

**GENERAL CONDITIONS
FOR UNDP REIMBURSABLE LOAN AGREEMENTS (RLA)**

Article 1 - Independent Contractor

1. The Contractor shall be considered as having the legal status of an independent contractor. The Employees of the Contractor shall not be considered in any aspect as being officials or staff members of the United Nations Development Programme. The Contractor shall be solely responsible for all claims by such persons arising out of or in connection with their agreement by the Contractor. The Contractor shall inform such persons of the foregoing.

Article 2 - Contractor's General Responsibilities

1. The Contractor shall perform its obligations under the RLA with due diligence and efficiency and in conformity with sound professional, administrative and financial practices.
2. The Contractor shall act at all times so as to protect, and not be in conflict with, the interests of UNDP.
3. The Contractor shall be responsible for the services performed by its Employees. To this end, and without limiting the generality of the foregoing, the Contractor shall select reliable individuals who will perform effectively in the implementation of the RLA, respect the local customs and conform to a high standard of moral and ethical conduct.
4. The Contractor shall respect and abide by all applicable laws and regulations of the country in which the obligations under this RLA are to be performed, and shall take all reasonable measures to ensure that its Employees do so.

Article 3 - Assignment of Personnel

1. Other than persons specifically named in this RLA, no person shall be assigned by the Contractor to perform services in connection with this RLA until after the Contractor has notified the UNDP of the identity of such proposed persons and has provided the UNDP with their curricula vitae, and the UNDP has notified the Contractor of its approval of such assignments.

Article 4 - Removal of Personnel

1. If in the opinion of the UNDP any of the Contractor's Employees prove themselves incapable of substantially carrying out their duties and/or are fundamentally unsuitable for the services, it shall be at the discretion of the UNDP to decide if and when the employment of such Contractor's employees under the RLA shall be terminated and the Contractor be required to replace him. In this event the Contractor shall, on receipt of instructions from the UNDP, comply forthwith and shall assign new persons in accordance with the provisions of Article 3.
2. Such withdrawal or replacement shall not be a cause for suspension of the RLA.
3. Any costs or expenses resulting from any withdrawal or replacement of persons pursuant to paragraph 1 of this Article 4 shall be borne by the Contractor.

Article 5 - Indemnification and Insurance

1. The Contractor shall indemnify, hold and save harmless and defend, at its own expense, the UNDP, its officials, agents, servants and employees, from and against all suits, claims, demands and liability of any nature, including their costs and expenses, arising out of the acts or omissions of the Contractor or its Employees in the performance of this RLA. This provision shall extend to claims and liability in the nature of workmen's compensation claims and those arising out of the use of patented inventions or devices.
2. The Contractor shall provide and thereafter maintain all appropriate workmen's compensation and liability insurance to cover its Employees and any claims for death, bodily injury or damage to property arising from the execution of this RLA. The Contractor represents that the liability includes possible subcontractors.

3. The Contractor shall ensure that all policies of insurance referred to above, other than workmen's compensation, shall name the UNDP and, where appropriate, subcontractors concerned, as additional insured parties.
4. Upon request by the UNDP, the Contractor shall provide evidence, to the reasonable satisfaction of the UNDP, of the insurance referred to above and shall give the UNDP reasonable advance notice of any proposed changes related to such insurance.
5. The UNDP undertakes no responsibility to provide life, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any persons performing services in connection with this RLA.

Article 6 - Sickness and Accident

1. If the Contractor's Employees fall sick in the period during which they are engaged on the RLA, the UNDP shall not be responsible for arranging or paying for medical treatment and attention.
2. The UNDP shall not be required to pay for the services of the Contractor's Employees for any period that the Contractor's Employees are incapacitated by sickness.
3. If in the opinion of the UNDP, any of the Contractor's Employees either has been or will be incapacitated by sickness for an unreasonable period or period then, and in that case, it shall be at the discretion of the UNDP to decide if and when the employment of the Contractor's Employee under the RLA shall be terminated and the Contractor be required to replace him. In this event, the Contractor shall on receipt of instructions from the UNDP comply forthwith and shall substitute for the Employee whose services are so terminated another and satisfactory person and the whole costs of such replacements shall be at the Contractor's expense.

Article 7 - Encumbrances

1. The contractor shall not cause or permit any lien, attachment or other encumbrance by any third party to be placed on file or to remain on file in any public office or on file with the UNDP against any monies due or to become due for any work done or services rendered in connection with this RLA, or by reason of any claim or demand against the Contractor.

Article 8 - Source of Instructions

1. The Contractor shall neither seek nor accept instructions from any authority external to the UNDP in connection with the performance of its services under this RLA. The Contractor shall refrain from any action which may adversely affect the UNDP and shall fulfill its commitments with the fullest regard for the interest of the UNDP.

Article 9 - Prohibition of Conflicting Activities

1. The Contractor and its personnel admitted into the country to perform services under this RLA shall not engage in any conflicting business or other activity in the country in which the services are to be performed, or accept paid employment in contravention with the laws of the country.

Article 10 - Officials not to Benefit

1. The Contractor warrants that no official of the UNDP has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this RLA or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this RLA.

Article 11 - Records, Accounts, Information and Audit

1. The Contractor shall maintain accurate and systematic records and accounts in respect of the performance of its obligations under this RLA.
2. The Contractor shall furnish, compile and make available at all reasonable times to the UNDP any records, accounts or other information, oral or written, which the UNDP may reasonably request in respect of the performance by the Contractor of its obligations under this RLA.

3. The Contractor shall allow the UNDP to inspect and audit such records, accounts or other information upon reasonable notice.

Article 12 - Confidential Nature of Documents

1. All maps, drawings, photographs, plans, manuscripts, records, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this RLA shall be the property of the UNDP, shall be treated as confidential and shall be delivered only to the authorized UNDP officials on completion of work under this RLA.
2. The Contractor may not communicate at any time to any other person, government or authority external to the UNDP, any information known to it by reason of its association with the UNDP which has not been made public except with the authorization of the UNDP; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this RLA with the UNDP.

Article 13 - Copyright, Patents and other Proprietary Rights

1. The UNDP shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights and trademarks, with regard to documents and other materials which bear a direct relation to or are prepared or collected in consequences or in the course of the execution of this RLA. The Contractor, at the UNDP's request shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring the same to the UNDP in compliance with the requirements of the applicable law.

Article 14 - Use of Name, Emblem or Official Seal of the UNDP

1. The Contractor shall not advertise or otherwise make public the fact that it is a contractor with the UNDP. Also the Contractor shall, in no manner whatsoever use the name, emblem or official seal of the UNDP or any abbreviation of the name of the UNDP in connection with its business or otherwise. This obligation does not lapse upon termination of the RLA.

Article 15 - Contractor's Default

1. If the Contractor shall fail to carry out the Services or any part thereof with due diligence and expedition, or shall refuse or fail to comply with any reasonable order given to it in writing by the UNDP, the UNDP may immediately give notice in writing to the Contractor to make good such failure or contravention.
2. Should the Contractor fail to comply with the notice referred to in Sub-Clause 15.1 either within seven days from receipt of such notice, or otherwise within such times as may be reasonably necessary for making it good, the UNDP without prejudice to any other right it may have under the RLA may, subject to the prior notification of the Contractor
 - (a) employ others to carry out that part of the Services which the Contractor shall have failed to carry out, or
 - (b) take the Services in whole or in part out of the Contractor's hands and recontract with others as may be appropriate.
3. If the cost to the UNDP of employing others to carry out part or all of the Services in accordance with Sub-Clause 15.2. exceeds the amount which would have become payable to the Contractor had it completed that part or all of the Services, then the UNDP shall have the right to charge such excess cost to the Contractor. The UNDP shall also have the right to retain part or all of any sum which would otherwise be due to the Contractor under the RLA and set such sum against the excess due from the Contractor.
4. If the Contractor fails to carry out the Services in part or in whole, the Contractor shall refund to the UNDP any advance payment made in respect of that portion of the Services not carried out.
5. Nothing in this Clause shall, in the event of a malfunction, prevent emergency action being taken by the UNDP to meet operational requirements but, if such actions result in the UNDP incurring additional costs in carrying out the Services, such reasonable costs shall be reimbursed to the Contractor by the UNDP provided such emergency action is not taken as a result of failure by the Contractor.

Article 16 - Audits and investigations:

16.1- Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or the authorized agents of the 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. The UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the UNDP other than in accordance with the terms and conditions of the Contract. Should the audit determine that any funds paid by UNDP have not been used as per contract clauses, the company shall reimburse such funds forthwith. Where the company fails to reimburse such funds, UNDP reserves the right to seek recovery and/or to take any other action as it deems necessary.

16.2- The Contractor acknowledges and agrees that, at anytime, UNDP may conduct investigations relating to any aspect of the Contract, the obligations performed under the Contract, and the operations of the Contractor generally. The right of UNDP to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. 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 documentation for such purposes and to grant to UNDP access to the Contractor's premises. 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.

Article 17 - Anti-terrorism:

- The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Contract 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/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.

Article 18 - Security:

18.1 The responsibility for the safety and security of the Contractor and its personnel and property, and of UNDP's property in the Contractor's custody, rests with the Contractor.

18.2 The Contractor shall:

- (a) 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;
- (b) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

18.3 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 3.1 above.

Article 19 - Termination for Insolvency

1. The UNDP may at any time terminate the RLA by giving written notice to the Contractor, without compensation to the Contractor, if the Contractor becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the UNDP.

Article 20 - Termination for Convenience

1. The UNDP, may by written notice sent to the Contractor, terminate the RLA, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the UNDP's convenience, the extent to which performance of Services under the RLA is terminated, and the date upon

which such termination becomes effective. This shall be no fewer than 30 days from the date of the letter issued by the UNDP detailing its intent to terminate the RLA.

2. In the event of any termination no payment shall be due from the UNDP to the Contractor except for the Services satisfactorily performed in conformity with the expressed terms of this RLA.

Article 21 - Force Majeure

1. The Contractor shall not be liable for termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the RLA is the result of the event of Force Majeure.
2. For the purposes of this Clause, "Force Majeure" means an event beyond the control of the Contractor and not involving the Contractor's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the UNDP either in its sovereign or contractual capacity, wars, fires, floods, epidemics, quarantine restrictions.
3. If a Force Majeure situation arises, the Contractor shall promptly notify the UNDP in writing of such condition and the cause thereof. Unless otherwise directed by the UNDP in writing, the Contractor shall continue to perform its obligations under the RLA as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
4. If the Contractor is rendered permanently unable, wholly or in part, by reason of Force Majeure to perform its obligations under this RLA, the UNDP shall have the right to suspend or terminate this RLA with a period of notice to the Contractor of seven (7) days.

Article 22 - Arbitration

1. Any controversy or claim arising out of, or in connection with this RLA or any breach thereof, shall unless it is settled amicably by direct negotiation, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. Such arbitration shall be conducted under the auspices of the International Chamber of Commerce ICC (where contract activities are conducted outside the United States of America) or the American Arbitration Association AAA (where the contract activities are more closely connected with the United States of America) which shall also serve as the Appointing Authority under the Rules.
2. All parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such controversy or claim.

Article 23 - Privileges and Immunities

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

Article 24 - Tax Exemption

1. Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the UN including its subsidiary organs, such as the UNDP, are exempt from all direct taxes and from custom duties in respect of articles imported or exported for its official use. Accordingly, the Contractor authorizes the UNDP to deduct from the Contractor's invoice any amount representing such taxes or duties. Payment of such corrected invoiced amount shall constitute full payment by the UNDP. In the event any taxing authority refuses to recognize the UNDP exemption from such taxes, the Contractor shall immediately consult with the UNDP to determine a mutually acceptable procedure.

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Article 25 - Amendments

1. No modification of or change in this RLA, waiver of any of its provisions or additional contractual provisions shall be valid or enforceable unless previously approved in writing by the parties to this RLA or their duly authorized representatives in the form of an amendment to this RLA signed by the parties hereto.

UNDP Office
Address

Dear Sir/Madam:

Subject: **Undertaking by the Consultant**

1. I refer to para 6 of the Reimbursable Loan Agreement between **P & D Consulting, Inc.**, and UNDP, dated **5 December 2005**.
2. I affirm any personal obligation to comply with undertaking as contained in the covenants applicable to the consultant in the Standard Conditions of the Contract. I also affirm that my employment in connection with the contract will include, as my personal obligation, continued cooperation with UNDP after the conclusion of the Reimbursable Loan Agreement to the extent necessary to clarify or explain any report or recommendations made by me. This obligation shall be independent of my obligation to P & D Consulting Inc. under our employment contract.
3. I understand that UNDP's confirmation of this side letter is necessary to make the Reimbursable Loan Agreement effective.

Sincerely yours,

Consultant

Confirmed:

UNDP

