		
10Mbps		
12Mbps		
14Mbps		
16Mbps		
18Mbps		
20Mbps		
22Mbps		
Cost of Internet Cable, cost of connectivity, installation, and cost Civil Works to complete the internet connectivity job- lumpsum		

Please check the appropriate box below, failing to comply to which the price proposal will be considered invalid:

- () Offer% of discount on monthly invoice;
- () The above quoted will remain fixed for the entire LTA period of 3 years;
- () The price will remain fixed as quoted above for a period of 2 years. It will change in the third year in accordance with revised price schedule by the company. The company should provide the revised price to UNDP as soon as it takes place;
- () The price will remain fixed as quoted above for a period of 1 year. It will change in the 2nd and 3rd year depending on the revised price schedule by the company. The company will provide the revised price to UNDP as soon as it takes place.

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

[Designation]

[Date]

General Terms and Conditions for Services

1.0 LEGAL STATUS:

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

2.0 SOURCE OF INSTRUCTIONS:

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

3.0 CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:

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

4.0 ASSIGNMENT:

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

5.0 SUB-CONTRACTING:

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

6.0 OFFICIALS NOT TO BENEFIT:

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

7.0 INDEMNIFICATION:

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

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:

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

- 8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:
- 8.4.1 Name UNDP as additional insured;
 - 8.4.2 Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;
 - 8.4.3 Provide that the UNDP shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- 8.5 The Contractor shall, upon request, provide the UNDP with satisfactory evidence of the insurance required under this Article.

9.0 ENCUMBRANCES/LIENS:

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

10.0 TITLE TO EQUIPMENT:

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

11.0 COPYRIGHT, PATENTS, AND OTHER PROPRIETARY RIGHTS:

- 11.1 Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.
- 11.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

11.3 At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents, and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.

11.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

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

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

13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

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

13.1 The recipient ("Recipient") of such information shall:

13.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

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

13.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:

13.2.1 Any other party with the Discloser's prior written consent; and,

13.2.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employee's officials, representatives and agents of any legal entity that it controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

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

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

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

13.3 The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

- 13.4 The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions, or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5 The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

- 14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the UNDP shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.
- 14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.
- 14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 14.4 The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

15.0 TERMINATION

- 15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.
- 15.2 UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.
- 15.3 In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

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

16.0 SETTLEMENT OF DISPUTES

- 16.1 **Amicable Settlement:** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.
- 16.2 **Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

17.0 PRIVILEGES AND IMMUNITIES:

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

18.0 TAX EXEMPTION

- 18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.
- 18.2 Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event,

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

19.0 CHILD LABOUR

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

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

20.0 MINES:

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

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

21.0 OBSERVANCE OF THE LAW:

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

22.0 SEXUAL EXPLOITATION:

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

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

23.0 AUTHORITY TO MODIFY:

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the Contractor and jointly by the UNDP Authorized Official.