

# **REQUEST FOR PROPOSALS (RFPMAR2018/006)**

**Supervision of works ‘ Rehabilitation of Mon Choisy Public beach  
and installation of artificial reef’**

**under the**

**AFB funded ‘Climate Change Adaptation Programme in the Coastal  
Zone of the Republic of Mauritius’ project**

**Mauritius**



**United Nations Development Programme**

**31 May 2018**

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## Section 1. Letter of Invitation

Date: 31 May 2018

**RFPMAR2018/006 for the Supervision of works ' Rehabilitation of Mon Choisy Public beach and installation of artificial reef'**

Dear Mr./Ms.:

The United Nations Development Programme (UNDP) hereby invites you to submit a Proposal to this Request for Proposal (RFP) for the above-referenced subject.

This RFP includes the following documents:

- Section 1 – This Letter of Invitation
- Section 2 – Instructions to Proposers (including Data Sheet)
- Section 3 – Terms of Reference
- Section 4 – Proposal Submission Form
- Section 5 – Documents Establishing the Eligibility and Qualifications of the Proposer
- Section 6 – Technical Proposal Form
- Section 7 – Financial Proposal Form
- Section 8 – Fact Sheet, including General Terms and Conditions

Your offer, comprising a Technical and Financial Proposal, in separate sealed envelopes, should be submitted in accordance with Section 2. Please note that UNDP condition of contract contained in this offer will not be modifiable pre or post to award of tender. **Negotiation will not be allowed.**

You are kindly requested to submit an acknowledgment letter to UNDP to the following address:

UNDP Mauritius and Seychelles Country Office  
6th Floor, Anglo Mauritius House  
Intendance Street  
P.O Box 253  
Port Louis  
Mauritius  
Tel: (+230) 212 3726  
Fax: (+230) 208 4871  
Email: registry.mu@undp.org  
Attention: The Head of Environment Unit

The letter should be received by UNDP no later than *08 June 2018, 16 00 hrs local time*. The same letter should advise whether your company intends to submit a Proposal. If that is not the case, UNDP would appreciate your indicating the reason, for our records.

If you have received this RFP through a direct invitation by UNDP, transferring this invitation to another firm requires your written notification to UNDP of such transfer and the name of the company to whom the invitation was forwarded.

Should you require further clarifications, kindly communicate with the contact person identified

in the attached Data Sheet as the focal person for queries on this RFP.

UNDP looks forward to receiving your Proposal and thanks you in advance for your interest in UNDP procurement opportunities.

Yours sincerely,

*Chantal Anthony, Operations Manager a.i.*

## Section 2: Instruction to Proposers

### Definitions

- a) *“Contract”* refers to the agreement that will be signed by and between the UNDP and the successful proposer, all the attached documents thereto, including the General Terms and Conditions (GTC) and the Appendices.
- b) *“Country”* refers to the country indicated in the Data Sheet.
- c) *“Data Sheet”* refers to such part of the Instructions to Proposers used to reflect conditions of the tendering process that are specific for the requirements of the RFP.
- d) *“Day”* refers to calendar day.
- e) *“Government”* refers to the Government of the country that will be receiving the services provided/rendered specified under the Contract.
- f) *“Instructions to Proposers”* (Section 2 of the RFP) refers to the complete set of documents that provides Proposers with all information needed and procedures to be followed in the course of preparing their Proposals
- g) *“LOI”* (Section 1 of the RFP) refers to the Letter of Invitation sent by UNDP to Proposers.
- h) *“Material Deviation”* refers to any contents or characteristics of the proposal that is significantly different from an essential aspect or requirement of the RFP, and: (i) substantially alters the scope and quality of the requirements; (ii) limits the rights of UNDP and/or the obligations of the offeror; and (iii) adversely impacts the fairness and principles of the procurement process, such as those that compromise the competitive position of other offerors.
- i) *“Proposal”* refers to the Proposer’s response to the Request for Proposal, including the Proposal Submission Form, Technical and Financial Proposal and all other documentation attached thereto as required by the RFP.
- j) *“Proposer”* refers to any legal entity that may submit, or has submitted, a Proposal for the provision of services requested by UNDP through this RFP.
- k) *“RFP”* refers to the Request for Proposals consisting of instructions and references prepared by UNDP for purposes of selecting the best service provider to perform the services described in the Terms of Reference.
- l) *“Services”* refers to the entire scope of tasks and deliverables requested by UNDP under the RFP.
- m) *“Supplemental Information to the RFP”* refers to a written communication issued by UNDP to prospective Proposers containing clarifications, responses to queries received from prospective Proposers, or changes to be made in the RFP, at any time after the release of the RFP but before the deadline for the submission of Proposals.

- n) *“Terms of Reference”* (TOR) refers to the document included in this RFP as Section 3 which describes the objectives, scope of services, activities, tasks to be performed, respective responsibilities of the proposer, expected results and deliverables and other data pertinent to the performance of the range of duties and services expected of the successful proposer.

## A. GENERAL

1. UNDP hereby solicits Proposals in response to this Request for Proposal (RFP). Proposers must strictly adhere to all the requirements of this RFP. No changes, substitutions or other alterations to the rules and provisions stipulated in this RFP may be made or assumed unless it is instructed or approved in writing by UNDP in the form of Supplemental Information to the RFP.
2. Submission of a Proposal shall be deemed as an acknowledgement by the Proposer that all obligations stipulated by this RFP will be met and, unless specified otherwise, the Proposer has read, understood and agreed to all the instructions in this RFP.
3. Any Proposal submitted will be regarded as an offer by the Proposer and does not constitute or imply the acceptance of any Proposal by UNDP. UNDP is under no obligation to award a contract to any Proposer as a result of this RFP.
4. UNDP implements a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical practices, and obstruction. UNDP is committed to preventing, identifying and addressing all acts of fraud and corrupt practices against UNDP as well as third parties involved in UNDP activities. (See [http://www.undp.org/about/transparencypdocs/UNDP\\_Anti\\_Fraud\\_Policy\\_English\\_FINAL\\_june\\_2011.pdf](http://www.undp.org/about/transparencypdocs/UNDP_Anti_Fraud_Policy_English_FINAL_june_2011.pdf) and [http://www.undp.org/content/undp/en/home/operations/procurement/procurement\\_protection/](http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protection/) for full description of the policies)
5. In responding to this RFP, UNDP requires all Proposers to conduct themselves in a professional, objective and impartial manner, and they must at all times hold UNDP's interests paramount. Proposers must strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. All Proposers found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Proposers, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this solicitation process, if they:
  - 5.1 Are or have been associated in the past, with a firm or any of its affiliates which have been engaged UNDP to provide services for the preparation of the design, specifications, Terms of Reference, cost analysis/estimation, and other documents to be used for the procurement of the goods and services in this selection process;
  - 5.2 Were involved in the preparation and/or design of the programme/project related to the services requested under this RFP; or
  - 5.3 Are found to be in conflict for any other reason, as may be established by, or at the discretion of, UNDP.

In the event of any uncertainty in the interpretation of what is potentially a conflict of interest, proposers must disclose the condition to UNDP and seek UNDP's confirmation on whether or not such conflict exists.

6. Similarly, the Proposers must disclose in their proposal their knowledge of the following :
  - 6.1 That they are owners, part-owners, officers, directors, controlling shareholders, or they have key personnel who are family of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving services under this RFP; and
  - 6.2 All other circumstances that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.

Failure of such disclosure may result in the rejection of the proposal or proposals affected by the non-disclosure.

7. The eligibility of Proposers that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered as an independent entity, the extent of Government ownership/share, receipt of subsidies, mandate, access to information in relation to this RFP, and others that may lead to undue advantage against other Proposers, and the eventual rejection of the Proposal.
8. All Proposers must adhere to the UNDP Supplier Code of Conduct, which may be found at this link: <http://web.ng.undp.org/procurement/undp-supplier-code-of-conduct.pdf>

## **B. CONTENTS OF PROPOSAL**

### **9. Sections of Proposal**

Proposers are required to complete, sign and submit the following documents:

- 9.1 Proposal Submission Cover Letter Form (see RFP Section 4);
- 9.2 Documents Establishing the Eligibility and Qualifications of the Proposer (see RFP Section 5);
- 9.3 Technical Proposal (see prescribed form in RFP Section 6);
- 9.4 Financial Proposal (see prescribed form in RFP Section 7);
- 9.5 Proposal Security, if applicable (if required and as stated in the **Data Sheet** (DS nos. 9-11), see prescribed Form in RFP Section 8);
- 9.6 Any attachments and/or appendices to the Proposal.

## 10. Clarification of Proposal

- 10.1 Proposers may request clarifications of any of the RFP documents no later than the date indicated in the **Data Sheet** (DS no. 16) prior to the proposal submission date. Any request for clarification must be sent in writing via courier or through electronic means to the UNDP address indicated in the **Data Sheet** (DS no. 17). UNDP will respond in writing, transmitted by electronic means and will transmit copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Proposers who have provided confirmation of their intention to submit a Proposal.
- 10.2 UNDP shall endeavor to provide such responses to clarifications in an expeditious manner, but any delay in such response shall not cause an obligation on the part of UNDP to extend the submission date of the Proposals, unless UNDP deems that such an extension is justified and necessary.

## 11. Amendment of Proposals

- 11.1 At any time prior to the deadline of Proposal submission, UNDP may for any reason, such as in response to a clarification requested by a Proposer, modify the RFP in the form of a Supplemental Information to the RFP. All prospective Proposers will be notified in writing of all changes/amendments and additional instructions through Supplemental Information to the RFP and through the method specified in the **Data Sheet** (DS No. 18).
- 11.2 In order to afford prospective Proposers reasonable time to consider the amendments in preparing their Proposals, UNDP may, at its discretion, extend the deadline for submission of Proposals, if the nature of the amendment to the RFP justifies such an extension.

## C. PREPARATION OF PROPOSALS

### 12. Cost

The Proposer shall bear any and all costs related to the preparation and/or submission of the Proposal, regardless of whether its Proposal was selected or not. UNDP shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

### 13. Language

The Proposal, as well as any and all related correspondence exchanged by the Proposer and UNDP, shall be written in the language (s) specified in the **Data Sheet** (DS No 4). Any printed literature furnished by the Proposer written in a language other than the language indicated in the **Data Sheet**, must be accompanied by a translation in the preferred language indicated in the **Data Sheet**. For purposes of interpretation of the Proposal, and in the event of discrepancy or inconsistency in meaning, the version translated into the preferred language shall govern. Upon conclusion of a contract, the language of the contract shall govern the relationship between the contractor and UNDP.

### 14. Proposal Submission Form



The Proposer shall submit the Proposal Submission Form using the form provided in Section 4 of this RFP.

## 15. Technical Proposal Format and Content

Unless otherwise stated in the **Data Sheet** (DS no. 28), the Proposer shall structure the Technical Proposal as follows:

- 15.1 Expertise of Firm/Organization – this section should provide details regarding management structure of the organization, organizational capability/resources, and experience of organization/firm, the list of projects/contracts (both completed and on-going, both domestic and international) which are related or similar in nature to the requirements of the RFP, and proof of financial stability and adequacy of resources to complete the services required by the RFP (see RFP clause 18 and DS No. 26 for further details). The same shall apply to any other entity participating in the RFP as a Joint Venture or Consortium.
- 15.2 Proposed Methodology, Approach and Implementation Plan – this section should demonstrate the Proposer's response to the Terms of Reference by identifying the specific components proposed, how the requirements shall be addressed, as specified, point by point; providing a detailed description of the essential performance characteristics proposed; identifying the works/portions of the work that will be subcontracted; and demonstrating how the proposed methodology meets or exceeds the specifications, while ensuring appropriateness of the approach to the local conditions and the rest of the project operating environment. This methodology must be laid out in an implementation timetable that is within the duration of the contract as specified in the **Data Sheet** (DS nos. 29 and 30).

Proposers must be fully aware that the products or services that UNDP requires may be transferred, immediately or eventually, by UNDP to the Government partners, or to an entity nominated by the latter, in accordance with UNDP's policies and procedures. All proposers are therefore required to submit the following in their proposals:

- a) A statement of whether any import or export licences are required in respect of the goods to be purchased or services to be rendered, including any restrictions in the country of origin, use or dual use nature of the goods or services, including any disposition to end users; and
  - b) Confirmation that the Proposer has obtained license of this nature in the past, and have an expectation of obtaining all the necessary licenses, should their Proposal be rendered the most responsive.
- 15.3 Management Structure and Key Personnel – This section should include the comprehensive curriculum vitae (CVs) of key personnel that will be assigned to support the implementation of the proposed methodology, clearly defining the roles and responsibilities vis-à-vis the proposed methodology. CVs should establish competence and demonstrate qualifications in areas relevant to the TOR.

In complying with this section, the Proposer assures and confirms to UNDP that the personnel being nominated are available for the Contract on the dates proposed. If any of the key personnel later becomes unavailable, except for unavoidable reasons such as death or medical incapacity, among other possibilities, UNDP reserves the right to

consider the proposal non-responsive. Any deliberate substitution arising from unavoidable reasons, including delay in the implementation of the project of programme through no fault of the Proposer shall be made only with UNDP's acceptance of the justification for substitution, and UNDP's approval of the qualification of the replacement who shall be either of equal or superior credentials as the one being replaced.

15.4 Where the **Data Sheet** requires the submission of the Proposal Security, the Proposal Security shall be included along with the Technical Proposal. The Proposal Security may be forfeited by UNDP, and reject the Proposal, in the event of any or any combination of the following conditions:

- a) If the Proposer withdraws its offer during the period of the Proposal Validity specified in the **Data Sheet** (DS no. 11), or;
- b) If the Proposal Security amount is found to be less than what is required by UNDP as indicated in the **Data Sheet** (DS no. 9), or;
- c) In the case the successful Proposer fails:
  - i. to sign the Contract after UNDP has awarded it;
  - ii. to comply with UNDP's variation of requirement, as per RFP clause 35; or
  - iii. to furnish Performance Security, insurances, or other documents that UNDP may require as a condition to rendering the effectivity of the contract that may be awarded to the Proposer.

## 16. Financial Proposals

The Financial Proposal shall be prepared using the attached standard form (Section 7). It shall list all major cost components associated with the services, and the detailed breakdown of such costs. All outputs and activities described in the Technical Proposal must be priced separately on a one-to-one correspondence. Any output and activities described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, as well as in the final total price.

## 17. Currencies

All prices shall be quoted in the currency indicated in the **Data Sheet** (DS no. 15). However, where Proposals are quoted in different currencies, for the purposes of comparison of all Proposals:

- a) UNDP will convert the currency quoted in the Proposal into the UNDP preferred currency, in accordance with the prevailing UN operational rate of exchange on the last day of submission of Proposals; and
- b) In the event that the proposal found to be the most responsive to the RFP requirement is quoted in another currency different from the preferred currency as per **Data Sheet** (DS no. 15), then UNDP shall reserve the right to award the contract in the currency of UNDP's preference, using the conversion method specified above.

Proposals submitted by two (2) or more Proposers shall all be rejected if they are found to have any of the following:

- a) they have at least one controlling partner, director or shareholder in common; or

- b) any one of them receive or have received any direct or indirect subsidy from the other/s; or
- c) they have the same legal representative for purposes of this RFP; or
- d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Proposal of, another Proposer regarding this RFP process;
- e) they are subcontractors to each other's Proposal, or a subcontractor to one Proposal also submits another Proposal under its name as lead Proposer; or
- f) an expert proposed to be in the team of one Proposer participates in more than one Proposal received for this RFP process. This condition does not apply to subcontractors being included in more than one Proposal.

## **18. Documents Establishing the Eligibility and Qualifications of the Proposer**

The Proposer shall furnish documentary evidence of its status as an eligible and qualified vendor, using the forms provided under Section 5, Proposer Information Forms. In order to award a contract to a Proposer, its qualifications must be documented to UNDP's satisfaction. These include, but are not limited to, the following:

- a) That, in the case of a Proposer offering to supply goods under the Contract which the Proposer did not manufacture or otherwise produce, the Proposer has been duly authorized by the goods' manufacturer or producer to supply the goods in the country of final destination;
- b) That the Proposer has the financial, technical, and production capability necessary to perform the Contract; and
- c) That, to the best of the Proposer's knowledge, it is not included in the UN 1267/1989 List or the UN Ineligibility List, nor in any and all of UNDP's list of suspended and removed vendors.

## **19. Joint Venture, Consortium or Association**

If the Proposer is a group of legal entities that will form or have formed a joint venture, consortium or association at the time of the submission of the Proposal, they shall confirm in their Proposal that : (i) they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the joint venture jointly and severally, and this shall be duly evidenced by a duly notarized Agreement among the legal entities, which shall be submitted along with the Proposal; and (ii) if they are awarded the contract, the contract shall be entered into, by and between UNDP and the designated lead entity, who shall be acting for and on behalf of all the member entities comprising the joint venture.

After the Proposal has been submitted to UNDP, the lead entity identified to represent the joint venture shall not be altered without the prior written consent of UNDP. Furthermore, neither the lead entity nor the member entities of the joint venture can:

- a) Submit another proposal, either in its own capacity; nor
- b) As a lead entity or a member entity for another joint venture submitting another Proposal.

The description of the organization of the joint venture/consortium/association must clearly define the expected role of each of the entity in the joint venture in delivering the requirements of the RFP, both in the Proposal and the Joint Venture Agreement. All entities

that comprise the joint venture shall be subject to the eligibility and qualification assessment by UNDP.

Where a joint venture is presenting its track record and experience in a similar undertaking as those required in the RFP, it should present such information in the following manner:

- a) Those that were undertaken together by the joint venture; and
- b) Those that were undertaken by the individual entities of the joint venture expected to be involved in the performance of the services defined in the RFP.

Previous contracts completed by individual experts working privately but who are permanently or were temporarily associated with any of the member firms cannot be claimed as the experience of the joint venture or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.

If a joint venture's Proposal is determined by UNDP as the most responsive Proposal that offers the best value for money, UNDP shall award the contract to the joint venture, in the name of its designated lead entity. The lead entity shall sign the contract for and on behalf of all other member entities.

## **20. Alternative Proposals**

Unless otherwise specified in the **Data Sheet** (DS nos. 5 and 6), alternative proposals shall not be considered. Where the conditions for its acceptance are met, or justifications are clearly established, UNDP reserves the right to award a contract based on an alternative proposal.

## **21. Validity Period**

Proposals shall remain valid for the period specified in the **Data Sheet** (DS no. 8), commencing on the submission deadline date also indicated in the **Data Sheet** (DS no. 21). A Proposal valid for a shorter period shall be immediately rejected by UNDP and rendered non-responsive.

In exceptional circumstances, prior to the expiration of the proposal validity period, UNDP may request Proposers to extend the period of validity of their Proposals. The request and the responses shall be made in writing, and shall be considered integral to the Proposal.

## **22. Proposer's Conference**

When appropriate, a proposer's conference will be conducted at the date, time and location specified in the **Data Sheet** (DS no. 7). All Proposers are encouraged to attend. Non-attendance, however, shall not result in disqualification of an interested Proposer. Minutes of the proposer's conference will be either posted on the UNDP website, or disseminated to the individual firms who have registered or expressed interest with the contract, whether or not they attended the conference. No verbal statement made during the conference shall modify the terms and conditions of the RFP unless such statement is specifically written in the Minutes of the Conference, or issued/posted as an amendment in the form of a Supplemental Information to the RFP.

## **D. SUBMISSION AND OPENING OF PROPOSALS**

## 23. Submission

- 23.1 The Financial Proposal and the Technical Proposal Envelopes MUST BE COMPLETELY SEPARATE and each of them must be submitted sealed individually and clearly marked on the outside as either “TECHNICAL PROPOSAL” or “FINANCIAL PROPOSAL”, as appropriate. Each envelope MUST clearly indicate the name of the Proposer. The outer envelopes shall bear the address of UNDP as specified in the **Data Sheet** (DS no.20) and shall include the Proposer’s name and address, as well as a warning that state “*not to be opened before the time and date for proposal opening*” as specified in the **Data Sheet** (DS no. 24). The Proposer shall assume the responsibility for the misplacement or premature opening of Proposals due to improper sealing and labeling by the Proposer.
- 23.2 Proposers must submit their Proposals in the manner specified in the **Data Sheet** (DS nos. 22 and 23). When the Proposals are expected to be in transit for more than 24 hours, the Proposer must ensure that sufficient lead time has been provided in order to comply with UNDP’s deadline for submission. UNDP shall indicate for its record that the official date and time of receiving the Proposal is the actual date and time when the said Proposal has physically arrived at the UNDP premises indicated in the **Data Sheet** (DS no. 20).
- 23.3 Proposers submitting Proposals by mail or by hand shall enclose the original and each copy of the Proposal, in separate sealed envelopes, duly marking each of the envelopes as “Original Proposal” and “Copy of Proposal” as appropriate. The 2 envelopes shall then be sealed in an outer envelope. The number of copies required shall be as specified in the **Data Sheet** (DS No. 19). In the event of any discrepancy between the contents of the “Original Proposal” and the “Copy of Proposal”, the contents of the original shall govern. The original version of the Proposal shall be signed or initialed by the Proposer or person(s) duly authorized to commit the Proposer on every page. The authorization shall be communicated through a document evidencing such authorization issued by the highest official of the firm, or a Power of Attorney, accompanying the Proposal.
- 23.4 Proposers must be aware that the mere act of submission of a Proposal, in and of itself, implies that the Proposer accepts the General Contract Terms and Conditions of UNDP as attached hereto as Section 11.

## 24. Deadline for Submission of Proposals and Late Proposals

Proposals must be received by UNDP at the address and no later than the date and time specified in the **Data Sheet** (DS nos. 20 and 21).

UNDP shall not consider any Proposal that arrives after the deadline for submission of Proposals. Any Proposal received by UNDP after the deadline for submission of Proposals shall be declared late, rejected, and returned unopened to the Proposer.

## 25. Withdrawal, Substitution, and Modification of Proposals

- 25.1 Proposers are expected to have sole responsibility for taking steps to carefully examine in detail the full consistency of its Proposals to the requirements of the RFP, keeping in mind that material deficiencies in providing information requested by

UNDP, or lack clarity in the description of services to be provided, may result in the rejection of the Proposal. The Proposer shall assume the responsibility regarding erroneous interpretations or conclusions made by the Proposer in the course of understanding the RFP out of the set of information furnished by UNDP.

- 25.2 A Proposer may withdraw, substitute or modify its Proposal after it has been submitted by sending a written notice in accordance with Clause 23.1, duly signed by an authorized representative, and shall include a copy of the authorization (or a Power of Attorney). The corresponding substitution or modification of the Proposal must accompany the respective written notice. All notices must be received by UNDP prior to the deadline for submission and submitted in accordance with RFP Clause 23.1 (except that withdrawal notices do not require copies). The respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION".
- 25.3 Proposals requested to be withdrawn shall be returned unopened to the Proposers.
- 25.4 No Proposal may be withdrawn, substituted, or modified in the interval between the deadline for submission of Proposals and the expiration of the period of proposal validity specified by the Proposer on the Proposal Submission Form or any extension thereof.

## **26. Proposal Opening**

UNDP will open the Proposals in the presence of an ad-hoc committee formed by UNDP of at least two (2) members. If electronic submission is permitted, any specific electronic proposal opening procedures shall be as specified in the **Data Sheet** (DS no. 23).

The Proposers' names, modifications, withdrawals, the condition of the envelope labels/seals, the number of folders/files and all other such other details as UNDP may consider appropriate, will be announced at the opening. No Proposal shall be rejected at the opening stage, except for late submission, for which the Proposal shall be returned unopened to the Proposer.

## **27. Confidentiality**

Information relating to the examination, evaluation, and comparison of Proposals, and the recommendation of contract award, shall not be disclosed to Proposers or any other persons not officially concerned with such process, even after publication of the contract award.

Any effort by a Proposer to influence UNDP in the examination, evaluation and comparison of the Proposals or contract award decisions may, at UNDP's decision, result in the rejection of its Proposal.

In the event that a Proposer is unsuccessful, the Proposer may seek a meeting with UNDP for a debriefing. The purpose of the debriefing is discussing the strengths and weaknesses of the Proposer's submission, in order to assist the Proposer in improving the proposals presented to UNDP. The content of other proposals and how they compare to the Proposer's submission shall not be discussed.

## E. EVALUATION OF PROPOSALS

### 28. Preliminary Examination of Proposals

UNDP shall examine the Proposals to determine whether they are complete with respect to minimum documentary requirements, whether the documents have been properly signed, whether or not the Proposer is in the UN Security Council 1267/1989 Committee's list of terrorists and terrorist financiers, and in UNDP's list of suspended and removed vendors, and whether the Proposals are generally in order, among other indicators that may be used at this stage. UNDP may reject any Proposal at this stage.

### 29. Evaluation of Proposals

29.1 UNDP shall examine the Proposal to confirm that all terms and conditions under the UNDP General Terms and Conditions and Special Conditions have been accepted by the Proposer without any deviation or reservation.

29.2 The evaluation team shall review and evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and other documentation provided, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet** (DS no. 32). Each responsive Proposal will be given a technical score. A Proposal shall be rendered non-responsive at this stage if it does not substantially respond to the RFP particularly the demands of the Terms of Reference, which also means that it fails to achieve the minimum technical score indicated in the **Data Sheet** (DS no. 25). Absolutely no changes may be made by UNDP in the criteria, sub-criteria and point system indicated in the **Data Sheet** (DS no. 32) after all Proposals have been received.

29.3 In the second stage, only the Financial Proposals of those Proposers who achieve the minimum technical score will be opened for evaluation for comparison and review. The Financial Proposal Envelopes corresponding to Proposals that did not meet the minimum passing technical score shall be returned to the Proposer unopened. The overall evaluation score will be based either on a combination of the technical score and the financial offer, or the lowest evaluated financial proposal of the technically qualified Proposers. The evaluation method that applies for this RFP shall be as indicated in the **Data Sheet** (DS No. 25).

When the Data Sheet specifies a combined scoring method, the formula for the rating of the Proposals will be as follows:

Rating the Technical Proposal (TP):

**TP Rating** = (Total Score Obtained by the Offer / Max. Obtainable Score for TP) x 100

Rating the Financial Proposal (FP):

**FP Rating** = (Lowest Priced Offer / Price of the Offer Being Reviewed) x 100

Total Combined Score:

(TP Rating) x (Weight of TP, e.g. 70%)

$\frac{\text{+ (FP Rating) x (Weight of FP, e.g., 30\%)}}{\text{Total Combined and Final Rating of the Proposal}}$
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29.4 UNDP reserves the right to undertake a post-qualification exercise aimed at determining, to its satisfaction the validity of the information provided by the Proposer. Such post-qualification shall be fully documented and, among those that may be listed in the **Data Sheet** (DS No.33), may include, but need not be limited to, all or any combination of the following :

- a) Verification of accuracy, correctness and authenticity of information provided by the Proposer on the legal, technical and financial documents submitted;
- b) Validation of extent of compliance to the RFP requirements and evaluation criteria based on what has so far been found by the evaluation team;
- c) Inquiry and reference checking with Government entities with jurisdiction on the Proposer, or any other entity that may have done business with the Proposer;
- d) Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed;
- e) Physical inspection of the Proposer's offices, branches or other places where business transpires, with or without notice to the Proposer;
- f) Quality assessment of ongoing and completed outputs, works and activities similar to the requirements of UNDP, where available; and
- g) Other means that UNDP may deem appropriate, at any stage within the selection process, prior to awarding the contract.

### 30. Clarification of Proposals

To assist in the examination, evaluation and comparison of Proposals, UNDP may, at its discretion, ask any Proposer for a clarification of its Proposal.

UNDP's request for clarification and the response shall be in writing. Notwithstanding the written communication, no change in the prices or substance of the Proposal shall be sought, offered, or permitted, except to provide clarification, and confirm the correction of any arithmetic errors discovered by UNDP in the evaluation of the Proposals, in accordance with RFP Clause 32.

Any unsolicited clarification submitted by a Proposer in respect to its Proposal, which is not a response to a request by UNDP, shall not be considered during the review and evaluation of the Proposals.

### 31. Responsiveness of Proposal

UNDP's determination of a Proposal's responsiveness will be based on the contents of the Proposal itself.

A substantially responsive Proposal is one that conforms to all the terms, conditions, TOR and other requirements of the RFP without material deviation, reservation, or omission.

If a Proposal is not substantially responsive, it shall be rejected by UNDP and may not subsequently be made responsive by the Proposer by correction of the material deviation, reservation, or omission.



## **32. Nonconformities, Reparable Errors and Omissions**

Provided that a Proposal is substantially responsive, UNDP may waive any non-conformities or omissions in the Proposal that, in the opinion of UNDP, do not constitute a material deviation.

Provided that a Proposal is substantially responsive, UNDP may request the Proposer to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Proposal related to documentation requirements. Such omission shall not be related to any aspect of the price of the Proposal. Failure of the Proposer to comply with the request may result in the rejection of its Proposal.

Provided that the Proposal is substantially responsive, UNDP shall correct arithmetical errors as follows:

- a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of UNDP there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to the above.

If the Proposer does not accept the correction of errors made by UNDP, its Proposal shall be rejected.

## **F. AWARD OF CONTRACT**

### **33. Right to Accept, Reject, or Render Non-Responsive Any or All Proposals**

UNDP reserves the right to accept or reject any Proposal, to render any or all of the Proposals as non-responsive, and to reject all Proposals at any time prior to award of contract, without incurring any liability, or obligation to inform the affected Proposer(s) of the grounds for UNDP's action. Furthermore, UNDP shall not be obliged to award the contract to the lowest price offer.

UNDP shall also verify, and immediately reject their respective Proposal, if the Proposers are found to appear in the UN's Consolidated List of Individuals and Entities with Association to Terrorist Organizations, in the List of Vendors Suspended or Removed from the UN Secretariat Procurement Division Vendor Roster, the UN Ineligibility List, and other such lists that as may be established or recognized by UNDP policy on Vendor Sanctions. (See [http://www.undp.org/content/undp/en/home/operations/procurement/procurement\\_protect/](http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protect/) for details).

Conditions of contract of UNDP are not modifiable pre or post to award of contract. Any request for change in the conditions of contract may render the proposal non-responsive.

### **34. Award Criteria**

Prior to expiration of the period of proposal validity, UNDP shall award the contract to the qualified Proposer with the highest total score based on the evaluation method indicated in the **Data Sheet** (DS nos. 25 and 32).

### **35. Right to Vary Requirements at the Time of Award**

At the time of award of Contract, UNDP reserves the right to vary 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.

### **36. Contract Signature**

Within fifteen (15) days from the date of receipt of the Contract, the successful Proposer shall sign and date the Contract and return it to UNDP.

Failure of the successful Proposer to comply with the requirement of RFP Clause 35 and this provision shall constitute sufficient grounds for the annulment of the award, and forfeiture of the Proposal Security if any, and on which event, UNDP may award the Contract to the Proposer with the second highest rated Proposal, or call for new Proposals.

### **37. Performance Security**

A performance security, if required, shall be provided in the amount and form provided in Section 9 and by the deadline indicated in the **Data Sheet** (DS no. 14), as applicable. Where a Performance Security will be required, the submission of the said document, and the confirmation of its acceptance by UNDP, shall be a condition for the effectivity of the Contract that will be signed by and between the successful Proposer and UNDP.

### **38. Bank Guarantee for Advanced Payment**

Except when the interests of UNDP so require, it is the UNDP's preference to make no advanced payment(s) on contracts (i.e., payments without having received any outputs). In the event that the Proposer requires an advanced payment upon contract signature, and if such request is duly accepted by UNDP, and the said advanced payment exceeds 20% of the total proposal price, or exceed the amount of USD 30,000, UNDP shall require the Proposer to submit a Bank Guarantee in the same amount as the advanced payment. A bank guarantee for advanced payment shall be furnished in the form provided in Section 10.

### **39. Vendor Protest**

UNDP's vendor protest procedure provides an opportunity for appeal to those persons or firms not awarded a purchase order or contract through a competitive procurement process. In the event that a Proposer believes that it was not treated fairly, the following link provides further details regarding UNDP vendor protest procedures:

<http://www.undp.org/procurement/protest.shtml>

## Instructions to Proposers

### DATA SHEET

The following data for the services to be procured shall complement, supplement, or amend the provisions in the Instruction to Proposers. In the case of a conflict between the Instructions to Proposers, the Data Sheet, and other annexes or references attached to the Data Sheet, the provisions in the Data Sheet shall govern.

**Table 1: Data Sheet**

DS No.	Cross Ref. to Instructions	Data	Specific Instructions / Requirements
1		Project Title:	Climate Change Adaptation Programme in the Coastal Zone of the Republic of Mauritius
2		Title of Services/Work:	<ul style="list-style-type: none"> <li>Supervision of works ‘ Rehabilitation of Mon Choisy public beach and installation of artificial reef’</li> </ul>
3		Country / Region of Work Location:	Mauritius
		Client	UNDP Mauritius and Seychelles Country Office
4	C.13	Language of the Proposal:	English
5	C.20	Conditions for Submitting Proposals for Parts or sub-parts of the TOR	Not Allowed.
6	C.20	Conditions for Submitting Alternative Proposals	Shall not be considered
7	C.22	A pre-proposal conference will be held on:	<p><b>Time: 14 00 hours local time</b>  <b>Date: 8 June 2018</b>  <b>Venue: <u>UNDP Mauritius and Seychelles Country Office</u>  <u>6th Floor, Anglo Mauritius House</u>  <u>Intendance Street</u>  <u>P.O Box 253</u>  <u>Port Louis</u>  <u>Mauritius</u></b></p> <p>The focal person for the arrangement is: <u>Mr. Satyajeet Ramchurn, Environment programme analyst</u></p> <p>Address: <u>UNDP Mauritius and Seychelles Country Office</u>  <u>6th Floor, Anglo Mauritius House</u></p>

			<u>Intendance Street</u> <u>P.O Box 253</u> <u>Port Louis</u> <u>Mauritius</u>  Telephone: <u>+230 211 0914</u> Facsimile: <u>+230 208 4871</u>  E-mail: <u>satyajeet.ramchurn@undp.org</u>
8	C.21	Period of Proposal Validity commencing on the submission date	120 days
9	B.9.5 C.15.4 b)	Proposal Security	Not Required
10	B.9.5	Acceptable forms of Proposal Security <sup>1</sup>	N/A
11	B.9.5 C.15.4 a)	Validity of Proposal Security	<u>N/A</u>
12		Advanced Payment upon signing of contract	N/A
13		Liquidated Damages	Will not be imposed
14	F.37	Performance Security	Not Required
15	C.17, C.17 b)	Preferred Currency of Proposal and Method for Currency conversion	United States Dollars (US\$)  <i>Reference date for determining UN Operational Exchange Rate: <u>Deadline for Submission of Proposal</u></i>
16	B.10.1	Deadline for submitting requests for clarifications/questions	<u>15 June 2018</u>
17	B.10.1	Contact Details for submitting clarifications/questions <sup>2</sup>	Focal Person: The focal person for the arrangement is: <u>Mr. Satyajeet Ramchurn, Environment programme analyst</u> <u>UNDP Mauritius and Seychelles Country Office</u> <u>6th Floor, Anglo Mauritius House</u> <u>Intendance Street</u> <u>P.O Box 253</u>

<sup>1</sup> Surety bonds or other instruments issued by non-bank Financial Institutions are least preferred by UNDP.

Unless stated otherwise, they shall be considered unacceptable to UNDP.

<sup>2</sup> This contact person and address is officially designated by UNDP. If inquiries are sent to other person/s or address/es, even if they are UNDP staff, UNDP shall have no obligation to respond nor can UNDP confirm that the query was officially received.

			<p><u>Port Louis</u> <u>Mauritius</u></p> <p>Telephone: <u>+230 211 0914</u>      Facsimile: <u>+230 208 4871</u></p> <p>E-mail: <u>satyajeet.ramchurn@undp.org</u></p>
18	B.11.1	Manner of Disseminating Supplemental Information to the RFP and responses/clarifications to queries	<p>Direct communication to prospective Proposers by email or fax, and Posting on the website<sup>3</sup></p> <p><a href="https://www.ungm.org/Public/Notice">https://www.ungm.org/Public/Notice</a> <a href="http://procurement-notices.undp.org/">http://procurement-notices.undp.org/</a></p>
19	D.23.3	No. of copies of Proposal that must be submitted	<p>Original : One (1) Copies : Three (3) Proposals should be submitted in soft copy in file sizes not exceeding 5 MB. Two CDs for Technical Proposals and two CDs for Financial Proposals in their separate sealed envelopes. The CDs shall be clearly labelled with the name of project, title of Consultancy services, and name of bidder.</p>
20	D.23.1 D.23.2 D.24	Proposal Submission Address	<p>UNDP Mauritius and Seychelles Country Office 6th Floor, Anglo Mauritius House Intendance Street P.O Box 253 Port Louis Mauritius Attention: The Head of Environment Unit</p>
21	C.21 D.24	Deadline of Submission	<p><b>Date : <u>21 June 2018</u></b> <b>Time : <u>15 00 hours local time</u></b></p>
22	D.23.2	Allowable Manner of Submitting Proposals	Courier/Hand Delivery
23	D.23.2 D.26	Conditions and Procedures for electronic submission and opening, if allowed	N/A
24	D.23.1	Date, time and venue for opening of Proposals	<p><b>Date : <u>21 June 2018</u></b> <b>Time : <u>15 30 hrs Local Time</u></b> Venue : <u>UNDP Mauritius and Seychelles Country Office</u> <u>6th Floor, Anglo Mauritius House</u> <u>Intendance Street</u> <u>P.O Box 253</u> <u>Port Louis</u> <u>Mauritius</u></p>

<sup>3</sup> Posting on the website shall be supplemented by directly transmitting the communication to the prospective offerors.

25	E.29.2 E.29.3 F.34	Evaluation method to be used in selecting the most responsive Proposal	Combined Scoring Method, using the 70%-30% distribution for technical and financial proposals for each Lot, respectively.
26	C.15.1	Required Documents that must be Submitted to Establish Qualification of Proposers (In "Certified True Copy" form only)	<ul style="list-style-type: none"> <li>▪ Company Profile, which should <u>not</u> exceed fifteen (15) pages, including printed brochures and product catalogues relevant to the goods/services being procured</li> <li>▪ Official Letter of Appointment as local representative, if Proposer is submitting a Proposal on behalf of an entity located outside the country</li> <li>▪ Quality Certificate (e.g., ISO, etc.) and/or other similar certificates, accreditations, awards and citations received by the Proposer, if any</li> <li>▪ Audited Financial Statement for the last three years (Income Statement and Balance Sheet) including Auditor's Report</li> <li>▪ Statement of Satisfactory Performance from the Top three (3) Clients in terms of Contract Value the past ten (10) years</li> <li>▪ Professional Indemnity Insurance / Errors and Omission Insurance, or their equivalent</li> <li>▪ All information regarding any past and current litigation during the last five (5) years, in which the Proposer is involved, indicating the parties concerned, the subject of the litigation, the amounts involved, and the final resolution if already concluded.</li> <li>▪ Registration certificate with the Construction Industry Development Board (CIDB)</li> </ul>
27		Other documents that may be Submitted to Establish Eligibility	All key experts shall provide an original signed letter of availability and association (if they are external to the lead firm) for the duration of the assignment. <b>Note:</b> In the event of their unavailability at execution stage, the Consultant shall be under the obligation to provide a replacement of equal or better calibre at no extra cost to the Client.
28	C.15	Structure of the Technical Proposal ( <i>only if different from the provision of Section 12</i> )	
29	C.15.2	Latest Expected date for commencement of Contract	August 2018
30	C.15.2	Expected duration of contract (Target Commencement Date and Completion Date)	starting in August 2018 and ending in August 2019
31		UNDP will award the contract to:	<p>One bidder</p> <p>The contract will be awarded according to the Combined</p>

			Scoring Method, using the 70%-30% distribution for technical and financial proposals.
32	E.29.2 F.34	Criteria for the Award of Contract and Evaluation of Proposals	(See Tables below)
33	E.29.4	Post-Qualification Actions	<ul style="list-style-type: none"> <li>▪ Verification of accuracy, correctness and authenticity of the information provided by the Proposer on the legal, technical and financial documents submitted;</li> <li>▪ Validation of extent of compliance to the RFP requirements and evaluation criteria, based on findings of the evaluation team;</li> <li>▪ Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed.</li> </ul>
34		Conditions for Determining Contract Effectivity	Signature of contract
35		Other Information Related to the RFP	<ul style="list-style-type: none"> <li>▪ In case of an international consultancy team, it is mandatory for the consulting team to associate with one or more local experts so as to have a better appreciation of the local context.</li> <li>▪ The total expected input for the assignment shall not exceed 25 man-months.</li> </ul>

**Table 2: Summary of Technical Proposal Evaluation Forms**

Summary of Technical Proposal Evaluation Forms		Score Weight	Maximum Points Obtainable
1.	Expertise of Firm/Organization	30%	300
2.	Proposed Methodology, Approach and Implementation Plan	30%	300
3.	Management Structure and Key Personnel	30%	300
<b>Total</b>			<b>900</b>

**Table 2(a): Expertise of the Firm/Organization**

Technical Proposal Evaluation Form 1		Maximum Points obtainable
<b>Expertise of the Firm/Organization</b>		
1. 1	Reputation of Organization and Staff / Credibility / Reliability / Industry Standing	50
1. 2	General Organizational Capability which is likely to affect implementation	
	(1) Financial stability	15
	(2) Type of firm/organization <ul style="list-style-type: none"> <li>• loose consortium</li> <li>• one firm</li> </ul>	10 15
	(3) Age/size of the firm <ul style="list-style-type: none"> <li>• Less than 5 years</li> <li>• 5 - 10 years</li> <li>• More than 10 years</li> </ul>	0 10 15
	(4) Strength of project management support	10
	(5) Project management controls	10
1. 3	Extent to which any work would be subcontracted (subcontracting carries additional risks which may affect project implementation, but properly done it offers a chance to access specialised skills.)	10
1. 4	Quality assurance procedures, warranty (e.g. ISO certified or Quality Management System in place)	10
1. 5	Relevance of:	
	A. Specialised Knowledge	
	(1) Experience in coastal protection/rehabilitation works <ul style="list-style-type: none"> <li>• No experience</li> <li>• 1 – 3 projects</li> <li>• More than 3 projects</li> </ul>	0 20 25



	(2) Experience in design/conception of artificial reef project <ul style="list-style-type: none"> <li>No experience</li> <li>1 – 3 projects</li> <li>More than 3 projects</li> </ul>	0 40 45
	(3) Experience in beach landscaping works <ul style="list-style-type: none"> <li>No experience</li> <li>1 - 3 projects</li> <li>More than 3 projects</li> </ul>	0 15 20
	B. Experience of lead firm/organization on Similar Programme / Projects	25
	C. Experience of lead firm/organization on Projects in Small Island Developing States (SIDS)	10
	D. Experience of lead firm/organization on Projects in Mauritius	10
	E. Work for UNDP/ major multilateral/ or bilateral programmes	30
		300

**Table 2(b): Proposed Methodology, Approach and Implementation Plan**

Technical Proposal Evaluation Form 2		Maximum Points Obtainable
<b>Proposed Methodology, Approach and Implementation Plan</b>		
2.1	<b>Technical Approach and Methodology</b>	
	• Understanding of the objectives of the assignment	40
	• Interpretation of scope of task in line with the Terms of Reference	40
	• Approach to the services	50
	• Methodology for carrying out the activities, particularly the supervision of the works in relation to artificial reef (including anchoring) and obtaining the overall expected outputs/Degree of detail of outputs	70
2.2	<b>Work plan</b>	
	• Clarity in presentation	25
	• Degree of logical and realistic sequence of activities	25
	• Planning for efficient implementation of the project	25
	• Compliance with implementation period set in the RFP	25
<b>Total Part 2</b>		300

**Table 2(c): Management Structure and Key Personnel**

Technical Proposal Evaluation Form 3		Maximum Points Obtainable
<b>Management Structure and Key Personnel</b>		
3.1	<b>Management Structure</b>	
	(a) Structure and composition of team	50
	(b) Discipline of assignments	50
3.2	<b>Key professional staff qualifications and suitability for assignment</b>	
A	<b>Key personnel 1 – Civil Engineer (Team Leader)</b>	
	(a) General Academic Qualifications	
	• Degree	20

	• Masters	25
	• PhD	30
	(b) Experience	
	(1) Post degree experience relevant to conservation of marine and coastal biodiversity	
	• Less than 5 years	2
	• 5 – 10 years	3
	• More than 10 years	5
	(2) Experience relevant to protection and/or restoration of coastal zone	
	• No experience	0
	• 1- 3 projects	6
	• More than 3 projects	10
	(3) Experience in carrying out or having been involved in assignment(s) of a nature and complexity close to the present assignment	
	• No experience	0
	• 1- 3 projects	15
	• More than 3 projects	20
	(c) Work experience in Small Island Developing States (SIDS), preferably in Mauritius	10
	(d) Proficiency in English (Mandatory)	10
	(e) Proficiency in French	5
<b>B</b>	<b>Key Personnel 2 –Coastal engineer</b>	
	(a) General Academic Qualifications	
	• Masters	7
	• PhD	10
	(b) Experience	
	(1) Post degree specific experience in conservation, protection and management of coastal zone	
	• Less than 10 years	0
	• 10 - 15 years	3
	• More than 15 years	5
	(2) Experience in ecosystem based coastal projects	
	• No experience	0
	• 1 – 3 projects	3
	• More than 3 projects	5
	(3) Experience in carrying out or having been involved in assignment(s) of a nature and complexity close to the present assignment	
	• 1 – 3 projects	6
	• More than 3 projects	10
	(c) Work experience in Small Island Developing States (SIDS), preferably in Mauritius	10
	(d) Proficiency in English (Mandatory)	10
<b>C</b>	<b>Key personnel 3 – Quantity Surveyor</b>	
	(a) General Academic Qualifications	
	• Degree	7
	• Masters	10
	(b) Experience	
	(1) Post degree specific experience in civil engineering project	
	• Less than 5 years	0

	<ul style="list-style-type: none"> <li>• More than 5 years</li> </ul>	5
	(2) Experience relevant to coastal project	
	<ul style="list-style-type: none"> <li>• No experience</li> <li>• 1- 3 projects</li> <li>• More than 3 projects</li> </ul>	0 3 5
D	<b>Key personnel 4 – Sworn Land Surveyor</b>	
	(a). General Academic Qualifications	
	(1) Sworn and registered as Land Surveyor	10
	(2) Degree	5
	(b). Experience	
	(1) Specific experience in Land survey	
	<ul style="list-style-type: none"> <li>• Less than 5 years</li> </ul>	0
	<ul style="list-style-type: none"> <li>• 5 - 10 years</li> </ul>	3
	<ul style="list-style-type: none"> <li>• More than 10 years</li> </ul>	5
	(2). Working experience in coastal profiling works	
	<ul style="list-style-type: none"> <li>• No experience</li> </ul>	0
	<ul style="list-style-type: none"> <li>• 1 – 3 projects</li> </ul>	4
	<ul style="list-style-type: none"> <li>• More than 3 projects</li> </ul>	5
E	<b>Key personnel 5 – Technical officer</b>	
	(a). General Academic Qualifications	
	<ul style="list-style-type: none"> <li>• Diploma holder</li> </ul>	3
	<ul style="list-style-type: none"> <li>• Degree</li> </ul>	5
	(b). Experience	
	(1) Post degree specific experience in civil engineering project	
	<ul style="list-style-type: none"> <li>• No experience</li> </ul>	0
	<ul style="list-style-type: none"> <li>• 1- 3 projects</li> </ul>	3
	<ul style="list-style-type: none"> <li>• More than 3 projects</li> </ul>	5
	(2) Experience in carrying out or having been involved in assignment(s) of a nature and complexity close to the present assignment	
	<ul style="list-style-type: none"> <li>• No experience</li> </ul>	0
	<ul style="list-style-type: none"> <li>• 1 – 3 projects</li> </ul>	3
	<ul style="list-style-type: none"> <li>• More than 3 projects</li> </ul>	5
<b>Total Part 3</b>		<b>300</b>

**\* Notes:**

- a. The consultant shall also demonstrate that the services of a professional diver have been retained in relation to the underwater works in the lagoon.
- b. Degree Holder means any relevant degree in the field of expertise as defined in the qualification of the Consultancy Team component of Section 2.8 – Terms of Reference.

### Section 3

#### **Terms of Reference (TOR) for Consultancy services for Supervision of the coastal adaptation works at Mon Choisy public beach in the Republic of Mauritius**

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#### **TERMS OF REFERENCE**

##### **1. Background**

The Republic of Mauritius (ROM) is a group of islands in the South West of the Indian Ocean, consisting of the main island of Mauritius, Rodrigues and several outer islands located at distances greater than 350 km from the main island. As a Small Island Developing State (SIDS), the ROM is particularly vulnerable to the adverse effects of climate change, especially in the coastal zone, where a convergence of accelerating sea level rise and increasing frequency and intensity of tropical cyclones (with more intense rainfall events and stronger winds) will result in considerable economic loss, humanitarian stresses, and environmental degradation.

The visible and measurable effects of climate change in the coastal zone of ROM have become more apparent over the last ten years. There is a direct linkage between climate change effects on coastal ecosystem services (especially coral reefs and lagoons) and the integrity of the whole coastal zone of ROM. As coral reefs lose the race with sea level rise, it is imperative that the critical ecosystem function of wave attenuation be replaced in some manner. Adaptation therefore requires *in situ* changes in behaviour and site management, and appropriate technical interventions, as well as early warning systems that provide enough time for communities to move away from areas where the risk of storm surge and flooding is imminent. Storm surges and swell waves are expected to be aggravated through sea level rise and climate change effects on weather patterns. This will compound underlying trends of increasing coastal erosion and pressure on scarce land resources, and increase physical vulnerability of island populations, infrastructure and livelihood assets.

The Government of Mauritius has secured a grant from the Adaptation Fund for the implementation of the project “Climate Change Adaptation Programme in the Coastal Zone of Mauritius”. This fund, set up under the Kyoto Protocol of the United Nations Framework Convention on Climate Change, is targeted to assist developing-country parties to the above protocol that are particularly vulnerable to the adverse effects of climate change in meeting the costs of concrete adaptation projects and actions that will limit the impacts of climate change.

The expected outcome of the project is to increase climate resilience of communities and their livelihoods in coastal areas of Mauritius.

## **Consultancy services for design of the coastal works**

The consultancy services for the technical assessment of the site, feasibility study, design of the coastal protection measures and preparation of bid document was awarded to an international consultant 'Indufor Oy in consortium with eCoast Ltd and C.L.A.M.S Ltd' under a UNDP contract and the deliverables hereunder listed have been completed by the consultant, in accordance with the contract agreement:

- Detailed Technical Assessment Report for Mon Choisy.
- Report on Options for Coastal Adaptation including Cost/benefit analysis
- Feasibility Study Report
- Design Report
- Tender Document

## **Environment Impact Assessment (EIA)**

An Environmental Impact Study as well as a social impact study have also been commissioned for the project.

## **2.0 Coastal adaptation measures at Mon Choisy**

### **GENERAL LOCATION / INFORMATION**

The Employer is Ministry of Social Security, National Solidarity and Environment and Sustainable Development and the site for the proposed Contract is located at Mon Choisy Public Beach in Mauritius.

### **2.1 SCOPE OF WORKS**

The Scope of the Works under the Contract comprises of the following:

- (a) Integrated approach to Rehabilitate Mon Choisy Public Beach involving:
  - Beach Works (Tree and Stump Removal, beach re-profiling)
  - Sand Procurement
  - Mechanical Grading
  - Beach Fencing
  - Dune Planting
  - Rock Groyne Removal

(b) Installation of Artificial Reef in the lagoon

## **2.2 Installation of the Artificial Reef Units**

The artificial reef units are to be laid in the lagoon at two distinct locations:

- Two distinct artificial “fringing reefs”, each approximately 110 m long, placed approximately 230 m from the coastline / shoreline at a depth greater than 2 m below MSL. The southern of the two reef arrays shall incorporate additional reef units to create a snorkeling trail.

Each of this unit shall comprise three to four parallel rows of the artificial reef units laid seaward of the 2.0 m bathymetric contour.

The units shall be laid in clusters in a sinusoidal pattern so that the cross shore width of coverage is between 10 to 15 m over the total length of 110 m.

- Two distinct “patch reefs” within the lagoon at a distance varying between 160 m to 200 m from the coastline/shoreline at depths ranging from 1.5 to 2.0 m.

The patch reef shall comprise of units of different dimensions and sizes that will be laid to cover a footprint of approximately 220 to 250 m<sup>2</sup> at each of the two locations. These units have to be in the shape and form that is similar to natural looking reefs.

### **Anchoring of Reef and Patch Reef Units**

The individual reef units will have to be secured by anchoring them firmly to the sea bed by providing suitable anchoring materials that are suited and applicable for such Works. In addition to the above, the reef units are to be tied with each other with suitable slings or alternative materials. The anchoring of the reef and patch reef units shall be carried out to ensure that no vertical and lateral displacement of the units takes place on account of wave action, swells, cyclones and other inclement weather conditions.

The consultant shall approve the methodology and details for the anchoring of the reef and patch reef units prior to its procurement by the contractor.

### **Tree and stump removal**

The trees with exposed roots located within the beach dynamic zone within the confines of the project area will be removed upon the approval of the Forestry service.

The consultant shall liaise with the competent authorities to obtain the approval prior to the felling of the trees.

### **Beach re-profiling and Landscaping works**

Upon removal of the trees and stumps, the dune shall be re-profiled to the required slope and landscaped.

The landscaping works under the Contract are confined to the section of Mon Choisy Beach over a stretch of 450 m and comprises of planting of:

- Trees and Shrubs
- Grasses and Sedges
- Vines and Lianas
- Palm Trees

### **Groyne Removal**

The Contractor's attention is drawn to the fact that no heavy equipment or rock breaking equipment shall be allowed for the groyne removal. The Contractor shall submit a detailed methodology for the approval of the Engineer's Representative prior to undertaking this operation.

The use of a front end loader or similar equipment that could be driven out across the groyne at low tide and the workers can use pry bars or similar to dislodge the loose rocks and load them in the machine's bucket to be hauled away when full.

<b>Description of Works</b>	<b>Details</b>
Beach rehabilitation works	450m
Installation of artificial reef	Appr 900 units
Duration of works	12 months
Tentative Start Date	August 2018

The Ministry of Social Security, National Solidarity and Environment and Sustainable Development through the UNDP hereinafter referred to as the “Client”, intends to appoint a Consulting Firm for the provision of services mentioned above for the implementation of the project.

In this context, Consulting firms having capabilities, experience and resources to undertake the assignment, have been shortlisted.

The selection of the Consulting Firm for the Project shall be based on a Quality and Cost (QCBS) method and eventually appointed on a **lump sum fee basis**.

## **2.1 Project Funding**

The coastal adaptation works at Mon Choisy will be funded under the Adaptation Fund and implemented by the Ministry of Social Security, National Solidarity and Environment and Sustainable Development.

## **3.0 The services**

The services required under the current assignment consist of the supervision of works of the project ‘ Rehabilitation of the Mon Choisy public beach and installation of artificial reef ’.

### **3.1 Scope of Services**

The consultant will carry out the following tasks:

- (a)** Following award of construction contracts, the Consultant shall prepare the necessary contract documents for signature by the Client and the Contractor. Same shall have to be submitted within a maximum period of one week from the date of instruction by the Client and in the number of copies specified.
- (b)** Supervision of works, including management of construction contracts, preparation of reports for (physical and financial) monitoring of projects, and other tasks which are consistent with the project objectives and which are normally expected from a Consultant. The progress report shall be submitted on a monthly basis depicting the progress of work on site duly evidenced by photographs, contractor’s performance and remedial actions undertaken amongst others
- (c)** Certification of claims for payment to contractors
- (d)** To attend site meetings fortnightly and at the Client’s office in connection with the concerned projects.



- (e)** Preparation of monthly reports on progress of works, performance of Contractors, financial aspect of construction works and project briefs/ materials on projects which may be required from time to time;
- (f)** Assistance to the Client in the resolution of any disputes with Contractors.
- (g)** Monitoring of the rehabilitated site during the Defects Liability Period and maintenance period and submit recommendations on future course of action,
- (h)** Ensure compliance to Environmental Monitoring Plan / conditions to be adhered to by the contractor during the construction works and submit EMP reports as requested
- (i)** Assist in resolving any grievances and/or complaints from the public or any other party, NGOs, pressure groups, fishermen, beach users, beach hawkers, economic operators amongst others.

The Consultant shall ensure that all necessary insurances, securities and clearances have been obtained prior to any operations by the Contractor on site and that same are compliant with the Client's requirements. Any pending clearances shall be brought to the attention of the Client before issue of Award of Contracts. The Consultant shall monitor the validity of insurance cover and other securities required on a regular basis and shall take appropriate actions for timely renewal of same.

Before commencement of works, the Consultant shall discuss and agree upon a proper programme of works with the Contractor and shall inform the Client accordingly. In addition, the Consultant shall examine any proposal from the Contractor before or during the period of construction, as may be appropriate, and shall inform the Client accordingly, together with any appropriate comments and recommendations.

The consultant shall carry out regular and systematic site inspections including underwater survey to ensure that works are executed according to the Contract. The Consultant will be fully responsible for non-compliance of the specifications by the Contractor if the matter is not dealt with the latter as per contractual provisions or due to failure by the Consultant to notify the Client in case the matter is not successfully resolved with the Contractor.

Upon occurrence of unforeseen circumstances, which are in the Consultant's opinion susceptible to causing modifications to the nature and/or cost of the Works and to the construction programme, the Consultant shall prepare and submit special reports thereon as quickly as possible, reporting on any suggested modifications and associated cost/contractual implications. Appropriate recommendations shall be required to be made in order to cause the least possible disruption to construction works.

The Consultant is required to set up a proper recording system, particularly with respect to certain items which are paid on the basis of the actual quantities used. In addition, the

Consultant may be required to submit all justifications, test reports, compliance certificates, approval sheets, duly certified copies of delivery notes, etc., in respect of each item of works for which payment is recommended by him.

Depending on circumstances, the Client may require Contractors to submit source documents to substantiate any matter, especially with respect to payment issues, and shall not accept typewritten information emanating from Contractors. For this purpose, receipts, initial, quotations and other supporting documents from suppliers and other concerned parties shall be submitted in original and as and when necessary so as to satisfy the Client for eventual payment to Contractors.

The Client may also request Contractors to submit original documents relating to clearance from the customs department and/ or appropriate authorities as substantiation for imported materials/ equipment to be used in the works.

The Consultant shall issue all necessary instructions to the Contractor as may be required and shall not, without the prior approval of the Client, give any instructions which are likely to increase the costs of the works unless, under given circumstances, it is not practicable for the latter to obtain such prior approval. The Client must be informed in writing by the next working day of the decisions.

The consultant shall examine and assess claims from Contractors for extension of time and other matters relating to construction contracts and to make appropriate recommendations to Client. The Consultant shall take all reasonable steps so as to submit the necessary assessments within the least possible delay after submission of claim by Contractor and shall ensure that proper records are kept as soon as a notification for claim is received or upon the occurrence of events which would lead to delays.

The Consultant shall submit a status report on the project within one month or an appropriate period before the scheduled completion date. The report shall mainly highlight progress achieved, the actual progress which could be expected to be made by the Contractor during the remaining period up to the scheduled completion date and possible corrective actions in case of probable delays in the project.

The Consultant shall be fully liable for delayed projects where no prior notification is submitted to the Client and/ or which would necessitate additional inputs from the Consultant for supervision tasks.

### **Processing Payment Applications**

The Consultant shall issue payment certificates to the Client for payments to Contractors. The certificate shall be accompanied by all relevant substantiating details so as to enable the Client to effect payments at the earliest and the Consultant shall ensure that the Contractor has complied with the contract requirements. For any significant variation in the works, the Consultant shall ensure that approval of the Client has been obtained prior to certifying payment thereof.

The Consultant shall take all necessary steps as regards submission of payment applications from Contractors and submission of corresponding payment certificates with a view to enable the Client effect regular disbursement of funds. For this purpose, the consultant will be required to seek cash flow estimates from Contractors so as to enable the Client effect the necessary financial planning.

It will be the full responsibility of the Consultant to keep proper records during the construction stage so as to substantiate any works executed by Contractor, through photographs, daily records sheet, measurement sheets, etc. and same shall need to be acknowledged by the concerned parties.

The Consultant will bear full liability for such cases where payment is not effected to the Contractor and where the Client is not satisfied about the records provided.

Prior to recommending payments to Contractors, the Consultant shall liaise with the Client on previous payments effected so as to reflect the actual amount due for payment by Client rather than the amount certified. The Client shall not be liable in case short payment is made to the Contractor due to failure on the part of the Consultant to establish the actual amounts previously paid to the Contractor.

### **Testing**

The Client may require the Consultant to submit on a regular basis test reports, giving details of all tests carried out and the results, as well as the Consultant's comments and appraisal thereof with particular reference to the requirements of the construction contract.

### **Site meetings**

The Consultant shall hold site and progress meetings on a regular basis, which may be attended by a representative of the Client to review the progress of works, cost of works executed and any other issues arising.

### **Meetings with Public Body**

The Consultant shall attend the following meetings/site visits which shall be scheduled regularly and sometimes at short notice:

- Meeting and site visits with stakeholders
- Any other meetings and site visits in connection with the project

### **Grievance mechanism**

The Consultant in collaboration with the contractor shall manage and deal with any grievances/complaints lodged by the public, beach users, NGOs, pressure groups, fishermen association amongst others throughout the duration of the Contract.

The consultant shall inform the client and monitor all complaints that are received and ensure that necessary actions are initiated by the Public relations Officer of the contractor to address these complaints. The consultant shall also ensure that the Health and safety requirements are strictly adhered to.

The consultant shall also be responsible to organize meetings with the key stakeholders including pressure groups, beach hawkers, hotel operators, NGOs, fishermen associations/representatives amongst others upon consultation with the Ministry/client in event of any grievances.

### **Environmental Monitoring Plan**

The consultant shall ensure that the all mitigating measures required to be adhered as stipulated in the EIA conditions are complied. The Environmental Monitoring Plan (EMP) shall be submitted as per the requirement of the Department of the Environment in 12 hard copies and 1 soft copy.

### **Issue of construction drawings**

The consultant shall issue construction drawings to the contractor as and when required.

### **Progress/Financial Reports**

The Consultant shall submit monthly progress reports on construction projects, highlighting the salient features of each contract, payments certified, independent assessment of value of works executed by Contractor during the month irrespective of whether payment application has been submitted by Contractor, forecast of expenditure, progress photographs, comments on progress of work and comments on performance of the Contractor.

The reports shall indicate the likely/ revised value of works on each project so as to convey the realistic/ actual outstanding balance on the project. The Consultant shall take all necessary steps to ensure that the disbursements targeted by the Client in respect of projects under construction are not delayed/ deferred unnecessarily. Should certain delays be inevitable, the Consultant will be required to submit the necessary notifications, with explanations and propose corrective actions, within the shortest delay after occurrence of any event likely to impact on the disbursement.

The Consultant shall submit additional reports on ad-hoc basis and relating to any specific matter relating as and when required by the Client.

### **Completion**

The Consultant shall liaise with the Client regarding the procedures to be adopted during the completion stage of the project and shall strictly comply with same. As part of capacity building, the Consultant will be required to carry out a presentation with stakeholders highlighting the project objectives and future maintenance works.

As-built drawings shall be submitted as soon as possible following completion of construction works.

The Practical Completion Certificate shall be submitted as soon as possible following the completion of the works.

Prior to the issue of the Final Completion Certificate, the Consultant shall submit a Completion Report. The contents and format of the report shall be in line with the requirements of the Client. A list of maintenance works and associated costs shall also be submitted to the Client for the regular up keeping of the site after the project completion.

No payment will be entertained by the Client to the Contractor in case the Consultant fails to ensure compliance with any of the foregoing provisions. Should there be any delay in effecting payment to the Contractor due to non-compliance of the required provisions by the Consultant and for which interest claims are submitted by the Contractor, the Client shall make necessary deductions from fee payments due to the Consultant in order to recover the cost of the interest claims.

### **Monitoring**

Upon completion of the construction works, the Consultant shall continually monitor beach profile within the upgraded site during the Defects Liability Period and submit their findings with recommendations on any future course of action required to remedy the situation. Similarly, monitoring exercises should also be carried out along the overall public beach and any stretch of the seafront or shoreline adjacent to the location where the works have been carried out to ascertain that the protection works affecting the stability of the immediate surroundings to the works that have been implemented.

The Consultant shall be responsible to undertake appropriate field surveys at such time intervals that would allow a prompt identification of any movement of sediment that occurs as a result of the works or any settlement in the works. Survey data, findings, analyses and recommendations for remedial action, if any, shall be included in monitoring reports to be submitted to the Client on regular quarterly basis and promptly in the event of a natural disaster including cyclones, swells and high waves amongst others. The consultant shall submit its recommendation in the above cases to remedy, if such need arises, the affected portion of the beach including the detailed cost estimate.

### **Progress Reports for Services**

The Consultant shall submit to the Client quarterly reports on the progress of the services. These reports shall indicate the stage reached for construction, dates of any important meetings and decisions, relevant contractual parameters, details regarding the financial aspects of the project and any other salient feature.

The progress report shall be submitted in a format agreeable to the Client.

### **Coordination with the consultant**

Depending on circumstances the Consultant shall take any necessary steps as regards liaison/ coordination with the Consultant, Indufor Oy in association with eCoast Ltd and CLAMS Ltd during the period of Contract, if required, with a view to enable smooth implementation of the project.

The consultant shall be in constant liaison with the Beach Authority during the construction phase and ensure an intrinsic coordination with the Authority. In the event the Beach Authority implements any project including the Beach Management Plan, the consultant shall be responsible to coordinate the works closely with the consultant appointed by the Authority.

### **Compliance with Procurement and other Regulating Authorities**

The Consultant shall comply with the guidelines, recommendations and directives of the Government Authorities responsible for procurement and other matters relating to project implementation. Such directives, recommendations and guidelines shall be duly considered at any stage in the provision of Consultancy services

## **4.0 Staffing Requirements**

<b>S.N</b>	<b>Key Personnel</b>	<b>Man-month inputs</b>
a)	Civil Engineer (Team leader)	12
b)	Coastal engineer	1
c)	Quantity Surveyor	1
d)	Sworn Land surveyor	2
e)	Technical Officer	9
	Total	25

In addition, the consultant shall also provide during the installation of the reef units, the services of a Professional Diver with a minimum of 10 years of experience. The Professional Diver shall submit documentary evidence of qualification and experience.

### **4.1 Qualification of the Consultancy Team**

The core personnel shall have the expertise in the fields required for the implementation of the project. Details like academic qualifications, field of competency and technical/practical experience of the previous assignments of similar nature and/or related consultancy services should be submitted with signed CVs.

The coastal engineer shall undertake at least three missions in Mauritius during the assignment.

#### **4.1.1 Key Personnel 1 – Civil Engineer (Team Leader)**

The expert should hold at least a degree in Civil Engineering. Experience in leading teams of interdisciplinary experts will be an added advantage.

He/She should have a minimum of 10 years' experience in his/her field of expertise and having worked on at least 1 similar projects. He/She will also be responsible for the technical coordination of the project and shall **provide 12 man-months services**.

#### **4.1.2 Key Personnel 2 - Coastal Engineer**

The coastal engineer should hold a post graduate degree with specific expertise in the area of coastal engineering or management of marine and coastal biodiversity and should have at least 15 years of professional experience in coastal protection, conservation, sustainable use and management of marine and coastal biodiversity. Experience in design of artificial reef will be an added advantage. **He/She shall provide 1 man-month service.**

#### **4.1.3 Key Personnel 3 – Quantity Surveyor**

The Quantity Surveyor shall have at least a Degree in Quantity Surveying. He/She should have a minimum of 5 years' experience in his/her field of expertise. **He/She shall provide 1 man-month service.**

#### **4.1.4 Key Personnel 4 - Sworn Land Surveyor**

The Sworn Land Surveyor shall have at least a Degree in Land Surveying and be registered to a recognised professional body. He/She should have a minimum of 5 years' experience in his/her field of expertise. **He/She shall provide 2 man-month service.**

#### **4.1.5- Key Personnel 5 - Technical officer**

The Technical officer shall be a diploma holder. He/She should have at least 5 years' experience working on civil engineering projects. The technical officer **shall provide 9 man-months services**.

### **Letter of availability for Experts**

All key experts shall provide an original signed letter of availability and association for the duration of the assignment. In the event of their unavailability, the Consultant shall be under the obligation to provide a replacement of equal or better caliber at no extra cost to the Client.

#### **Support bodies/staff**

The Consultant may include the services of any other support staff for the purposes of the assignment. The costs thereof shall be deemed to be included in the bid price.

However, the total expected input for the assignment shall not exceed 25 man-months.

### **5.0 Submission of Documents**

The number of copies for the different documents required to be submitted by the Consultant is as follows:

**Table 3**

<b>Document</b>	<b>No. of hard copies</b>	<b>Timeframe submission for of documents</b>	<b>Soft copy</b>
Contract Documents	Two	1 week after award of contract	
Approved Programme of work	One	1 week after award of contract	√
Monthly Progress and Financial Report on the construction projects	One	monthly	√
Monthly Progress Report on of monitoring/compliance of EMP/Environmental conditions	one	monthly	√
Progress report for services	one	Quarterly	√



Shoreline and beach profile survey	one	monthly	
Payment Certificate	One original and one copy		
Test Report/ Certificates and other substantiations	One		
Report on any extreme events including cyclones, swells, high waves or any natural disaster	one		
As-built drawings	Three	Two weeks after final taking over certificate	√
Completion Report	Three	Two weeks after final taking over certificate	√
Report on lessons learned	Three	Two weeks after the expiry of the Defects Liability period	√

## 6.0 Schedule of Payment for Supervision of works

The contract will be awarded on a lump sum basis and payment will be made as per the following schedule:

**Table 4**

S.N	Deliverable	% payment
1.	Upon submission of contract agreement	5%
2.	Upon 30% completion of works and submission of progress report	30%
3.	Upon 60% completion of works and submission of progress report	30%
4.	Upon practical completion of works, submission of project completion report and taking over by client	30%
5.	Upon completion of Defects liability period and submission of report on the performance of coastal adaptation works/lessons learned	5 %
	TOTAL	100%

## **7 Reporting, Presentations, and Language**

A Technical Committee has also been set up under the aegis of the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development to oversee all assignment related to the project. Members of the TC's are senior technicians of different Ministries/organisations.

These TC's will be responsible:

1. to provide support on proposed works;
2. to provide inputs/views on technical reports; and
3. to facilitate consultative meetings.

The Technical Committee will review all progress/outputs/deliverables. Their comments shall be communicated to the consultants within 21 days of submission of the output/deliverable.

Reporting line and collaboration with stakeholders will be as follows:

- The consultants will be required to report to the Project Manager of the Adaptation Fund project at the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development and Technical Committee.
- The consultants will have to work closely with the Beach Authority.
- Throughout the duration of the contract, the Consultants shall maintain a constant liaison with the Client to discuss alternatives, options and any other matters pertaining to the progress of works.
- The UNDP will be responsible for contractual and payment issues for this assignment.

The language of the assignment shall be in English. All the outputs and deliverables shall be written in English language and should be presented in a format acceptable by the Technical Committee under the aegis of the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development.

The reports and documentation should be submitted in electronic format, in both editable Microsoft Office Word version and in pdf version. All the final versions of the reports and documentation should also be dispatched to the Project Manager at the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development in 3 original CDs. There shall be no security restrictions on printing/editing in the deliverables.

The Consultant will have to submit all reports and documentation in draft form (in soft format - MS Word) in the first instance, and should thereafter incorporate any comments the Client may submit, prior to their finalization.

## **8 Delivery**

- Deliverables will be the basis for the payment schedule. All reports will be submitted in draft (for comments) and then final.
- The Deliverables shall be submitted in electronic format (MS Word, and Pdf versions) and by courier to the Project Manager, Mr N. Khedah. The address for delivery is:

Mr. Nuvin KHEDAH,  
Project Manager  
Climate Change Adaptation Programme in the Coastal Zone in the Republic of Mauritius  
Address: Ministry of Social Security, National Solidarity, and Environment and Sustainable  
Development  
5th Floor, Ken Lee Tower,  
Barracks street,  
Port Louis.  
Email : [mnkhedah@yahoo.com](mailto:mnkhedah@yahoo.com)  
Tel: +230 212 8992  
Fax: +230 208 8058

#### Section 4: Proposal Submission Form<sup>4</sup>

[insert: *Location, Date*]

To: The Head of Environment Unit  
UNDP Mauritius and Seychelles Country Office  
6th Floor, Anglo Mauritius House  
Intendance Street  
P.O Box 253  
Port Louis  
Mauritius

Dear Sir/Madam:

We, the undersigned, hereby offer to provide professional services to supervise the project 'Rehabilitation of Mon Choisy Public beach and Installation of Artificial reef' in accordance with your Request for Proposal dated xxxxxxxx and our Proposal. We are hereby submitting our Proposal, which includes the Technical Proposal and Financial Proposal each sealed in separate envelopes.

We hereby declare that :

- a) All the information and statements made in this Proposal are true and we accept that any misrepresentation contained in it may lead to our disqualification;
- b) We are currently not on the removed or suspended vendor list of the UN or other such lists of other UN agencies, nor are we associated with, any company or individual appearing on the 1267/1989 list of the UN Security Council;
- c) We have no outstanding bankruptcy or pending litigation or any legal action that could impair our operation as a going concern; and
- d) We do not employ, nor anticipate employing, any person who is or was recently employed by the UN or UNDP.

We confirm that we have read, understood and hereby accept the Terms of Reference describing the duties and responsibilities required of us in this RFP, and the General Terms and Conditions of UNDP's Contract for Professional Services.

We agree to abide by this Proposal for 120 days.

We undertake, if our Proposal is accepted, to initiate the services not later than the date indicated in the Data Sheet.

We fully understand and recognize that UNDP is not bound to accept this proposal, that we shall bear all costs associated with its preparation and submission, and that UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the evaluation.

We remain,

Yours sincerely,

Authorized Signature *[In full and initials]*: \_\_\_\_\_

---

<sup>4</sup> No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Proposal.

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Contact Details : \_\_\_\_\_

*[please mark this letter with your corporate seal, if available]*

\_\_\_\_\_

## Section 5: Documents Establishing the Eligibility and Qualifications of the Proposer

Proposer Information Form<sup>5</sup>

Date: *[insert date (as day, month and year) of Proposal Submission]*

RFP No.: *[insert number]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Proposer's Legal Name <i>[insert Proposer's legal name]</i>		
2. In case of Joint Venture (JV), legal name of each party: <i>[insert legal name of each party in JV]</i>		
3. Actual or intended Country/ies of Registration/Operation: <i>[insert actual or intended Country of Registration]</i>		
4. Year of Registration: <i>[insert Proposer's year of registration]</i>		
5. Countries of Operation	6. No. of staff in each Country	7. Years of Operation in each Country
8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Proposer's legal address in country of registration]</i>		
9. Value and Description of Top three (3) Biggest Contract for the past five (5) years		
10. Latest Credit Rating (if any)		
40. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved.		
12. Proposer's Authorized Representative Information  Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>		
13. Are you in the UNPD List 1267.1989 or UN Ineligibility List ? (Y / N)		
14. Attached are copies of original documents of:  <input type="checkbox"/> All eligibility document requirements listed in the Data Sheet <input type="checkbox"/> If Joint Venture/Consortium – copy of the Memorandum of Understanding or Letter of Intent to form a JV/Consortium, or Registration of JV/Consortium, if registered <input type="checkbox"/> If case of Government corporation or Government-owned/controlled entity, documents establishing legal and financial autonomy and compliance with commercial law.		

<sup>5</sup> The Proposer shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

Joint Venture Partner Information Form (if Registered)<sup>6</sup>

Date: *[insert date (as day, month and year) of Proposal Submission]*

RFP No.: *[insert number]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Proposer's Legal Name: <i>[insert Proposer's legal name]</i>		
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>		
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>		
4. Year of Registration: <i>[insert Party's year of registration]</i>		
5. Countries of Operation	6. No. of staff in each Country	7. Years of Operation in each Country
8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Party's legal address in country of registration]</i>		
9. Value and Description of Top three (3) Biggest Contract for the past five (5) years		
10. Latest Credit Rating (if any)		
12. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved.		
<p>13. JV's Party Authorized Representative Information</p> <p>Name: <i>[insert name of JV's Party authorized representative]</i></p> <p>Address: <i>[insert address of JV's Party authorized representative]</i></p> <p>Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i></p> <p>Email Address: <i>[insert email address of JV's Party authorized representative]</i></p>		
<p>14. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i></p> <p><input type="checkbox"/> All eligibility document requirements listed in the Data Sheet</p> <p><input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2.</p> <p><input type="checkbox"/> In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law.</p>		

<sup>6</sup> The Proposer shall fill in this Form in accordance with the instructions. Apart from providing additional information, No alterations to its format shall be permitted and no substitutions shall be accepted.

## Section 6: Technical Proposal Form

### TECHNICAL PROPOSAL FORMAT

INSERT TITLE OF THE SERVICES

**Note: Technical Proposals not submitted in this format may be rejected. The financial proposal should be included in separate envelope.**

Name of Proposing Organization / Firm:	
Country of Registration:	
Name of Contact Person for this Proposal:	
Address:	
Phone / Fax:	
Email:	

### SECTION 1: EXPERTISE OF FIRM/ ORGANISATION

*This section should fully explain the Proposer's resources in terms of personnel and facilities necessary for the performance of this requirement. All contents of this section may be modified or expanded depending on the evaluation criteria stated in the RFP.*

**1.1 Brief Description of Proposer as an Entity:** Provide a brief description of the organization / firm submitting the proposal, its legal mandates/authorized business activities, the year and country of incorporation, types of activities undertaken, and approximate annual budget, etc. Include reference to reputation, or any history of litigation and arbitration in which the organisation / firm has been involved that could adversely affect or impact the performance of services, indicating the status/result of such litigation/arbitration.

**1.2. Financial Capacity:** Provide the latest Audited Financial Statement (Income Statement and Balance Sheet) duly certified by a Public Accountant, and with authentication of receiving by the Government's Internal Revenue Authority. Include any indication of credit rating, industry rating, etc.

**1.3. Track Record and Experiences:** Provide the following information regarding corporate experience within the last five (5) years which are related or relevant to those required for this Contract.

Name of project	Client	Contract Value	Period of activity	Types of activities undertaken	Status or Date Completed	References Contact Details (Name, Phone, Email)



## **SECTION 2 - APPROACH AND IMPLEMENTATION PLAN**

*This section should demonstrate the Proposer's responsiveness to the TOR by identifying the specific components proposed, addressing the requirements, as specified, point by point; providing a detailed description of the essential performance characteristics proposed; and demonstrating how the proposed methodology meets or exceeds the requirements.*

2.1. Approach to the Service/Work Required: Please provide a detailed description of the methodology for how the organisation/firm will achieve the Terms of Reference of the project, keeping in mind the appropriateness to local conditions and project environment.

2.2. Technical Quality Assurance Review Mechanisms: The methodology shall also include details of the Proposer's internal technical and quality assurance review mechanisms.

2.3 Implementation Timelines: The Proposer shall submit a Gantt Chart or Project Schedule indicating the detailed sequence of activities that will be undertaken and their corresponding timing.

2.4. Subcontracting: Explain whether any work would be subcontracted, to whom, how much percentage of the work, the rationale for such, and the roles of the proposed sub-contractors. Special attention should be given to providing a clear picture of the role of each entity and how everyone will function as a team.

2.5. Risks / Mitigation Measures: Please describe the potential risks for the implementation of this project that may impact achievement and timely completion of expected results as well as their quality. Describe measures that will be put in place to mitigate these risks.

2.6. Reporting and Monitoring: Please provide a brief description of the mechanisms proposed for this project for reporting to the UNDP and partners, including a reporting schedule.

2.7. Anti-Corruption Strategy: Define the anti-corruption strategy that will be applied in this project to prevent the misuse of funds. Describe the financial controls that will be put in place.

2.8. Partnerships: Explain any partnerships with local, international or other organizations that are planned for the implementation of the project. Special attention should be given to providing a clear picture of the role of each entity and how everyone will function as a team. Letters of commitment from partners and an indication of whether some or all have successfully worked together on other previous projects is encouraged.

2.9 Statement of Full Disclosure: This is intended to disclose any potential conflict in accordance with the definition of "conflict" under Section 4 of this document, if any.

2.10 Other: Any other comments or information regarding the project approach and methodology that will be adopted.

## SECTION 3: PERSONNEL

**3.1 Management Structure:** Describe the overall management approach toward planning and implementing this activity. Include an organization chart for the management of the project describing the relationship of key positions and designations.

**3.2 Staff Time Allocation:** Provide a spreadsheet will be included to show the activities of each staff member and the time allocated for his/her involvement. (Note :*This spreadsheet is crucial and no substitution of personnel will be tolerated once the contract has been awarded except in extreme circumstances and with the written approval of the UNDP. If substitution is unavoidable it will be with a person who, in the opinion of the UNDP project manager, is at least as experienced as the person being replaced, and subject to the approval of UNDP. No increase in costs will be considered as a result of any substitution.*)

**3.3 Qualifications of Key Personnel:** Provide the CVs for key personnel (Team Leader, Managerial and general staff) that will be provided to support the implementation of this project. CVs should demonstrate qualifications in areas relevant to the Scope of Services. Please use the format below:

<b>Name:</b>		
<b>Position for this Contract:</b>		
<b>Nationality:</b>		
<b>Contact information:</b>		
<b>Countries of Work Experience:</b>		
<b>Language Skills:</b>		
<b>Educational and other Qualifications:</b>		
<b>Summary of Experience:</b> <i>Highlight experience in the region and on similar projects.</i>		
<b>Relevant Experience (From most recent):</b>		
<b>Period: From – To</b>	<b>Name of activity/ Project/ funding organisation, if applicable:</b>	<b>Job Title and Activities undertaken/Description of actual role performed:</b>
<i>e.g. June 2004-January 2005</i>		
<i>Etc.</i>		
<i>Etc.</i>		
<b>References No.1 (Minimum of 3):</b>	<i>Name Designation Organization Contact Information – Address; Phone; Email; etc.</i>	
<b>Reference No.2</b>	<i>Name Designation Organization Contact Information – Address; Phone; Email; etc.</i>	
<b>Reference No.3</b>	<i>Name Designation Organization Contact Information – Address; Phone; Email; etc.</i>	

**Declaration:**

I confirm my intention to serve in the stated position and present availability to serve for the term of the proposed contract. I also understand that any wilful misstatement described above may lead to my disqualification, before or during my engagement.

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Signature of the Nominated Team Leader/Member

Date Signed

## Section 7: Financial Proposal Form<sup>7</sup>

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

The Financial Proposal must provide a detailed cost breakdown. Provide separate figures for each functional grouping or category.

Any estimates for cost-reimbursable items, such as travel and out-of-pocket expenses, should be listed separately.

In case of an equipment component to the service provider, the Price Schedule should include figures for both purchase and lease/rent options. UNDP reserves the option to either lease/rent or purchase outright the equipment through the Contractor.

The format shown on the following pages is suggested for use as a guide in preparing the Financial Proposal. The format includes specific expenditures, which may or may not be required or applicable but are indicated to serve as examples.

### A. **Cost Breakdown by Cost Component:**

The Proposers are requested to provide the cost breakdown for the above given prices for each deliverable based on the following format. UNDP shall use the cost breakdown for the price reasonability assessment purposes as well as the calculation of price in the event that both parties have agreed to add new deliverables to the scope of Services.

**Table 5: Cost Breakdown by Cost Component**

Description of Activity	Remuneration per Unit of Time (e.g., day, month, etc.)	Total Period of Engagement	No. of Personnel	Total Rate for the Period
<b>I. Personnel Services</b>				
1. Services from Home Office				
a. Expertise 1				
b. Expertise 3				
c. Expertise 4				
d. Expertise 5				
2. Services from Overseas				
a. Expertise 2				
<b>II. Out of Pocket Expenses</b>				
1. Travel Costs				
2. Daily Allowance				
3. Communications				
4. Others				
<b>III. Other Related Costs</b>				
<b>TOTAL</b>				

<sup>7</sup> No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Proposal.

**Model Contract for Goods and/or Services  
Between the United Nations Development Programme and a Company or  
Organization**

# United Nations Development Programme



Empowered lives.  
Resilient nations.

## Contract for Goods and/or Services Between the United Nations Development Programme and [insert name of the Contractor]

1. <b>Country Where Goods Will be Delivered and/or Services Will be Provided:</b>	
2. <b>UNDP</b> <input type="checkbox"/> Request for Quotation <input type="checkbox"/> Request for Proposal <input type="checkbox"/> Invitation to Bid <input type="checkbox"/> direct contracting Number and Date:	
3. <b>Contract Reference (e.g. Contract Award Number):</b>	
4. <b>Long Term Agreement:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> [indicate as appropriate]	
5. <b>Subject Matter of the Contract:</b> <input type="checkbox"/> goods <input type="checkbox"/> services <input type="checkbox"/> goods <i>and</i> services	
6. <b>Type of Services:</b>	
7. <b>Contract Starting Date:</b>	8. <b>Contract Ending Date:</b>
9. <b>Total Contract Amount:</b> [insert currency and amount in figures and words]	
9a. <b>Advance Payment:</b> [insert currency and amount in figures and words or indicate “not applicable”]	
10. <b>Total Value of Goods and/or Services:</b> <input type="checkbox"/> <b>below US\$50,000 (Services only)</b> – UNDP General Terms and Conditions for Institutional (de minimis) Contracts apply <input type="checkbox"/> <b>below US\$50,000 (Goods or Goods and Services)</b> – UNDP General Terms and Conditions for Contracts apply <input type="checkbox"/> <b>equal to or above US\$50,000 (Goods and/or Services)</b> – UNDP General Terms and Conditions for Contracts apply	
11. <b>Payment Method:</b> <input type="checkbox"/> fixed price <input type="checkbox"/> cost reimbursement	
12. <b>Contractor’s Name:</b> Address: Country of incorporation: Website:	
13. <b>Contractor’s Contact Person’s Name:</b> Title: Address:  Telephone number: Fax: Email:	
14. <b>UNDP Contact Person’s Name:</b> Title: Address: Telephone number: Fax: Email:	
15. <b>Contractor’s Bank Account to which payments will be transferred:</b> Beneficiary: Account name:	

Account number:
Bank name:
Bank address:
Bank SWIFT Code:
Bank Code:
Routing instructions for payments:

This Contract consists of the following documents, which in case of conflict shall take precedence over one another in the following order:

1. This face sheet (“Face Sheet”).
2. UNDP Special Conditions [delete if not applicable].
3. [UNDP General Terms and Conditions for Contracts] [UNDP General Terms and Conditions for Institutional (de minimis) Contracts] [delete if not applicable and remove square brackets].
4. Terms of Reference (TORs) and Schedule of Payments, incorporating the description of services, deliverables and performance targets, time frames, schedule of payments, and total contract amount [delete if not applicable].
5. Technical Specifications for Goods [delete if not applicable].
6. The Contractor’s Technical Proposal and Financial Proposal, dated [insert date], as clarified by the agreed minutes of the negotiations meeting, dated [insert date]; these documents not attached hereto but known to and in the possession of the Parties, and forming an integral part of this Contract.
7. Discount Prices [to be used in cases where the Contractor is engaged on the basis of an LTA; delete if not applicable].

All the above, hereby incorporated by reference, shall form the entire agreement between the Parties (the “Contract”), superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract.

This Contract shall enter into force on the date of the last signature of the Face Sheet by the duly authorized representatives of the Parties, and terminate on the Contract Ending Date indicated on the Face Sheet. This Contract may be amended only by written agreement between the duly authorized representatives of the Parties.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto, have on behalf of the Parties hereto signed this Contract at the place and on the day set forth below.

For the Contractor		For UNDP	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

# GENERAL TERMS AND CONDITIONS

## FOR CONTRACTS

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 deliver the goods described in the Technical Specifications for Goods (hereinafter the “Goods”) and/or 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 delivery of the Goods and/or performance of the Services.

**2.2** To the extent that the Contract involves any purchase of the Goods, the Contractor shall provide UNDP with written evidence of the delivery of the Goods. Such evidence of delivery shall, at the minimum, consist of an invoice, a certification of conformity, and other supporting shipment documentation as may otherwise be specified in the Technical Specifications for Goods.

**2.3** 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.

**2.4** All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the delivery of the Goods and/or 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 Goods and/or 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 Goods and/or Services from the Contractor hereunder.

**3.3** The Contractor shall provide the Services and/or deliver the Goods, 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 Goods and/or 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 Goods and/or 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 Goods delivered and/or 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 Goods and/or 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 delivery of the Goods and/or 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 delivery of the Goods and/or 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 delivery of the Goods and/or 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 delivery of the Goods and/or the provision of the Services.

4.2.2 The Contractor shall not provide the Services and/or deliver the Goods 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 Goods delivered in accordance with the Technical Specifications for Goods and/or 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 delivery of the Goods and/or 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.

**8. RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of the Services to UNDP by the Contractor's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

**8.1** The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property.

**8.2** The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

**8.3** Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

**8.4** At the option of and in the sole discretion of UNDP:

8.4.1 the qualifications of personnel proposed by the Contractor (*e.g.*, a curriculum vitae) may be reviewed by UNDP prior to such personnel's performing any obligations under the Contract;

8.4.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNDP prior to such personnel's performing any obligations under the Contract; and,

8.4.3 in cases in which, pursuant to Article 8.4.1 or 8.4.2, above, UNDP has reviewed the qualifications of such Contractor's personnel, UNDP may reasonably refuse to accept any such personnel.

**8.5** Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

8.5.1 UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.

8.5.2 Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.

8.5.3 The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.

8.5.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

8.5.5 Any request by UNDP for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.

8.5.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

**8.6** Nothing in Articles 8.3, 8.4 and 8.5, above, shall be construed to create any obligations on the part of UNDP with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

**8.7** The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of UNDP shall:

8.7.1 undergo or comply with security screening requirements made known to the Contractor by UNDP, including but not limited to, a review of any criminal history;

8.7.2 when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to UNDP for cancellation.

**8.8** Within one working day after learning that any of Contractor's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.

**8.9** All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP property without appropriate authorization from UNDP.

**8.10** 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.

**8.11** 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 in paragraph 8.10 above.

## **9. ASSIGNMENT:**

**9.1** Except as provided in Article 9.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of UNDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNDP.

**9.2** The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, *provided that*:

9.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*,

9.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; *and*,

9.2.3 the Contractor promptly notifies UNDP about such assignment or transfer at the earliest opportunity; *and*,

9.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UNDP following the assignment or transfer.

**10. SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNDP. UNDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP

reasonably considers is not qualified to perform obligations under the Contract. UNDP shall have the right to require any subcontractor's removal from UNDP premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

**11. PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of the Goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to such purchases under the Contract:

**11.1 DELIVERY OF GOODS:** The Contractor shall hand over or make available the Goods, and UNDP shall receive the Goods, at the place for the delivery of the Goods and within the time for delivery of the Goods specified in the Contract. The Contractor shall provide to UNDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the Goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the Goods shall be borne exclusively by the Contractor until physical delivery of the Goods to UNDP in accordance with the terms of the Contract. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by UNDP.

**11.2 INSPECTION OF THE GOODS:** If the Contract provides that the Goods may be inspected prior to delivery, the Contractor shall notify UNDP when the Goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNDP or its designated inspection agents may also inspect the Goods upon delivery in order to confirm that the Goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNDP or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

**11.3 PACKAGING OF THE GOODS:** The Contractor shall package the Goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the Goods. The Goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the Goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by UNDP as well as such other information as is necessary for the correct handling and safe delivery of the Goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

**11.4 TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the Goods in accordance with the requirements of the Contract. The Contractor shall ensure that UNDP receives all necessary transport documents in a timely manner so as to enable UNDP to take delivery of the Goods in accordance with the requirements of the Contract.

**11.5 WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNDP stated in or arising under the Contract, the Contractor warrants and represents that:

11.5.1 The Goods, including all packaging and packing thereof, conform to the technical specifications, are fit for the purposes for which such Goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

11.5.2 If the Contractor is not the original manufacturer of the Goods, the Contractor shall provide UNDP with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

11.5.3 The Goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

11.5.4 The Goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

11.5.5 The Goods are new and unused;

11.5.6 All warranties will remain fully valid following any delivery of the Goods and for a period of not less than one (1) year following acceptance of the Goods by UNDP in accordance with the Contract;

11.5.7 During any period in which the Contractor's warranties are effective, upon notice by UNDP that the Goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective Goods with Goods of the same or better quality or, at its own cost, remove the defective Goods and fully reimburse UNDP for the purchase price paid for the defective Goods; and,

11.5.8 The Contractor shall remain responsive to the needs of UNDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

**11.6 ACCEPTANCE OF GOODS:** Under no circumstances shall UNDP be required to accept any Goods that do not conform to the specifications or requirements of the Contract. UNDP may condition its acceptance of the Goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNDP be obligated to accept any Goods unless and until UNDP has had a reasonable opportunity to inspect the Goods following delivery. If the Contract specifies that UNDP shall provide a written acceptance of the Goods, the Goods shall not be deemed accepted unless and until UNDP in fact provides such written acceptance. In no case shall payment by UNDP in and of itself constitute acceptance of the Goods.

**11.7 REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to UNDP under the Contract, in case any of the Goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNDP, at its sole option, may reject or refuse to accept the Goods, and within thirty (30) days following receipt of notice from UNDP of such rejection or refusal to accept the Goods, the Contractor shall, in sole option of UNDP:

11.7.1 provide a full refund upon return of the Goods, or a partial refund upon a return of a portion of the Goods, by UNDP; *or*,

11.7.2 repair the Goods in a manner that would enable the Goods to conform to the specifications or other requirements of the Contract; *or*,

11.7.3 replace the Goods with Goods of equal or better quality; *and*,

11.7.4 pay all costs relating to the repair or return of the defective Goods as well as the costs relating to the storage of any such defective Goods and for the delivery of any replacement Goods to UNDP.

**11.8** In the event that UNDP elects to return any of the Goods for the reasons specified in Article 11.7, above, UNDP may procure the Goods from another source. In addition to any other rights or remedies available to UNDP under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and UNDP shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the Goods for the Contractor's account.

**11.9 TITLE:** The Contractor warrants and represents that the Goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the Goods shall pass from the Contractor to UNDP upon delivery of the Goods and their acceptance by UNDP in accordance with the requirements of the Contract.

**11.10 EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the Goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNDP under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNDP, UNDP shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with UNDP to enable UNDP to take appropriate measures to resolve the matter.

## **12. INDEMNIFICATION:**

**12.1** The Contractor shall indemnify, defend, and hold and save harmless, UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

12.1.1 allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

12.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

**12.2** The indemnity set forth in Article 12.1.1, above, shall not apply to:

12.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNDP directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; *or*

12.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if UNDP or another party acting under the direction of UNDP made such changes.

**12.3** In addition to the indemnity obligations set forth in this Article 12, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 12, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

**12.4** UNDP shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

**12.5** In the event the use by UNDP of any Goods, property or Services provided or licensed to UNDP by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

12.5.1 procure for UNDP the unrestricted right to continue using such Goods or Services provided to UNDP;

12.5.2 replace or modify the Goods and/or or Services provided to UNDP, or part thereof, with the equivalent or better Goods and/or Services, or part thereof, that is non-infringing; *or*,

12.5.3 refund to UNDP the full price paid by UNDP for the right to have or use such Goods, property or Services, or part thereof.

### **13. INSURANCE AND LIABILITY:**

**13.1** The Contractor shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

**13.2** Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

13.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

13.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

13.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,

13.2.4 such other insurance as may be agreed upon in writing between UNDP and the Contractor.



**13.3** The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

**13.4** The Contractor acknowledges and agrees that UNDP accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

**13.5** Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNDP, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

13.5.1 name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

13.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP;

13.5.3 provide that UNDP shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,

13.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.

**13.6** The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

**13.7** Except for any self-insurance program maintained by the Contractor and approved by UNDP for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNDP. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNDP with evidence, in the form of certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNDP reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 13.5.3, above, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.

**13.8** The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

**14. 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.

**15. 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.

**16. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

**16.1** 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.

**16.2** 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.

**16.3** 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.

**16.4** 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.

**17. 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.

**18. 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:

**18.1** The Recipient shall:

18.1.1 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*,

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

**18.2** 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 18, the Recipient may disclose Information to:

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

18.2.2 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:

18.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; *or*,  
18.2.2.2 any entity over which the Party exercises effective managerial control; *or*,  
18.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

**18.3** 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.

**18.4** 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.

**18.5** 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.

**18.6** 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.

## **19. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**

**19.1** 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.

**19.2** 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 20, "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.

**19.3** *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.

## **20. TERMINATION:**

**20.1** Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 23 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

**20.2** 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.

**20.3** In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by UNDP, the Contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing:

20.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;

20.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

20.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

20.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

20.3.5 transfer title and deliver to UNDP the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

20.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to UNDP thereunder;

20.3.7 complete performance of the work not terminated; *and*,

20.3.8 take any other action that may be necessary, or that UNDP may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNDP has or may be reasonably expected to acquire an interest.

**20.4** In the event of any termination of the Contract, UNDP shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNDP shall not be liable to pay the Contractor except for those Goods satisfactorily delivered and/or Services satisfactorily provided to UNDP in accordance with the requirements of the Contract, but only if such Goods or Services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNDP or prior to the Contractor's tendering of notice of termination to UNDP.

**20.5** UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

20.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

20.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

20.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

20.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

20.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

20.5.6 UNDP reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

**20.6** Except as prohibited by law, the Contractor shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 20.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNDP of the occurrence of any of the events specified in Article 20.5, above, and shall provide UNDP with any information pertinent thereto.

**20.7** The provisions of this Article 20 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

**21. 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.

**22. 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.

**23. SETTLEMENT OF DISPUTES:**

**23.1 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.

**23.2 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 23.1, 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.

**24. 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.

**25. TAX EXEMPTION:**

**25.1** 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.

**25.2** 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.

**26. MODIFICATIONS:**

**26.1** 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.

**26.2** If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 26.1, above.

**26.3** The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any Goods or Services provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute an agreement by UNDP thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 26.1, above.

**27. AUDITS AND INVESTIGATIONS:**

**27.1** 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.

**27.2** 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.

**27.3** 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.

**27.4** 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.

**28. LIMITATION ON ACTIONS:**

**28.1** Except with respect to any indemnification obligations in Article 12, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 23.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

**28.2** 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.

**29. ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 30 to 36 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.

**30. 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.

**31. 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 documents then in force at the time of signature of the Contract:

**31.1** The UN Supplier Code of Conduct;

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

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

**31.4 UNDP Social and Environmental Standards (SES), including the related Accountability Mechanism;**

**31.5 UNDP Vendor Sanctions Policy; and**

**31.6 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](http://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.

**32. 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.

**33. 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.

**34. 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.

**35. SEXUAL EXPLOITATION:**

**35.1** 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.

**35.2** 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.

**35.3** 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.



**36. 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](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.