



**REQUEST FOR QUOTATION (RFQ)**  
*(Services and Goods)*

<b>Name of the Firm:</b>	<b>Date:</b> January 8, 2019
<b>Address:</b>	<b>Reference:</b> UNDP-TUR-RFQ(GREEK)-2019/01

Dear Sir / Madam:

We kindly request you to submit your quotation for “**Production of Three (3) Short Films for Increasing the Border Surveillance Capacity of Borders Between Turkey and Greece Project**”. The information regarding the content of the short films are submitted in **Annex 1-Technical Specifications**.

Quotation may be submitted on or before **COB January 14, 2019** and via *e-mail or courier*, to the address below:

**United Nations Development Programme**

Yıldız Kule, Yukarı Dikmen Mah.  
Turan Güneş Bulvarı No:106 Kat:16  
Çankaya/Ankara  
Turkey

M.Taylan Özdemir  
tr.procurement@undp.org

It shall remain your responsibility to ensure that your quotation will reach the address above on or before the deadline. Quotation that are received by UNDP Turkey Country Office after the deadline indicated above, for whatever reason, shall not be considered for evaluation.

If you are submitting your quotation by email, kindly ensure that they are signed and in the .pdf format, and free from any virus or corrupted files.

Please take note of the following requirements and conditions pertaining to the provision of the abovementioned services and goods:

## DATA SHEET

<b>Exact Address of UNDP Turkey CO</b>	<b>United Nations Development Programme</b> Yıldız Kule Yukarı Dikmen Mah. Turan Güneş Bulvarı No:106 Kat:16 Çankaya/Ankara
<b>Latest Expected Delivery Date and Time</b> <i>(if delivery time exceeds this, quote may be rejected by UNDP)</i>	15 February 2019  Time: 17:30  Time Zone of Reference: GMT +3
<b>Preferred Currency of Quotation</b>	<input checked="" type="checkbox"/> United States Dollars
<b>Value Added Tax on Price Quotation</b>	<input checked="" type="checkbox"/> Must be exclusive of VAT and other applicable indirect taxes
<b>Deadline for the Submission of Quotation</b>	COB, Monday, January 14, 2019 <i>and GMT +3</i>
<b>All documentations, including catalogs, instructions and operating manuals, shall be in this language</b>	<input checked="" type="checkbox"/> English
<b>Documents to be submitted</b>	<input checked="" type="checkbox"/> Trade Registry Gazette <input checked="" type="checkbox"/> Valid Chamber of Commerce Registration Certificate (original documents may be requested by UNDP and shall be presented when requested) <input checked="" type="checkbox"/> Signature Curricular/Power of Attorney (original documents may be requested by UNDP and shall be presented when requested) <input checked="" type="checkbox"/> Proof documents (such as work completion certificate, contract for ongoing or completed works, reference letter from customer, invoice, etc) for fulfilment of Qualification Requirements <input checked="" type="checkbox"/> Duly accomplished, signed and stamped Form for Submitting Offeror's Quotation (Annex 2)
<b>Period of Validity of Quotes starting the Submission Date</b>	<input checked="" type="checkbox"/> 60 days  In exceptional circumstances, UNDP may request the Vendor to extend the validity of the Quotation beyond what has been initially indicated in this RFQ. The quotation shall then confirm the extension in writing, without any modification whatsoever on the Quotation.
<b>Partial Quotes</b>	<input checked="" type="checkbox"/> Not permitted
<b>Payment Terms</b>	<input checked="" type="checkbox"/> Upon UNDP's written acceptance (i.e., not mere receipt) approval of each deliverable; and receipt of invoice from the Contractor

<b>Liquidated Damages</b>	Not Applicable
<b>Qualification Requirements</b>	<p><input checked="" type="checkbox"/> Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of producing films and production services, to be submitted digitally i.e. with CD, USB or via cloud accounts such as google drive, we transfer etc.</p> <p><input checked="" type="checkbox"/> Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of developing distance learning training programmes.</p> <p><input checked="" type="checkbox"/> Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of developing interactive video-based distance learning training material on a learning management system (LMS).</p> <p><input checked="" type="checkbox"/> Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of analysis of videos with eye-tracking technology.</p>
<b>Evaluation Criteria</b>	<p><input checked="" type="checkbox"/> Technical responsiveness/Full compliance to requirements and lowest price<sup>1</sup></p> <p><input checked="" type="checkbox"/> Full acceptance of the Contract General Terms and Conditions for Contracts</p>
<b>UNDP will award to:</b>	<input checked="" type="checkbox"/> One and only one offeror
<b>Type of Contract to be Signed</b>	<input checked="" type="checkbox"/> Contract for Services and Goods (Facesheet)
<b>Conditions for Release of Payment</b>	<input checked="" type="checkbox"/> Written Acceptance of Services based on full compliance with RFQ requirements
<b>Annexes to this RFQ</b>	<p><input checked="" type="checkbox"/> Terms of Reference (Annex 1)</p> <p><input checked="" type="checkbox"/> Form for Submitting Offeror's Quotation (Annex 2)</p> <p><input checked="" type="checkbox"/> General Terms and Conditions for Contracts (Annex 3).</p> <p><input checked="" type="checkbox"/> Non-disclosure Declaration (Annex 4)</p> <p>Non-acceptance of the terms of the General Terms and Conditions for Contracts shall be grounds for disqualification from this procurement process.</p>
<b>Contact Person for Inquiries (Written inquiries only)<sup>2</sup></b>	<p><i>M. Taylan Özdemir</i>  Procurement Assistant, UNDP Turkey CO <a href="mailto:tr.procurement@undp.org">tr.procurement@undp.org</a>  Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>

<sup>1</sup> UNDP reserves the right not to award the contract to the lowest priced offer, if the second lowest price among the responsive offer is found to be significantly more superior, and the price is higher than the lowest priced compliant offer by not more than 10%, and the budget can sufficiently cover the price difference. The term "more superior" as used in this provision shall refer to offers that have exceeded the pre-determined requirements established in the specifications.

<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 received.

<p><b>Pre-Bid conference</b></p>	<p>Will be conducted at the date, time and location specified below. All offerors are encouraged to attend. Non-attendance, however, shall not result in disqualification of an interested offeror. Minutes of the pre-bid conference will be disseminated on the procurement website and shared by email. No verbal statement made during the conference shall modify the terms and conditions of the RFQ, unless specifically incorporated in the Minutes of the Pre-Bid Conference or issued/posted as an amendment to RFQ.</p> <p>All expenses relating to the offerors' participation in the Pre-bid Conference are borne by the offerors.</p> <p><b>Time:</b> 14:30 by Turkey time  <b>Date :</b>11 January 2019  <b>Venue :</b> <u>United Nations Development Programme (UNDP)</u></p> <p>Yıldız Kule16th Floor, Yukarı Dikmen Mahallesi, Turan Güneş Bulvarı, No:106, 06550, Çankaya, Ankara/Turkey</p> <p>The UNDP focal point for the arrangement is:  Taylan Özdemir, Procurement Assistant, UNDP Turkey CO  Telephone: 03124541103  E-mail: <a href="mailto:tr.procurement@undp.org">tr.procurement@undp.org</a></p> <p>Failure of an offeror to participate in the Pre-bid Conference shall not lead to any additional payment to the offeror in case awarded by the Contract.</p>
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Services and goods offered shall be reviewed based on completeness and compliance of the quotation with the minimum specifications described above and any other annexes providing details of UNDP requirements.

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

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

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

At any time during the validity of the quotation, no price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the quotation.

At the time of award of Contract or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of outputs, by up to a maximum twenty-five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

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

UNDP is not bound to accept any quotation, nor award a contract, nor be responsible for any costs associated with a offerors' preparation and submission of a quotation, regardless of the outcome or the manner of conducting the selection process. Please be advised that UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a purchase order or contract in a competitive procurement process. **In the event that** you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link:

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

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

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

Thank you and we look forward to receiving your quotation.

Sincerely Yours,



Üsâme Yalçın

Assistant Resident Representative  
(Operations)

January 8, 2019

## TERMS OF REFERENCE

### *Production of Three (3) Short Films for Increasing the Border Surveillance Capacity of Borders Between Turkey and Greece Project*

#### **Background**

UNDP (United Nations Development Programme) is the UN's global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP is on the ground in 177 countries and territories, working with them on their own solutions to global and national development challenges.

With the latest changes in the global arena and in Turkey, UNDP Turkey has repositioned itself to be in line with the new UNDP Strategic Plan 2014-2017, changing needs of Turkey and Tenth National Development Plan, in order to target development challenges and priorities of the country.

UNDP Turkey has repositioned to contribute through three core areas: 1) Inclusive and Democratic Governance (IDG); 2) Inclusive and Sustainable Growth (ISG); and 3) Climate Change and Environment (CCE); and in addition to these core areas, UNDP Turkey is emphasizing the role of Strategic Partnerships that cut across the entire country programme as well as regionally and globally.

Under the IDG Portfolio, in line with the EU requirements and policies, the Government of Turkey in the course of progress towards accession to the EU is actively implementing a National Programme for the Adoption of the EU Acquis (NPAA). The objective of the legal harmonization is not only about the amendments in relevant existing legislation but also strengthening institutions responsible for the enforcement and implementation of the new procedures. Therefore, the process of “Institution Building and Reform” is considered as crucial in ensuring Turkey’s successful transition to the standards, norms, expectations and obligations of similar EU Member State administrations. Within the process of “Institution Building and Reform”, border management is evaluated as one of the high priority areas under the chapter 24. To this end, the Government of Turkey is following a reform programme targeting a decrease in irregular migration through developing an effective IBM system, strengthening institutional capacities and raising awareness on matters related to border management.

In line with this, “Substantial progress is made in implementing institutional reforms for integrated border management, with an increased technical capacity for border management and a high degree of alignment with relevant EU policy”. In addition, “capacity building to combat cross-border crimes and manage borders in an effective and sustainable manner, focusing on efficient use of equipment, risk analysis, information exchange and integrated border management practices, complemented by upgraded software and hardware” have been set as an action.

To this end, the project named “Increasing Border Surveillance Capacity of Borders between Turkey and Greece” at hand aims to respond to the above referred needs in the field of border management via assessing the institutional capacity needs of Land Forces Command (LFC) to adopt tools for modern border surveillance including but not limited to high technology systems and developing a training model and curriculum in line with international law and practices; and training of 500 professional staff (currently Turkish Armed Forces, Land Forces Command) staff on the procedural requirements of dealing with irregular movements at the border regions as well as fundamental rights on migrants and international protection and combating human trafficking.

In this respect the Project is composed of 2 components:

**Component A – Institutional Capacity Building:** This component aims to enhance institutional capacity of Land Forces, which will be equipped with certain training tools for modern border surveillance in line with international standards and European practices

**Component B – Individual Capacity Building:** This component aims to build the individual capacity of the professional staff on the procedural requirement of dealing with irregular movement at the border regions through development and delivery of tailor-made training modules.

**Ministry of Interior (MoI)** is the main beneficiary and **the LFC** is the co-beneficiary of the Project.

- According to the Turkish law, the overall supervision of Border Management is exercised by the MoI. Specifically; at central level, General Directorate of Provincial Administrations - Border Management Department under MoI coordinates the border management activities. At local level, the MoI performs these functions through the deputy governors assigned by the governors. MoI is responsible for the programming, monitoring and evaluation of the home affairs sub-sector which covers migration and asylum, Integrated Border Management and fight against organized crimes priority areas.
- The LFC is responsible for border surveillance activities on land borders and delivers the criminals seized at the borders to law enforcement units (Police/ Gendarmerie).

For the smooth implementation of the Project, **UNDP** provides technical assistance for the efficient and effective implementation of the Project through the Direct Grant contract signed between **Central Finance and Contracts Unit (CFCU)** as the contracting authority and endorsed by the **EU Delegation to Turkey** as the donor. To this end,

- UNDP is expected to ensure the achievement of the Project's expected results as presented in the Description of Action and under the conditions stipulated in the Special Conditions of the Direct Grant Agreement.
- CFCU holds responsibility for the overall budgeting, tendering, contracting, payments, accounting and financial reporting aspects of this project as well as overall coordination and monitoring of the project implementation.
- EU Delegation to Turkey is involved in the monitoring of the project and provides guidance/advise when necessary for the purposes of improving and strengthening further the Project's expected results

The implementation period of the Project has started on 30 May 2017 and it will be ended as of 28 February 2019.

#### **A. Scope of Work and Objectives**

The overall objective of this requirement is to increase the visibility of the activities and to develop the training materials within the scope of the Increasing Border Surveillance Capacity of Border Between Turkey and Greece. To achieve the overall objective, the purpose of this Contract is to produce three short films in total;

- **Two of which** aim to be used as audio visual training content and cover the basic concepts and highlights of **IBM** and **human rights** training topics in order to help the intensive level trainees to receive essential knowledge in a memorable way.
- **One of which** aims to promote the impact of the Project by sharing video stories of the participants of the basic level trainings who will be visited during the field study in Edirne and representatives from Project beneficiaries based in Ankara as well as shooting scenes from the intensive trainings that will be organized in Ankara/Antalya.

Within the scope of the assignment, the contractor shall undertake the production of **three short films**, including preparatory work for the films (preparing the work plan, forming the team, supplying the equipment for camera, lights, sound etc., writing the story boards in coordination with the Project technical assistance team and Project Beneficiaries, production of the material, supplying the equipment for the editing phase and impact assessment, etc).



## B. Outputs and methodology

- **Two 5 minutes short film for integrated border management (IBM) and human rights.**

After the enforcement of the internal circular of LFC, there have been new assignments to the border units. As agreed with the project beneficiaries, it would be beneficial to involve their participation into the Project activities, most importantly to the trainings, for their smooth orientation into their new appointments and sustainability of the trainings delivered within the scope of this project. To this end, 5 days-long intensive training courses will be organized for the newly assigned 150 professional border staff.

In order to increase the effectiveness of intensive trainings, audio visual training content will be introduced and two short films (on IBM and human rights) will be produced, each of them will last for 5 minutes. These short films will cover the basic concepts and highlights of IBM and human rights training topics in order to help the intensive level trainees to receive essential knowledge in a memorable way. These short films will be further used in a coming project whereby pilot distance learning trainings will be organized by making use of the subject short films as training content. The short films will not only help the institutional memory of LFC to be preserved and thus serve for the sustainability of the project; but also will be used for the distance learning trainings which will be delivered under the upcoming EU funded “Border Surveillance Capacity between Turkey and the EU – Phase II” project.

- **One 3 minutes short film for Project highlights:** The short film to be produced shall include interviews with representatives from Project Beneficiaries based in Ankara, basic level training participants and high level LFC personnel in Edirne and scenes from intensive trainings which will be organized in Ankara/Antalya illustrating the positive impact of training activities and Project in general, in their daily professional lives by sharing lessons learned and how they apply the knowledge gained from the Project Activities. For better visibility, good perception and best showcasing the impact, the short films to be produced should include innovative drone shootings, photo & video shootings and other means of the modern storytelling.

It is required to prepare the story boards for shooting and production of the films, develop the concept and write the scripts of the films in coordination with the UNDP technical assistance team and the Project Beneficiaries, realize the shooting and make interviews based on the time plan, make the post-production including editing, dubbing, 3D animation when necessary.

The development of above mentioned three short films will be conducted in two phases:

**a. Design phase:** this phase will be conducted for each short film with the planning of the setup and work flow through story boards.

Firstly, identified subject matters and the necessary data for the content of the trainings will be provided to the contractor by UNDP. Subject and objective of the short film, target group and script will be included in this data.

Secondly, according to the data provided by UNDP; story boards including speech text, animation, graphics, video and/or images to enhance training will be developed by the Contractor and cleared by UNDP. Shall there be any revisions by the UNDP to the story boards, the revisions will be completed in 2 days by the Contractor. To increase the effectiveness of the short films, attractive images, legible and typographic fonts, colors and other visual elements such as movie clips, animated descriptions and any other innovative teaching models should be used.

The contractor will realize the necessary organization and design for the development of the short films and transfer of this content into electronical environment. The videos,



graphics and animations and general visual design will be produced for the development of electronic content that will be in line with visual specifications for learning and remembering. In this respect the impact of the visual elements such as color, shape, or movement will be assessed by the Contractor and these elements will be used in most effective way during the design process.

**b. Production phase:** In line with the agreed story boards; the necessary electronic content defined such as animation, image, video and graphics will be prepared in MPEG 4 (.mp4) format for each short film. Short films must be operable in PC and tablets without the requirement of players such as Flash Player, Unity Web Player, Java Applet. The final version of the short films will be delivered to UNDP in electronical environments such as USB memory stick etc.

For the two short films on IBM and migrants' rights, since these short films will be used for the distance learning trainings which will be delivered under the upcoming EU funded "Border Surveillance Capacity between Turkey and the EU – Phase II" project, the content must be convertible and usable in distance learning training platforms. To this end, electronic content must be developed in line with the distance learning standards such as SCORM, Tin Can API and Portal Systems. Short films must be transferrable into interactive video-based distance learning training material on an learning management system (LMS). Lastly, the content must be compatible with the "eye tracking tool" technology whereby the responses of the participants on the computer screen, how long/where they are looking on the screen and the change analysis of their eye-pupil growth will be analyzed.

All the short films will be produced in Turkish and will be sub-titled in English.

#### **i. Shooting Details for the Short Films**

##### **Two 5 minutes short film for integrated border management (IBM) and human rights (one film for each topic):**

- Visual and audio media should play an integral role in the development process to help motivate audiences, deliver content faster than text or speech, help learners comprehend and retain information. For concept; images, 3D art, and vector design icons can be used. Infographics should be used to chunk complex content into more manageable bites.
- Content must be developed in line with the distance learning standards such as SCORM, Tin Can API and Portal Systems.
- Short films must be transferrable into interactive video-based distance learning training material on an LMS.
- The content must be compatible with the "eye tracking tool" technology whereby the responses of the participants on the computer screen, how long/where they are looking on the screen and the change analysis of their eye-pupil growth will be analyzed.
- For the case studies, animations and/or visualization of the scenario by using actors should be preferred.
- For visual media to be used in the short films; such as military equipment used in border surveillance, border areas and border professionals; there will be 3 days shootings in LFC premises in Edirne.

##### **One 3 minutes short film for Project highlights:**

- 2 days in LFC premises in Edirne there will be aerial shooting, general video and photo shooting

of the border areas where the surveillance towers and border infrastructure are built, LFC professional staff while they are on duty.

- 3 days interviews and photo shooting with the representatives of Project beneficiary institutions (in LFC and MoI premises) in Ankara in studio or indoors (office of the interviewee).
- 1 day filming and photo shooting of intensive trainings will be conducted during the intensive trainings which will be organized between 14-25 January 2019 in Ankara or 28 January - 8 February 2019 in Antalya. Exact location of the shootings will be agreed based on the availability of the UNDP and Project Beneficiaries. The images produced during the trainings will be used in the short films.

All expenses such as travel, accommodation, living expenses, etc. borne during the Edirne, Ankara and Antalya missions will be borne by the Contractor.

## ii. Technical Requirements

- The systems to be used in the film production shall conform to the norms of the European Broadcasting Union.
- No data shall be used whose sources or references are not known, not based on scientific data, taken from the internet environment (photographs, films, information, documents, maps, logos etc.).
- It is the Contractor's responsibility to ensure compliancy with national and international legislation for the protected works such as stock music, stock images used in the films.
- All visuals shall comply with EU Delegation to Turkey guidelines mentioned on <https://www.avrupa.info.tr/tr/avrupa-birligi-gorunurluk-ilkelerini-ogrenin-16> page. Required guidance will be provided by UNDP in the post production stage.

### Film shooting;

- All film shootings shall be in 4K Ultra HD resolution (3840 x 2160px, 60fps and at least 4:2:0 color sampling, 10bit compression) shooting format.
- Where necessary, the shooting shall involve several simultaneous cameras. Light shall be used in indoors. Where necessary, sliders etc. shall be used.
- Aerial shootings shall be executed by drone capable of the specs mentioned above, in Edirne.
- In the areas for which details are provided; general, detailed and aerial shootings shall be executed. During the shootings, interviews shall be held with pre-identified persons, as stipulated before, in a way to support the scenario and story line.
- Two 5 minutes short film for integrated border management (IBM) and human rights must be developed in line with the distance learning standards such as SCORM, Tin Can API and Portal Systems
- End product must be delivered in Mpeg4 (.mp4) format

### Photograph;

- During all shootings, professional photo-shooting shall be made; photographs shall reflect the work done, positive impact and human stories, and at least 50 photographs agreed upon with the UNDP technical assistance team and the Project Beneficiaries shall be delivered in an external memory device.
- Lowest resolution for the photographs should be 5538 x 4153px and 350dpi.

### Scenario

- The scripts of the films shall be written in Turkish by the Contractor considering the technical information and documents provided by UNDP and Project Beneficiaries.

## **Post Production**

- Where deemed necessary by the UNDP and the Project Beneficiaries during the post-production phase (areas worked on map, graphics, infographics etc.), 3D and/or various animation formats, infographics and other informative graphic methods applications, shall be used.
- The Contractor shall execute any and all processes of the post-production phase (editing, voice-over, music score, mixing, colour correction, 3D animation etc.). The post-production of the film shall be based on the script which has been agreed upon by UNDP.
- The final version of the films will be delivered to UNDP in electronic environments such as USB memory stick etc.

## **Closed Captioning**

- Voice samples of the experienced, professional dubbing artist who shall perform the Turkish voice-over shall be submitted to UNDP, and following UNDP's approval, the voice-over shall be applied to the short films. UNDP reserves the right not to accept the proposed dubbing artist and to require alternatives for the dubbing artist.
- The voice-over shall be in Turkish. The short films shall have English subtitles. The subtitles shall not be hard coded to the short films (open captioning). Instead, they should be delivered in (.srt) format along with the short films (closed captioning).

## **Music score**

- The short films shall be supported by anonymous or original (instrumental, local) score or stock music without intellectual property issues. The music scores shall be approved by UNDP.
- The stock music shall be purchased before being used on the final product. Receipts for the before mentioned purchase must be delivered together with the short films in soft copy format (.pdf).

### **iii. Governance and Accountability**

Following the contract signature, the Contractor shall submit a detailed work plan to UNDP within 5 calendar days; the work plan is subject to approval of UNDP.

All raw stocks (images), photographs, and master copies of all produced films shall be delivered in 1 external memory device in line with the corresponding specifications above.

The Contractor shall obtain written approval from UNDP technical assistance team and the Project Beneficiaries prior to production phase for each media.

All versions (i.e. draft, revised) of deliverables of this contract are subject to review of UNDP. The Contractor shall submit every film completed with shooting and post-production to UNDP for approval; implement the changes indicated by UNDP and project beneficiaries and finalize the films. There may be up to 8 reviews, which will be required by UNDP, to each short films product mentioned above.

UNDP may reject deliverables if Contractor fails to revise the deliverables in line with the comments of UNDP and Project Beneficiaries. Any rejection shall not delay the target delivery, UNDP reserves the right to impose liquidated damages for any delay on target delivery.

All documents and information provided by UNDP, as well as the multimedia products to be recorded by the contractor shall be kept confidential. A non-disclosure declaration will be signed upon the award of the contract as attached in **Annex IV**.

UNDP will provide all relevant background documents. UNDP will not provide any physical facility or equipment for the preparatory and reporting works work of the Contractor.

UNDP will facilitate meetings between the Contractor and other stakeholders, when needed. UNDP will help the Contractor with necessary administrative authorization before the interviews. All official authorization and permissions for the sites of shooting and work will be obtained by UNDP. In case, where

the work cannot be done and/or delayed, necessary measures shall be taken by UNDP and the lost time shall be added to the Work Delivery Deadline.

The Contractor shall submit the personal details of its team members who will participate in the shooting of the videos in LFC and MoI premises to UNDP at least 10 days before the visit/interview. UNDP reserves the right not to accept the proposed team members and to require alternatives.

During the shootings, UNDP and the Project Beneficiaries shall accompany the Contractor. UNDP shall arrange and choose the persons to be interviewed.

The Contractor shall use the official logos of UNDP and of other relevant entities as designated by UNDP and following the **approval of UNDP**.

Portfolio Manager of “Inclusive and Democratic Governance Portfolio” will directly supervise the Contractor. Contractor will be directly responsible to, reporting to, seeking approval/acceptance of deliverable from Portfolio Manager.

Copyright of the materials shall be vested in UNDP.

All copyrights of the visual, audio-visual and printed materials provided by UNDP and produced by the Contractor shall be vested in UNDP.

The Contractor is responsible of the protection, security and deposit of all information, documents and other materials, throughout the work. The Contractor is responsible for not using all above-mentioned information, in another work of any nature.

### C. Duration of the Work

The contract shall be effective on the date of last signature by the parties and short films will be submitted before 15 February 2019.

### D. Payment Terms

<b>Deliverables</b>	<b>Percentage</b>	<b>Condition for Payment Release</b>
5 minutes short film for integrated border management (IBM)	40	Within thirty (30) days from the date of meeting the following conditions: <ul style="list-style-type: none"> <li>• UNDP’s written acceptance (i.e., not mere receipt) approval of each deliverable; and</li> <li>• Receipt of invoice from the Contractor</li> </ul>
5 minutes short film for human rights	40	
3 minutes short film for Project highlights	20	

The contract price is a fixed price regardless of extension of the herein specific duration. The contract price is gross, and all inclusive of all travel, accommodation, transportation, equipment, office and etc. expenses required for the successful provision of outputs and deliverables as well all legal expenses, including but not limited to social security, income tax, pension, visa etc., which shall be required by applicable laws. Contractor will not receive any additional payment for whatsoever reason.

#### **E. Qualification Requirements:**

- 1- Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of producing films and production services, to be submitted digitally i.e. with CD, USB or via cloud accounts such as google drive, we transfer etc.
  
- 2- Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of developing distance learning training programmes.
  
- 3- Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of developing interactive video-based distance learning training material on a learning management system (LMS).
  
- 4- Documented (such as work completion certificate, contract for completed or ongoing works, reference letter from customer, invoice, etc) track record of analysis of videos with eye-tracking technology.

ANNEX 2

**FORM FOR SUBMITTING OFFEROR’S QUOTATION<sup>3</sup>**

*(This Form must be submitted only using the Offeror’s Official Letterhead/Stationery<sup>4</sup>)*

<b>Deliverables/ Outputs</b>		<b>Price (All Inclusive)</b>
1	5 minutes short film for integrated border management (IBM)	_____USD
2	5 minutes short film for human rights	_____USD
3	3 minutes short film for Project highlights	_____USD
<b>GRAND TOTAL</b>		_____USD

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<sup>3</sup> This serves as a guide to the offeror in preparing the Quotation.

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



## 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.

## NONDISCLOSURE DECLARATION

This Nondisclosure Declaration (the "Declaration") is entered into by and between UNDP Turkey with its principal offices at Ankara ("Disclosing Party") and \_\_\_\_\_(name of the Company), located at \_\_\_\_\_("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Declaration, "Confidential Information" shall include all information, visuals or material that has or could have commercial value, military confidentiality or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information. If the Confidential Information is in the form of visual material, the disclosing party shall not need to provide any information on confidentiality since all of the information in this form will be considered Confidential Information.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Declaration. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Declaration shall survive the termination of this Declaration and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Declaration.

5. Relationships. Nothing contained in this Declaration shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Declaration invalid or unenforceable, the remainder of this Declaration shall be interpreted so as best to effect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Declaration may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Declaration shall not be a waiver of prior or subsequent rights.

This Declaration and each party's obligations shall be binding on the representatives, assigns, and successors of such party. The contractor has signed this Declaration through its authorized representative.