

## PERFORMANCE-BASED PAYMENT AGREEMENT

[**Reference No.** *insert reference number, if any; if none, delete bracketed text*]

1.	Country: [Click <b>here</b> and enter Host Country name]
2.	Responsible Party: [Click here and enter the full name of the Responsible Party] incorporated under the laws of [Click here and enter the jurisdiction of the Responsible Party] with address at [Click here and enter the full address of the Responsible Party]
3.	Project Number and Title to which the Agreement relates: "[Click here and enter Project number (if any) and title]"
4.	Project Objectives: [In this section, provide a context and linkage to the Prodoc. Incorporate a brief overview or summary of the project objectives, the Results being sought and the role of RP in the delivery of the activities and services that would achieve the Results/complete the Deliverable(s).]
5.	Deliverable(s) Implementation Period: From the Effective Date (as defined in the Agreement) to [x] months/years thereafter [Click <b>here</b> and enter date]
6.	Maximum Payment under this Agreement: Up to the amount of US\$ [Click <b>here</b> and enter amount] ([Click <b>here</b> and amount in words] United States Dollars)
7.	Performance-Based Payments (PBPs) only [ <input type="checkbox"/> ]  PBPs with Working Capital Reimbursement [ <input type="checkbox"/> ]
8.	Information for Responsible Party Bank Account into Which Payment Will Be Disbursed: Account Name: [Click <b>here</b> and enter Owner of Bank Account] Account Title: [Click <b>here</b> and enter Account Title] Account Number: [Click <b>here</b> and enter Account Number] Bank Name: [Click <b>here</b> and enter Bank name] Bank Address: [Click <b>here</b> and enter Bank Address] Bank SWIFT Code: [Click <b>here</b> and enter Bank SWIFT Code] Bank Code: [Click <b>here</b> and enter Bank Code] Routing instructions for disbursements: [Click <b>here</b> and enter any additional instructions]
9.	Number of Deliverable(s) [ <input type="text"/> ]  Deliverable(s) are fully described in Annex A-3.

10. Notices to Responsible Parties:

Name:  
Address:

Tel:  
Fax:  
Email:

11. Notices to UNDP:

Name:  
Address:

Tel:  
Fax:  
Email:

11. Signed for **[Click here and enter the name of the Responsible Party]** by its Authorized Representative

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

12. Signed for the **United Nations Development Programme** by its Authorized Representative

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

13. Name of the Independent Assessor (IA):

Name:  
Address:  
Tel:  
Fax:  
Email:

The Independent Assessor indicated above acknowledges its role as set forth in this Agreement, and as more fully detailed in the IAA it has signed with UNDP:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**The following documents constitute the entire Agreement between the Parties and supersedes all prior agreements, understandings, communications and representations concerning the subject matter:**

**This face sheet ("Face Sheet")**

**General Terms and Conditions**

**Annex A – Validation Methodology**

**Annex A-1 – Results Framework**

**Annex A-2 – Results/Performance Threshold Validation Format**

**Annex A-3 – Deliverable(s) and Performance-Based Payment Terms**

**Annex B – Independent Assessor Agreement**

**Annex C – Budget (will be attached only if the Agreement provides for working capital reimbursements).**

**Annex D – Nature and Schedule of Assurance Activities**

**Annex E – RP's Financial Reporting Format**

**Annex F – Results Reporting Format**

**Annex G – Request for Payment Format**

**Annex H – Reporting on Minimum Progress Thresholds**

**Annex I – Project Document**

**If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the above order of priority.**

## Performance-Based Payment Agreement

This Performance-Based Payment Agreement (**PBPA**), herein referred to as the “Agreement”, is entered into on xxxxx (**Execution date**), by and between United Nations Development Programme (UNDP), xxxxxxxxxx (name of the Programme Government, non-UN IGO or Civil Society Organization or a Non-Governmental Organization) as the **Responsible Party (RP)**, each a “Party” and jointly referred to herein as the “Parties.”

**WHEREAS**, [name of the Programme Government, non-UN IGO or Civil Society Organization or a Non-Governmental Organization] has been selected as the Responsible Party to carry out substantive development activities to achieve results (hereinafter referred to as “Result(s)”) as set out in Annex A-1, and complete the deliverables (hereinafter referred to as “Deliverable(s)”) as set forth in Annex A-3 of this Agreement;

**WHEREAS**, UNDP has determined that a Performance-based Payment Agreement creates incentives for the RP to provide innovative service delivery methods and quality performance with the goal of achieving the Result(s);

**WHEREAS**, UNDP has agreed to make **performance-based payments (“PBPs”)** to the RP, upon the completion of the Deliverable(s) within the related time-frame specified in Annex A-3, that will contribute to achieving the development outcomes set forth in the Project Document (“**Prodoc**”), attached as Annex I;

**WHEREAS**, PBPs by UNDP to the RP, pursuant to this Agreement, will be contingent upon the completion of the Deliverable(s) as specified in this Agreement, verified by the Independent Assessor (“IA”) through the Validation Methodology, described in the Annex A (entitled “**Validation Methodology**”) of this Agreement, that includes a monitoring schedule to assess the minimum progress thresholds that need to be achieved in order for this Agreement to continue;

**WHEREAS**, UNDP has engaged and entered into an agreement with the IA specified in Block 13 of the Face Sheet through an **Independent Assessor Agreement (IAA)** attached hereto as Annex B), and with whom the RP is already acquainted through the development of this Agreement, to perform the tasks assigned to the IA as described in this Agreement;

**WHEREAS**, prior to signing this Agreement the IA has performed a scope of work as set forth in the Validation Methodology including a) verification of the theory of change and the definition of the specific Result(s) to be delivered by the Responsible Party, b) [validation/development] of objectively verifiable indicators to measure the achievement of Result(s) with a clear definition of data sources and validation techniques, and setting of suitably ambitious but realistic milestone and target results for each indicator, and c) [validation/development of] a Deliverables and Performance-Based Payment Terms as set forth in **Annex A-3** (hereinafter referred to as “Payment Terms”) linked to the validation and certification of Deliverable(s) achieved by the RP;

**WHEREAS** the Deliverable(s) are part of a Project indicated in Block 3 of the Face Sheet for which the Project Document establishes the Project Board as a governance mechanism. As the achievement of Result(s) and completion of Deliverable(s) are closely intertwined with the overall success of the Project, the Project Board makes recommendations as specified in this Agreement and in the Project Document attached hereto as Annex I;

**WHEREAS**, the Parties agree to be bound by the Validation Methodology and the decision making process regarding the Deliverable(s) (including with respect to the PBPs and the working capital reimbursements as set forth in this Agreement;

**WHEREAS**, to the extent that the Agreement provides for working capital reimbursements, the Project Budget set forth in Annex C will contain the terms and conditions related to such reimbursements to be made by UNDP to the RP;

**NOW, THEREFORE**, the Parties are entering into this Agreement to set forth the terms and conditions upon which the RP will complete the Deliverable(s) and the conditions for the receipt of Performance-Based Payments (PBPs).

## **ARTICLE 1**

**1.01** This Agreement including its Annexes, shall form the entire Agreement between UNDP and the RP with respect to the subject matter of this Agreement, and supersedes the contents of any other negotiations and/or agreements between the Parties, whether oral or in writing, pertaining to the subject matter of this Agreement.

**1.02** The Parties shall on a regular basis keep each other informed of and consult on matters pertaining to the implementation of the Agreement and achievement of the Results under this Agreement.

**1.03** For any matters not specifically covered by this Agreement, the Parties shall ensure that those matters shall be resolved in accordance with the appropriate provisions of the Project Document and any revisions thereof.

## **ARTICLE 2**

### **EXECUTION DATE AND EFFECTIVE DATE**

**2.01** Upon signature of this Agreement ("Execution Date"), the RP shall commence preparations for undertaking its obligations under the terms of this Agreement in preparation for the Effective Date.

**2.02** Once the RP has completed its preparatory activities and has commenced performance of its obligations under this Agreement, the RP will notify UNDP and the Project Board. The date of such notification to UNDP and the Project Board shall be the Effective Date and the beginning of the Deliverable(s) Implementation Period indicated in Block 5 of the Face Sheet.

**2.03** If this Agreement does not come into effect in accordance with Article 2.02 within 6 months

after the Execution Date, this Agreement along with the responsibilities of the Parties hereunder shall terminate, and no payments or reimbursement, if applicable, will be due.

## **ARTICLE 3**

### **TERM OF THIS AGREEMENT**

**3.01** The term of this Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with Article 7, shall continue in full force and effect until the last PBP and reimbursement, if applicable, is paid or resolved in accordance with the terms of this Agreement.

## **ARTICLE 4**

### **RP'S RESPONSIBILITIES AND OBLIGATIONS**

**4.01** The RP agrees to achieve the milestone results and target result(s) as specified in Annex A-1 ("Results Framework"), collectively referred to as the "Result(s)", and for which the RP will be paid for the completion of the related deliverable(s) specified in Block 9 of the Face Sheet, as fully described in Annex A-3 ("Deliverable(s) and Performance-Based Payment Terms"), referred to as the "Deliverable(s)", in accordance with the terms and conditions of this Agreement.

**4.02** The RP accepts full programmatic and financial responsibility for achieving the Results and completing the Deliverable(s) with due diligence and efficiency.

**4.03** Where the RP is eligible for PBPs only (as indicated in Block 7 of the Face Sheet), the RP's operations in completing the Deliverable(s) will be undertaken in accordance with its own Financial Regulations and Rules. Where in addition to PBPs, the RP is also eligible to receive working capital reimbursements (as indicated in Block 7 of the Face Sheet), the RP will follow its own Financial Regulations and Rules only to the extent they are consistent with UNDP's Financial Regulations and Rules.

**4.04** Without prejudice to Article 4.02, the Parties will, throughout the Term of the Agreement, communicate and collaborate to enable the successful achievement of the Result(s) by the RP for which it shall be solely responsible.

## **ARTICLE 5**

### **PAYMENT AND REIMBURSEMENT TERMS**

**5.01** Annex A-3 sets forth the PBPs that will be made against the completion of the Deliverable(s) by the RP after validation by the IA through the application of the Validation Methodology.

**5.02** If all final targets are met or exceeded on time, then the RP may be eligible for a bonus payment, as set forth in Annex A-3.

**5.03** If all milestone and/or target results that are part of a Deliverable are not achieved, the IA

may recommend that a reduced payment be made in accordance with Annex A-3.

**5.04** If this Agreement provides for working capital reimbursements, the maximum amount of reimbursement shall not exceed 50 % of the amount specified in Block 6 of the Face Sheet. Moreover, the working capital reimbursements shall not exceed 50% of individual budgeted line items as specified in Annex C ("Budget"). The schedule of possible working capital reimbursements, as well as the conditions for the RP to receive such reimbursements, are set forth in Annex C.

**5.05** The total amount payable to the RP under this Agreement (including all PBPs, incentives and working capital reimbursement, if applicable) shall not exceed the amount indicated in Block 6 of the Face Sheet, subject to the terms of this Agreement

**5.06** Annex A-3 may be amended from time to time during the Deliverable(s) Implementation Period, upon the recommendation of the Project Board (as defined in Project Document), and upon agreement of the Parties. Any such revision shall be reflected in a written amendment signed by the Parties.

**5.07** Upon completion of the Deliverable(s) within the related time-frame specified with Annex A-3, the RP may request a PBP by submitting the following:

- a. a completed Request for Payment form in the format set forth in Annex G;
- b. a completed Results Reporting form as set forth in Annex F; and
- c. all relevant evidence available to the RP as may be necessary to support such request, such as survey reports, photographs, copies of reports, etc.

**5.08** When the RP is eligible for working capital reimbursements as indicated in Block 7 of the Face Sheet, the RP may request a working capital reimbursement by submitting the following in accordance with the timeline set forth in Annex C:

- a. a completed Request for Payment form in the format set forth in Annex G, and specifying the actual costs incurred for the relevant budget line;
- b. a completed Report on Minimum Progress Thresholds as set forth in Annex H;
- c. all relevant evidence available to the RP as may be necessary to support such request, such as financial statements, survey reports, photographs, copies of reports, etc.

**5.09** The IA will consider and evaluate all of the foregoing in applying the Validation Methodology with respect to the payment request for the relevant Deliverable(s), and if relevant, the working capital reimbursement.

**5.10** Once the application of the Validation Methodology by the IA is complete, the IA will notify the Parties whether the relevant Deliverable(s) (and, in the case of working capital reimbursement, the relevant minimum progress thresholds) have been completed (either fully or partially, and indicating the percentage of completion). The IA shall make a recommendation to UNDP accordingly regarding the amount of the PBP and the working capital reimbursement, if applicable.

**5.11** UNDP will take into consideration the recommendation of the IA, and within 15 days of

receiving the IA's recommendation will inform the RP and the Project Board of its decision with respect to the PBP and, if applicable, the working capital reimbursement.

- 5.11 (a) If the RP agrees with UNDP's decision, UNDP will issue payment within 10 days.
- 5.11 (b) If the RP contests the recommendation of the IA which has been confirmed by UNDP's decision, the RP must notify the IA within 15 days that it is disputing the recommendation of the IA to UNDP. The IA will then have 15 days to review the dispute, make corrections to its calculations (if any), and submit its decision to the RP. The RP must respond within an additional 15 days whether it agrees with the revised calculations/recommendations of the IA. If the RP still rejects the revised calculations/recommendation of the IA, the mediation process in Article 5.12 will be followed.
- 5.11 (c) If the RP contests the decision of UNDP which did not adopt the recommendation of the IA, the RP may pursue the resolution of dispute mechanism set forth in Article 8.12.

**5.12** In the event that after the process set out in Article 5.11(b), the calculations/recommendation of the IA are still disputed by the RP, within fifteen (15) working days of the second notification of dispute, UNDP will appoint an Independent Mediator with expertise in such matters, acceptable to all Parties, with the costs to be borne by the disputing Party. The Mediator shall re-perform the calculations, using the same data and the original Validation Methodology. The Mediator shall negotiate in good faith to resolve the dispute in an expeditious manner. The determination of the Mediator shall be final and binding. The Parties waive the right to further recourse on the issue of the payment resolved by the Mediator. UNDP undertakes to abide by decisions of the Mediator and pay promptly to the RP, any differences arising out of such mediation process.

**5.13** All PBPs will be made by UNDP to the RP via an Electronic Fund Transfer (EFT) into the RP's bank account as specified in Block 8 of the Face Sheet.

## **ARTICLE: 6**

### **AUDITS AND INVESTIGATIONS**

**6.01** All payments made by UNDP under this Agreement 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 this Agreement and for a period of three (3) years following the expiration or early termination of this Agreement.

**6.02** The RP acknowledges and agrees that, from time to time, UNDP may conduct investigations relating to any aspect of this Agreement or its selection as RP, the obligations performed under this Agreement, compliance with social and environmental commitments, and the operations of the RP



generally relating to the performance of this Agreement. The right of UNDP to conduct an investigation and the RP's obligation to cooperate with such an investigation shall not lapse upon the expiration or the early termination of this Agreement, whichever is earlier.

**6.03** The RP shall provide its full and timely cooperation with any post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the RP's obligation to make available the RP personnel (including officers, officials, employees, consultants, contractors, advisors and agents, hereinafter "RP Personnel") and any relevant documentation for such purposes at reasonable times and on reasonable conditions, and to grant to UNDP access to the RP's premises at reasonable times and on reasonable conditions. The RP shall ensure that its personnel cooperate with any post-payment audits or investigations carried out by UNDP hereunder.

**6.04** UNDP shall be entitled to a refund from the RP for any amounts shown by audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of this Agreement.

**6.05** UNDP shall be entitled to a refund from the RP for any funds provided that have been used inappropriately, including fraud or corruption, or otherwise paid other than in accordance with the terms and conditions of this Agreement. Such amounts may be offset by UNDP from any payment due to the RP under this or any other agreement. Recovery of such amounts by UNDP shall not diminish or curtail the RP's obligations under this Agreement.

**6.06** Without prejudice or limitation to the foregoing, the RP agrees that, where applicable, UNDP's Funding Partner(s) whose funding is the source, in whole or in part, of the funds for the activities which are the subject of this Agreement, shall have direct recourse to the RP for the recovery of any funds determined by UNDP to have been used inappropriately, including fraud or corruption, or otherwise paid other than in accordance with the terms and conditions of this Agreement. However, there shall be no double recovery of funds under this and the preceding provision.

**6.07** Each contract issued by the RP in connection with its activities toward the achievement of the Result(s) under this Agreement, shall include a provision representing that no fees, gratuities, rebates, gifts, commissions or other ex gratia payments have been given, received, or promised in connection with the selection process or in contract execution, and that the recipient of funds from the RP shall cooperate with any and all investigations and post-payment audits.

**6.08** If the findings or circumstances of a post-payment audit or investigation so warrant, UNDP may, in its sole discretion, take any measures that may be appropriate or necessary, including, but not limited to, suspension of this Agreement with no liability whatsoever to UNDP.

## **ARTICLE 7**

### **EARLY TERMINATION**

**7.01** UNDP may terminate this Agreement, following consultation with the Project Board as indicated in the Project Document, prior to the end of the Deliverable(s) Implementation Period upon the occurrence of any of the following "Termination Events":

- (a) Any of the RP's actions are not in compliance with UNDP's Social and Environmental Standards.
- (b) The RP is in material breach of any of the provisions, obligations and responsibilities under this Agreement, that would either (i) reasonably be expected to materially adversely affect the RP's ability to achieve the Result(s) and complete the Deliverable(s); or (ii) be a material violation of any local laws applicable to the RP, or the financial regulations and rules applicable to the RP under this Agreement.
- (c) The IA finds, through its application of the Validation Methodology, that the RP has failed to achieve any of the 'minimum progress thresholds' as described in Annex H that may jeopardize the overall success and achievement of the Result(s).
- (d) Upon the occurrence of any force majeure event which is outside the reasonable control of either Party and is not attributable to any act or failure to take preventive action by that Party, including force majeure or any other disaster natural or man-made, acts of terrorism or similar cause beyond the reasonable control of the Party affected thereby, and political developments which prevent the Parties' access to data or any event which prevents a Party from performing its obligations under this Agreement for a period in excess of three (3) months from the due date of meeting their respective obligation(s).
- (e) Termination of the IAA by UNDP or the IA, and the Parties are unable to agree on the options for the continuation of this Agreement, including the contracting of another IA.

**7.02** Notwithstanding Article 7.01, this Agreement will terminate automatically in the event that this Agreement fails to become Effective in accordance with Article 2 above.

**7.03** The Parties may terminate this Agreement upon their mutual written consent.

**7.04** In the event of early termination of this Agreement, any payments remaining that may have been due in the future, shall cease irrespective of the stage of completion of the Deliverable(s) at such time.

## **ARTICLE 8**

### **OTHER RESPONSIBILITIES, OBLIGATIONS AND LIABILITIES**

**8.01** The RP shall be solely liable for claims by third parties arising from the RP's acts or omissions in the course of performing this Agreement and under no circumstances shall UNDP or the Funding Partner(s) be held liable for such claims by third parties.

**8.02** The RP shall ensure that the RP Personnel engaged by it in connection with its implementation of this Agreement (i) meet the highest standards of professional qualifications and competence necessary for the implementation of its activities in achieving the Result(s) and completion of the Deliverable(s) under this Agreement; (ii) are free from any conflicts of interest related to the RPs activities in achieving

the Result(s); (iii) respect the local laws and customs, and conform to the highest standards of moral and ethical conduct; (iv) shall refrain from any conduct that would adversely reflect on UNDP or the United Nations, and shall not engage in any activity that is incompatible with the aims, objectives or mandate of UNDP or the United Nations; and (v) shall not use information that is considered confidential without the prior written authorization of UNDP.

**8.03** The RP shall be fully responsible and liable for all RP Personnel engaged by it in connection with its activities in achieving the Result(s); the RP Personnel shall not be considered in any respect as being officials, personnel, employees, staff or agents of UNDP or the United Nations.

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

**8.05** The RP shall keep accurate and up-to-date records and documents, including original invoices, bills, and receipts pertinent to its activities in achieving the Result(s) under this Agreement. Upon achievement of the Results, or upon expiration or the early termination of this Agreement, the RP shall maintain its records for a period of at least five (5) years, unless otherwise agreed by the Parties.

**8.06** Information and data that is considered proprietary by either Party and that is delivered or disclosed by one Party to the other Party during the term of this Agreement, shall be considered confidential and shall be handled pursuant to the UNDP Information Disclosure Policy, not attached hereto but known to and in the possession of the Parties; the RP may disclose information to the extent required by law, provided that and without any waiver of the privileges and immunities of the United Nations, the RP 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; UNDP may disclose information to the extent required pursuant to the Charter of the United Nations, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General of the United Nations. These obligations shall not lapse upon achievement of the Results or expiration or early termination of this Agreement, whichever is earlier.

**8.07** RP shall maintain insurance (or self-insure) against all risks in respect of its property and any equipment used in connection with the achievement of Result(s) under this Agreement. The RP shall maintain all appropriate workmen's compensation insurance, or the equivalent, with respect to the RP's Personnel to cover claims for personal injury or death in connection with this Agreement.

**8.08** The RP agrees to indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials and persons performing services for UNDP from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) or relating to acts or omissions of the RP, including the RP Personnel, under this Agreement. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, damage to property or other hazards that may be suffered by the RP's personnel as a result of their services pertaining to its activities in achieving the Results, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the RP or the RP Personnel.

## 8.09

(a) 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 duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations' exemption from such taxes, duties or charges, the RP shall immediately consult with UNDP to determine a mutually acceptable solution.

(b) Accordingly, the RP authorizes UNDP to deduct from the PBPs (and if relevant, any working capital reimbursement) payable to the RP, any amounts representing such taxes, duties or charges, unless the RP has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically provided written authorization to the RP to pay such taxes, duties or charges under protest. In that event, the RP shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

## 8.10

(a) The responsibility for the safety and security of the RP and the RP Personnel and property, as well as of the equipment and other UNDP property in the RP's custody, shall rest with the RP.

(b) UNDP reserves the right to verify whether the necessary security arrangements are in place, and to suggest modifications thereto when necessary.

(c) The RP agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Agreement are used to provide support to individuals or entities associated with terrorism and that the 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 <http://www.un.org/sc/committees/1267/1267.htm>. This provision must be included in all contracts or sub-contracts entered into under this Agreement.

**8.11** The Parties hereby agree that the execution of and any performance pursuant to this Agreement does not constitute a waiver, each to the other, of any claims, rights, or obligations which shall or have arisen by virtue of any previous agreement among or between the Parties. Any such claims, rights, or obligations are hereby preserved, protected, and reserved.

**8.12** Except with respect to the mediation process specified in Article 5.12, the Parties shall try to settle amicably through direct negotiations, any dispute, controversy or claim arising out of or relating to the present Agreement, including breach and termination of the Agreement. If these negotiations are unsuccessful, the matter shall be referred to arbitration in accordance with United Nations Commission on International Trade Law Arbitration Rules. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final decision on any such dispute, controversy or claim.

**8.13:** Social and environmental sustainability will be enhanced through application of the UNDP Social and Environmental Standards and related Accountability Mechanism as set forth in the Project Document (Annex I). The RP shall: (a) conduct project activities in a manner consistent with the UNDP Social and Environmental Standards, (b) implement any management or mitigation plan prepared for

the project to comply with such standards, and (c) engage in a constructive and timely manner to address any concerns and complaints raised through UNDP's Accountability Mechanism. UNDP will seek to ensure that communities and other project stakeholders are informed of and have access to the Accountability Mechanism.

## ARTICLE 9

### MONITORING FRAMEWORK AND REPORTING

**9.01** The RP shall provide regular reporting of its performance and its progress in achieving the Result(s) and completing the Deliverable(s), high level risks, and financial matters in accordance with the reporting schedule and plans included in the Project Document and this Agreement.

**9.02** UNDP will monitor the progress made in achieving the Result(s) by the RP, to assess the consistency or discrepancy between planned and actual results and implementation performance as part of its quality assurance role. This may include, but is not limited to: 1) tracking performance through the collection of appropriate and credible data and other evidence; 2) analyzing evidence to inform management decision-making, improve effectiveness and efficiency, and adjust programming as necessary; and 3) reporting on performance and lessons to facilitate learning and support accountability. Such monitoring may require site visits to the RP. The frequency of monitoring shall be appropriate to decision-making, and shall also be aligned with the schedule of Project Board meetings.

**9.03** Where this Agreement provides for working capital reimbursements, UNDP shall also undertake various independent assurance activities (such as spot checks, audits or other related exercises) during the Deliverable(s) Implementation Period. In addition, UNDP may conduct "internal control audits" on the RP's processes, during the Deliverable(s) Implementation Period. The RP consents to the spot checks, audits and related exercises, and shall comply and ensure the compliance of RP Personnel.

**9.04** The RP shall facilitate such monitoring and assurance activities in an open and transparent manner, and in the implementation of which maintain and provide documentation and evidence that describes the proper and prudent use of project resources in conformity with this Agreement and in accordance with the applicable regulations and rules as indicated in Article 4.03. This documentation will be made available to UNDP upon its request, its designated monitoring agents, auditors, investigators and the IA.

**9.05** The RP shall submit a cumulative financial report every six months (as at 30 June, and 31 December), results reporting in the frequency set forth in the Results Framework (**Annex A-1**), and reporting towards the achievement of minimum progress thresholds in the frequency set forth in **Annex H**. The report will be submitted to UNDP within 30 days following those dates. The reporting will follow the formats provided as **Annex E** ("RP's Financial Reporting Format"), **Annex F** ("Results Reporting Format") or **Annex H** ("Reporting on Minimum Progress Thresholds") respectively. The RP shall also furnish a 'final financial report' within 3 months after the end of the Deliverable(s) Implementation Period or expiration or early termination of this Agreement, including all relevant audited or certified financial statements and records related to such achievement of the Result(s), as appropriate, pursuant to the financial regulations and rules as specified in 4.03.

**9.06** An Annual Review Report of the RP's activities towards achieving the Result(s) shall be prepared by the RP and shared with UNDP and the Project Board. The annual review report shall consist of updated

information and summary of performance against pre-defined minimum progress thresholds and milestone/target results.

## ANNEX A: VALIDATION METHODOLOGY

### [To be prepared by Independent Assessor in reference to the Performance-Based Payment Agreement and the Project Document]

Validation is a key component of a Performance-Based Payments agreement, as it enables UNDP to assess the effectiveness of the intervention and measure the extent to which performance benchmarks are achieved in order to determine the level of payment(s) to RPs. The theory of change, result definitions, and related performance benchmarks for results must be carefully defined, with performance and validation metrics specified, in advance of the start of the project. In addition, UNDP must be assured that relevant risk management measures are in place prior to signing the agreement, including through an Environmental and Social Management Plan when needed.

To ensure that assessments are conducted rigorously and the determinants of “success” are legitimate, projects must contract an internationally recognized institution of repute to formulate the validation method, to undertake assurance activities (e.g., random assignment, data collection), and to verify the achievement of the results required to make performance payments. These experts are involved with every stage of the project and ultimately examine the validity of the findings as a precondition for approval of performance payments to RPs.

UNDP, the Funding Partner(s) and the RP have to be confident that the measurement tools can demonstrate a direct causal link between the project interventions and contribution to the higher-level outcomes.

A well drafted, detailed Validation Method is fundamental to the success of implementation of Performance-Based Payment Agreements. Clarity on the theory of change underpinning the project results; and the basis, methodology and the timing of the measurement of indicators will ensure that the Responsible Parties direct its activities to achieving what will be measured. Lack of clarity poses risks of overpayments, underpayments and/or disagreements, and will impact the effectiveness of this results-based financing model.

This Validation Method is considered an attachment to the project document and must include:

- a) The IA’s assessment and validation of the project’s **theory of change** underlying the achievement of the expected results and **Definition of the specific results** to be delivered by the Responsible Party as per the project document;
- b) **Results framework** from the project document, including objectively verifiable indicators with fully populated baselines and targets, and data sources that will be used to measure the achievement of results by the Responsible Party;
- c) The method for **Results Validation**, to certify that the result has been delivered to the agreed level of quality and sustainability, including any primary data collection, validation of existing data, and/or analysis methods on the performance of the RP in meeting the milestones and targets set against the agreed indicators in the Results Framework. Quality will be determined by clear measures of efficient delivery of outputs, effective achievement of intended results, sustainability of results and equity through application of UNDP’s social and environmental standards. The Results Validation format is part of the agreement, and is completed by the IA during implementation to certify the achievement of results eligible for payment;

- d) A Deliverable(s) and **Performance-Based Payment Terms** that is linked to the IA's certification of results, which may include payments upon the achievement of agreed milestone results that contribute to the achievement of the final targeted result. The Deliverable(s) and Performance-Based Payment Terms will detail the minimum progress performance that is needed to issue payment (as well as for any bonuses or partial payments), the trigger(s) for validation and the methodology for performance payment calculations, including risk adjustment factors;
- e) **Risk management measures** in place, including through an Environmental and Social Assessment and Management Plan when needed to ensure compliance with UNDP's Social and Environmental Standards;
- f) Agreement on monitoring and reporting arrangements, including responsibilities of the RP, IA and UNDP, requirements, format, data sources and frequency;
- g) Details on the Early Termination Process, including criteria on RP performance (i.e., minimum progress thresholds, performance against agreed milestone and target indicators after a specified time, etc.).
- h) Standard language on data security, data ownership and the destruction of data.

Monitoring and Data collection: The Independent Assessor (IA) must have access to all of the primary and secondary data used by the Responsible Party to report on performance. The Validation Method of the IA must triangulate the reporting from the Responsible Party with additional evidence of achievement of the results, which may include (but is not limited to) random sample surveys, beneficiary feedback, photographs, interviews, and 3<sup>rd</sup> party stakeholders, as appropriate. The method of data collection should provide assurance to UNDP and the Funding Partner(s) that the results have been achieved as per the agreed indicators.

Reporting: The RP will report on the progress in achieving all objectively verifiable indicators on the milestone and target dates as agreed in the Results Framework. The RP will also report on its progress in meeting all minimum progress thresholds on the dates as agreed in Annex H. The IA will validate the performance reported by the RP using the Validation Method.

Early Termination: If, at any time during the contract period, either party feels that the results will not be achieved as agreed, this contract may be terminated early.



## Annex A-1: Results Framework

Intended Outcome as stated in the UNDAF/Country [or Global/Regional] Programme Results and Resource Framework:								
Project title and Atlas Project Number:								
Responsible Party:								
AGREED OUTPUTS AND INDICATORS	DATA SOURCE AND FREQUENCY (RP)	BASELINE		RESULTS (by frequency of data collection)				Method of Validation (IA)
		Value	Year	Milestone Result 1 [Date]	Milestone Result 2 [Date]	TARGET (Project Completion) RESULT [Date]	Post Agreement Sustainability TARGET [Date]	
<b>Output 1:</b> <i>Clearly specify each output that the Responsible Party will deliver</i>								
Indicator 1.1 Include quantifiable indicators (one per row) that will be used to determine if the output has been delivered ( <b>examples</b> ): <b># of active police trained in human rights obligations</b>	Arial photo estimate and invoices  Frequency: Annual	0	2018	1000	5000	10,000	20,000	
Indicator 1.2 Include indicators (one per row) that objectively measure the quality and sustainability of the results ( <b>examples</b> ): <b>% of trained police who can accurately identify at least one HRBA technique in policing</b>		0	2018	40%	60%	100%	100%	
Indicator 1.3								
<b>Output 2:</b>								
Indicator 2.1								
Indicator 2.2								

*This annex is finalized prior to the Performance-Based Payment Agreement being signed.*

## Annex A-2: Results/Performance Threshold Validation Format

*This form will be completed by the Independent Assessor (IA) each time a milestone or target result or a performance threshold needs to be validated, at least [once] per year or more frequently depending on the agreement. Relevant evidence must be attached to the validation form, including survey reports, photographs, copies of reports, etc. These measures must be defined in advance of the work starting. They must include a validation of performance against the objectively verifiable indicators and/or performance thresholds reported by the Responsible Party, in addition to any other measures agreed by the parties, as necessary to validate the results.*

Output 1: [specify output]				
	Milestone Result / Target Result / Performance Threshold Agreed by [Date]	IA Validated Progress by [Date]	Data/method of validation used	% of Milestone/Target/Performance Threshold Achieved
Quantifiable measures used to verify the delivery of the output by the Responsible Party (e.g.,) - # of Seedlings planted - # of Trainees signed-in - Event held (yes/no) - Existence of report (y/n) - # of Desks installed				
Measures used to verify the required <b>quality*</b> of the results (e.g.,) - Health of seedlings planted - Qualification of trainer, size of classes for specified resources - % of trained police who can accurately identify at least one HRBA policing technique - User satisfaction of the report - Standard and features of desks				
Environmental and social management measures implemented and monitored				

\*Measures for assessing quality should include clear targets on efficient delivery of the outputs, effective delivery of intended results, sustainability of results and equity of the approach using UNDP's Social and Environmental Standards

Certified by:

---

[Name]

[Firm Name of Independent Assessor]

---

[Date]

### Annex A-3: Deliverable(s) and Performance-Based Payment Terms

Deliverable(s)	Expected Date of Achievement	Eligible Cumulative Payment (USD)	Value of Payment	[Bonus and] Penalties
<b>Deliverable 1</b>	DD Month YYYY	10% of contract value	\$XX,XXX	<p>[*If all final targets are met or exceeded on time, then the Responsible Party may be eligible for a bonus payment no greater than 10% of the value of the contract. Any eligible bonus payments must be clearly stated in the Performance-Based Payment Agreement.]</p> <p>If all milestone/target results are not achieved, a reduced payment will be given. The payment will be reduced by an average percentage by which indicators have underperformed relative to their milestone/targets, as determined by the IA.</p>
Indicator 1.1 - 5,000 active police trained in human rights obligations				
Indicator 1.2 - 60% of trained police who can accurately identify at least one HRBA technique in policing				
<b>Deliverable 2</b>	DD Month YYYY	50% of contract value	\$XXX,XXX	
Indicator 1.1 - 10,000 active police trained in human rights obligations				
Indicator 1.2 - 100% of trained police who can accurately identify at least one HRBA technique in policing				
Indicator 1.3				
<b>Deliverable 3</b>	DD Month YYYY	100% of contract value*	\$X,XXX,XXX	
Indicator 2.1				
Indicator 2.2				
Indicator 2.3				
...				

*This annex is finalized prior to the Performance-Based Payment Agreement being signed. All milestones and/or target results that are part of a Deliverable must be achieved for a payment to be made.*

## Annex B: Independent Assessor Agreement

The xxxxx (Name of the Independent Assessor) agrees to the following responsibilities, obligations, scope of work and other specifics.

## Annex C: Budget<sup>1</sup>

### Principles for Working Capital Reimbursements:

- Budgets must be developed for each Result/ Output area.
- Each budget line must state whether Working Capital Reimbursements are eligible against that line item.
- The maximum amount of the working capital reimbursement shall not exceed 50 % of the amount specified in Block 6 of the Face Sheet.  
Moreover, the working capital reimbursements shall not exceed 50% of individual budgeted line items as specified in this Annex.
- No Working Capital Reimbursements may be made until the defined **minimum progress thresholds** (see Annex H) for the year have been achieved by the RP, validated by the IA and recommended by the Project Board.
- UNDP overheads and cost-recovery items are not eligible for working capital reimbursements to RPs.

EXPECTED OUTPUTS	PLANNED ACTIVITIES	Planned Budget by Year				RESPONSIBLE PARTY	PLANNED BUDGET			WORKING CAPITAL ELIGIBILITY AMOUNT AND BUDGET PERIOD (if applicable)
		Y1	Y2	Y3	Y4		Funding Source	Budget Description	Amount	
<b>Output 1</b>	1.1 Activity									
	1.2 Activity									
	1.3 Activity									
	MONITORING									
	<b>Sub-Total for Output 1</b>									
<b>Output 2</b>	2.1 Activity									
	2.2 Activity									
	2.3 Activity									

<sup>1</sup> Where the Agreement does not provide for any working capital reimbursement payable to the RP, the contents of this Annex C should be deleted and replaced with “ANNEX C: THIS PAGE IS INTENTIONALLY LEFT BLANK”

EXPECTED OUTPUTS	PLANNED ACTIVITIES	Planned Budget by Year				RESPONSIBLE PARTY	PLANNED BUDGET			WORKING CAPITAL ELIGIBILITY AMOUNT AND BUDGET PERIOD (if applicable)
		Y1	Y2	Y3	Y4		Funding Source	Budget Description	Amount	
	MONITORING									
	Sub-Total for Output 2									
<i>Evaluation and other assurance activities (as relevant)</i>	EVALUATION									
Independent Assessor										
General Management Support										
Contingencies (Dispute Resolution)										
TOTAL										

Annex E: RP's Financial Reporting Format



## **Annex F: Results Reporting Format**

Intended Outcome as stated in the UNDAF/Country [or Global/Regional] Programme Results and Resource Framework:									
Project title and Atlas Project Number:									
Responsible Party:									
AGREED OUTPUTS AND INDICATORS	DATA SOURCE AND FREQUENCY (RP)	BASELINE		RESULTS (by frequency of data collection)					Method of Validation
		Value	Year	Result Type (Planned/ Actual)	Milestone Result 1 [Date]	Milestone Result 2 [Date]	Milestone Result ... [Date]	TARGET RESULT [Date]	
<b>Output 1:</b> Clearly specify each output that the Responsible Party will deliver									
Indicator 1.1 Include quantifiable indicators (one per row) that will be used to determine if the output has been delivered <b>(examples):</b>  # of active police trained in human rights obligations	Aerial photo estimate and invoices	0	2018	Planned	1,000	5,000	10,000	20,000	
				Actual*					
Indicator 1.2 Include indicators (one per row) that objectively measure the quality and sustainability of the results <b>(examples):</b>  % of trained police who can accurately identify at least one HRBA technique in policing				Planned					
				Actual*					
Indicator 1.3				Planned					
				Actual*					
<b>Output 2:</b>									
Indicator 2.1				Planned					
				Actual*					
Indicator 2.2				Planned					
				Actual*					

*\*To be completed by the Responsible Party when a result (milestone or target) needs to be reported. Relevant evidence must be attached to the results reporting form, including survey reports, photographs, copies of reports, etc.*

## Annex G: Request for Payment Format

To: UNDP,  
<enter country office  
address and Fax No:>

Date: xx/xx/20xx

Pursuant to the Performance-Based Payment Agreement dated **DD MONTH YR** (the "Agreement") between **[Responsible Party]** and United Nations Development Programme, **[Responsible Party]** hereby requests payment for the achievement of results under **Deliverable [x]**, in the amount of **\$XX**. We certify that:

- 1) The pre-agreed indicators for **Deliverable [x]** have been satisfactorily met and were achieved within the specified timeframe listed in Annex A-3.
- 2) The Actual Results reported herein, are complete and correct as of the date of this letter.
- 3) The amount requested for this payment does not exceed the maximum allowable amount payable under this Deliverable.
- 4) The information for **[Responsible Party]** bank account into which payment will be disbursed (set forth in Block 8 of the Face Sheet) is still valid.
- 5) **[Responsible Party]** is in full compliance with all terms, conditions and commitments of the Agreement as of this date.

Deliverable(s)	Planned Result	Actual Result*	Expected Date of Completion	Actual Date of Completion*	Eligible Cumulative Payment (USD)	Value of Payment Requested*
<b>Deliverable x</b>			<b>DD Month YYYY</b>	<b>DD Month YYYY</b>	<b>10% of contract value</b>	<b>\$XX,XXX</b>
Indicator 1.1 - <i>5,000 active police trained in human rights obligations</i>	<b>5,000</b>	<b>6,200</b>				
Indicator 1.2 - <i>60% of trained police who can accurately identify at least one HRBA technique in policing</i>	<b>60%</b>	<b>60%</b>				

*\*To be completed by the Responsible Party when requesting a payment after completion of a Deliverable. Updated Annex F and relevant evidence must be attached to the form, including survey reports, photographs, copies of reports, etc.*

Yours faithfully,

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By: [Name]

Date: [Date]

[Designation], [Recipient Party Name]

For the [period] ended [ Date]

## Annex H: Reporting on Minimum Progress Thresholds

Project title and Atlas Project Number:								
Responsible Party:								
KEY PROGRESS MEASURES		DATA SOURCE  (RP)	PROGRESS MEASURE TYPE (MINIMUM REQUIRED / ACTUAL)	PROGRESS MEASURE LEVEL				EXPLANATION: Provide explanation if Actual Level of Progress Measure falls below the Minimum Required
				As of [30 June 2017]	As of [30 June 2018]	As of [30 June 2019]	.....	
<b>Progress Measure 1: Referrals</b>								
1.1	Clearly specify each measure that the Responsible Party has to meet  [EXAMPLE: Minimum number of Eligible Criminal Justice Referrals newly enrolled in the Criminal Justice Project per Year]	County Jail records	Minimum Required	1,200	1,200	1,200		Bad publicity in 2018 resulting from Lawsuit filed by previous participants of the Project.
			Actual*	1,200	1,200	800		
<b>Progress Measure 2: Housing Units</b>								
2.1	Clearly specify each measure that the Responsible Party has to meet  [EXAMPLE: The number of additional housing units secured compared to the previous year's number of housing units]	Lease records	Minimum Required	400	>200 from previous year #	>200 from previous year #		N/A
			Actual*	400	800	900		
<b>Progress Measure 3: [INSERT]</b>								
3.1	Clearly specify each measure that the Responsible Party has to meet	xx	Minimum Required					
			Actual*					

Minimum progress thresholds should be established and monitored at least on an annual basis. As such, progress measures and minimum required levels for each measure should be established prior to signing the Agreement. Actual progress levels should be completed by the RP when minimum progress thresholds are due to be reported based on agreed dates specified in the schedule above. Failure to attain specified threshold levels can result in early termination of the project.

## Annex I: Project Document

(Attach ProDoc.)