

## **INVITATION TO BID**

Intelligent Document Capture Software  
OIST

ITB/UNDP/OIST/SLSA/001/2013  
Bureau of Management (BoM)  
New York, USA



**United Nations Development Programme**  
November, 2013

## Section 1. Letter of Invitation

15 November 2013

### Procurement of Intelligent Document Capture Software

Dear Vendor,

The United Nations Development Programme (UNDP) hereby invites you to submit a Bid to this Invitation to Bid (ITB) for the provision of Intelligent Document Capture Software.

The purpose, therefore, of this Invitation to Bid is to conclude a Software License and Services Agreement for a period of three years, subject to satisfactory contract performance, with a qualified Bidder for Intelligent Document Capture Software.

This ITB includes the following documents:

- Section 1 – This Letter of Invitation
- Section 2 – Instructions to Bidders (including Data Sheet)
- Section 3 – Terms of Reference
- Section 4 – Bid Submission Form
- Section 5 – Documents Establishing the Eligibility and Qualifications of the Bidder
- Section 6 – Technical Bid Form
- Section 7 – Price Schedule Form
- Section 8 – Agreement to be signed, including General Terms and Conditions

Your offer, comprising of a Technical Bid and Price Schedule, in separate sealed envelopes, should be submitted in accordance with Section 2.

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

ugyen.tobgay@undp.org with a copy to bakhtiyor.khamraev@undp.org

The letter should be received by UNDP no later than **22 November 2013**. The same letter should advise whether your company intends to submit a Bid. If that is not the case, UNDP would appreciate your indicating the reason, for our records.

Should you require any clarification, kindly communicate with the contact person identified in the attached Data Sheet as the focal point for queries on this ITB.

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

Yours sincerely,

Bakhtiyor Khamraev, Chief  
Central Procurement Unit  
Procurement Support Office  
Bureau of Management  
United Nations Development Programme

## Section 2: Instruction to Bidders

### Definitions

- a) *“Bid”* refers to the Bidder’s response to the Invitation to Bid, including the Bid Submission Form, Technical Bid and Price Schedule and all other documentation attached thereto as required by the ITB.
- b) *“Bidder”* refers to any legal entity that may submit, or has submitted, a Bid for the supply of goods and provision of related services requested by UNDP.
- c) *“Contract”* refers to the legal instrument that will be signed by and between the UNDP and the successful Bidder, all the attached documents thereto, including the General Terms and Conditions (GTC) and the Appendices.
- d) *“Country”* refers to the country indicated in the Data Sheet.
- e) *“Data Sheet”* refers to such part of the Instructions to Bidders used to reflect conditions of the tendering process that are specific for the requirements of the ITB.
- f) *“Day”* refers to calendar day.
- g) *“Goods”* refer to any tangible product, commodity, article, material, wares, equipment, assets or merchandise that UNDP requires under this ITB.
- h) *“Government”* refers to the Government of the country where the goods and related services provided/rendered specified under the Contract will be delivered or undertaken.
- i) *“Instructions to Bidders”* refers to the complete set of documents which provides Bidders with all information needed and procedures to be followed in the course of preparing their Bid
- j) *“ITB”* refers to the Invitation to Bid consisting of instructions and references prepared by UNDP for purposes of selecting the best supplier or service provider to fulfil the requirement indicated in the Schedule of Requirements and Technical Specifications.
- k) *“LOI”* (Section 1 of the ITB) refers to the Letter of Invitation sent by UNDP to Bidders.
- l) *“Material Deviation”* refers to any contents or characteristics of the bid that is significantly different from an essential aspect or requirement of the ITB, and (i) substantially alters the scope and quality of the requirements; (ii) limits the rights of UNDP and/or the obligations of the offeror; and (iii) adversely impacts the fairness and

principles of the procurement process, such as those that compromise the competitive position of other offerors.

- m) *“Terms of Reference”* refers to the document included in this ITB as Section 3 which lists the services required by UNDP, their specifications, the related services, activities, tasks to be performed, and other information pertinent to UNDP’s receipt and acceptance of the services.
- n) *“Services”* refers to the entire scope of tasks related or ancillary to the completion or delivery of the services required by UNDP under the ITB.
- o) *“Supplemental Information to the ITB”* refers to a written communication issued by UNDP to prospective Bidders containing clarifications, responses to queries received from prospective Bidders, or changes to be made in the ITB, at any time after the release of the ITB but before the deadline for the submission of Bid.

#### **A. GENERAL**

1. UNDP hereby solicits Bids as a response to this Invitation to Bid (ITB). Bidders must strictly adhere to all the requirements of this ITB. No changes, substitutions or other alterations to the rules and provisions stipulated in this ITB may be made or assumed unless it is instructed or approved in writing by UNDP in the form of Supplemental Information to the ITB.
2. Submission of a Bid shall be deemed as an acknowledgement by the Bidder that all obligations stipulated by this ITB will be met and, unless specified otherwise, the Bidder has read, understood and agreed to all the instructions in this ITB.
3. Any Bid submitted will be regarded as an offer by the Bidder and does not constitute or imply the acceptance of any Bid by UNDP. UNDP is under no obligation to award a contract to any Bidder as a result of this ITB.
4. UNDP implements a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical practices, and obstruction. UNDP is committed to preventing, identifying and addressing all acts of fraud and corrupt practices against UNDP as well as third parties involved in UNDP activities. (See [http://www.undp.org/about/transparencydocs/UNDP Anti Fraud Policy English FINAL June 2011.pdf](http://www.undp.org/about/transparencydocs/UNDP%20Anti%20Fraud%20Policy%20English%20FINAL%20June%202011.pdf) and [http://www.undp.org/content/undp/en/home/operations/procurement/procurement\\_protest/](http://www.undp.org/content/undp/en/home/operations/procurement/procurement_protest/) for full description of the policies)
5. In responding to this ITB, UNDP requires all Bidders to conduct themselves in a professional, objective and impartial manner, and they must at all times hold UNDP’s

interests paramount. Bidders must strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. All Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this solicitation process, if they:

**5.1** Are, or have been associated in the past, with a firm or any of its affiliates which have been engaged UNDP to provide services for the preparation of the design, Schedule of Requirements and Technical Specifications, cost analysis/estimation, and other documents to be used for the procurement of the goods and related services in this selection process;

**5.2** Were involved in the preparation and/or design of the programme/project related to the goods and related services requested under this ITB; or

**5.3** Are found to be in conflict for any other reason, as may be established by, or at the discretion of, UNDP.

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

6. Similarly, the following must be disclosed in the Bid:

6.1 Bidders who are owners, part-owners, officers, directors, controlling shareholders, or key personnel who are family of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving the goods and related services under this ITB; and

6.4 Others that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.

**Failure of such disclosure may result in the rejection of the Bid.**

7. The eligibility of Bidders that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered as an independent entity, the extent of Government ownership/share, receipt of subsidies, mandate, access to information in relation to this ITB, and others that may lead to undue advantage against other Bidders, and the eventual rejection of the Bid.

8. All Bidders must adhere to the UNDP Supplier Code of Conduct, which may be found at this link: <http://web.ng.undp.org/procurement/undp-supplier-code-of-conduct.pdf>

## **B. CONTENTS OF BID**

### **9. Sections of Bid**

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

- 9.1 Bid Submission Cover Letter Form (see ITB Section 4);
- 9.2 Documents Establishing the Eligibility and Qualifications of the Bidder (see ITB Section 5);
- 9.3 Technical Bid (see prescribed form in ITB Section 6);
- 9.4 Price Schedule (see prescribed form in ITB Section 7);
- 9.5 Bid Security, if applicable (if required and as stated in the DS nos. 9-11, see prescribed Form in ITB Section 8);
- 9.6 Any attachments and/or appendices to the Bid (including all those specified under the **Data Sheet**)

## 10. Clarification of Bid

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

## 11. Amendment of Bid

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

## C. PREPARATION OF BID

### 12. Cost

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

### 13. Language

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

### 14. Bid Submission Form

The Bidder shall submit the Bid Submission Form using the form provided in Section 4 of this ITB.

### 15. Technical Bid Format and Content

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

- 15.1 Expertise of Firm/Organization – this section should provide details regarding management structure of the organization, organizational capability/resources, and experience of organization/firm, the list of projects/contracts (both completed and on-going, both domestic and international) which are related or similar in nature to the requirements of the ITB, manufacturing capacity of plant if Bidder is a manufacturer, authorization from the manufacturer of the goods if Bidder is not a manufacturer, and proof of financial stability and adequacy of resources to complete the delivery of goods and provision of related services required by the ITB (see ITB Clause 18 and DS No. 26 for further details). The same shall apply to any other entity participating in the ITB as a Joint Venture or Consortium.
- 15.2 Technical Specifications and Implementation Plan – this section should demonstrate the Bidder's response to the Schedule of Requirements and Technical Specifications by identifying the specific components proposed; how each of the

requirements shall be met point by point; providing a detailed specification and description of the goods required, plans and drawings where needed; the essential performance characteristics, identifying the works/portions of the work that will be subcontracted; a list of the major subcontractors, and demonstrating how the bid meets or exceeds the requirements, while ensuring appropriateness of the bid to the local conditions and the rest of the project operating environment during the entire life of the goods provided. Details of technical bid must be laid out and supported by an Implementation Timetable, including Transportation and Delivery Schedule where needed, that is within the duration of the contract as specified in the **Data Sheet** (DS noS. 29 and 30).

Bidders must be fully aware that the goods and related services that UNDP require may be transferred, immediately or eventually, by UNDP to the Government partners, or to an entity nominated by the latter, in accordance with UNDP's policies and procedures. All bidders are therefore required to submit the following in their bids:

- a) A statement of whether any import or export licences are required in respect of the goods to be purchased or services to be rendered, including any restrictions in the country of origin, use or dual use nature of the goods or services, including any disposition to end users;
- b) Confirmation that the Bidder has obtained license of this nature in the past, and have an expectation of obtaining all the necessary licenses, should their bid be rendered the most responsive; and
- c) Complete documentation, information and declaration of any goods classified or may be classified as "Dangerous Goods".

15.3 Management Structure and Key Personnel – This section should include the comprehensive curriculum vitae (CVs) of key personnel that will be assigned to support the implementation of the technical bid, clearly defining their roles and responsibilities. CVs should establish competence and demonstrate qualifications in areas relevant to the requirements of this ITB.

In complying with this section, the Bidder assures and confirms to UNDP that the personnel being nominated are available to fulfil the demands of the Contract during its stated full term. If any of the key personnel later becomes unavailable, except for unavoidable reasons such as death or medical incapacity, among other possibilities, UNDP reserves the right to render the Bid non-responsive. Any deliberate substitution of personnel arising from unavoidable reasons, including delay in the implementation of the project of programme through no fault of the Bidder, shall be made only with UNDP's acceptance of the justification for substitution, and UNDP's approval of the qualification of the replacement who shall be either of equal or superior credentials as the one being replaced.



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

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

## 16. Price Schedule

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

## 17. Currencies

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

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

## 18. Documents Establishing the Eligibility and Qualifications of the Bidder

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

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

18.2 Bids submitted by two (2) or more Bidders shall all be rejected by UNDP if they are found to have any of the following:

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

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

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

venture.

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

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

The description of the organization of the joint venture/consortium/association must clearly define the expected role of each of the entity in the joint venture in delivering the requirements of the ITB, both in the bid and in the Joint Venture Agreement. All entities that comprise the joint venture shall be subject to the eligibility and qualification assessment by UNDP.

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

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

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

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

## **20. Alternative Bid**

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

## **21. Validity Period**

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

21.2 In exceptional circumstances, prior to the expiration of the Bid validity period, UNDP may request Bidders to extend the period of validity of their Bid. The request and the responses shall be made in writing, and shall be considered integral to the Bid.

## **22. Bidder's Conference**

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

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

### **23. Submission**

23.1 The Technical Bid and the Price Schedule **must be submitted together and sealed together in one and the same envelope**, delivered either personally, by courier, or by electronic method of transmission. If submission will not be done by electronic means, the Technical Bid and Price Schedule must be sealed together in an envelope whose external side must :

- a) Bear the name of the Bidder;
- b) Be addressed to UNDP as specified in the **Data Sheet** (DS no.20); and
- c) Bear a warning not to open before the time and date for Bid opening as specified in the **Data Sheet** (DS no. 24).

If the envelope is not sealed nor labeled as required, the Bidder shall assume the responsibility for the misplacement or premature opening of Bid due to improper sealing and labeling by the Bidder.

23.2 Bidders must submit their Bid in the manner specified in the **Data Sheet** (DS nos. 22 and 23). When the Bid is expected to be in transit for more than 24 hours, the

Bidder must ensure that sufficient lead time has been provided in order to comply with UNDP's deadline for submission. UNDP shall indicate for its record that the official date and time of receiving the Bid is the actual date and time when the said Bid has physically arrived at the UNDP premises indicated in the **Data Sheet** (DS no. 20).

23.3 Bidders submitting Bid by mail or by hand shall enclose the original and each copy of the Bid, in separate sealed envelopes, duly marking each of the envelopes as "Original Bid" and the others as "Copy of Bid". The two envelopes, consisting of original and copies, shall then be sealed in an outer envelope. The number of copies required shall be as specified in the **Data Sheet** (DS no. 19). In the event of any discrepancy between the contents of the "Original Bid" and the "Copy of Bid", the contents of the original shall govern. The original version of the Bid shall be signed or initialed by the Bidder or person(s) duly authorized to commit the Bidder on every page. The authorization shall be communicated through a document evidencing such authorization issued by the highest official of the firm, or a Power of Attorney, accompanying the Bid.

23.4 Bidders must be aware that the mere act of submission of a Bid, in and of itself, implies that the Bidder accepts the General Contract Terms and Conditions of UNDP as attached hereto as Section 11.

#### **24. Deadline for Submission of Bid and Late Bids**

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

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

#### **25. Withdrawal, Substitution, and Modification of Bid**

25.1 Bidders are expected to have sole responsibility for taking steps to carefully examine in detail the full consistency of its Bid to the requirements of the ITB, keeping in mind that material deficiencies in providing information requested by UNDP, or lack clarity in the description of goods and related services to be provided, may result in the rejection of the Bid. The Bidder shall assume any responsibility regarding erroneous interpretations or conclusions made by the Bidder in the course of understanding the ITB out of the set of information furnished by UNDP.

25.2 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 23, duly signed by an

authorized representative, and shall include a copy of the authorization (or a Power of Attorney). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be received by UNDP prior to the deadline for submission and submitted in accordance with ITB Clause 23 (except that withdrawal notices do not require copies). The respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION".

25.3 Bid requested to be withdrawn shall be returned unopened to the Bidders.

25.4 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bid and the expiration of the period of Bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

## **26. Bid Opening**

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

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

## **27. Confidentiality**

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

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

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

## E. EVALUATION OF BID

### 28. Preliminary Examination of Bid

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

### 29. Evaluation of Bid

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

29.2 The evaluation team shall review and evaluate the Bids on the basis of their responsiveness to the Schedule of Requirements and Technical Specifications and other documentation provided, applying the procedure indicated in the **Data Sheet** (DS No. 25). Absolutely no changes may be made by UNDP in the criteria after all Bids have been received.

29.1 UNDP reserves the right to undertake a post-qualification exercise, aimed at determining, to its satisfaction the validity of the information provided by the Bidder. Such post-qualification shall be fully documented and, among those that may be listed in the **Data Sheet** (DS No.33), may include, but need not be limited to, all or any combination of the following :

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

### **30. Clarification of Bid**

To assist in the examination, evaluation and comparison of bids, UNDP may, at its discretion, ask any Bidder to clarify its Bid.

UNDP's request for clarification and the Bidder's response shall be in writing. Notwithstanding the written communication, no change in the prices or substance of the Bid shall be sought, offered, or permitted, except to provide clarification, and confirm the correction of any arithmetic errors discovered by UNDP in the evaluation of the Bid, in accordance with ITB Clause 35.

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

### **31. Responsiveness of Bid**

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

A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the ITB without material deviation, reservation, or omission.

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

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

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

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

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



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

32.6 If the Bidder does not accept the correction of errors made by UNDP, its Bid shall be rejected.

## **F. AWARD OF CONTRACT**

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

33.1 UNDP reserves the right to accept or reject any Bid, to render any or all of the Bids as non-responsive, and to reject all Bids at any time prior to award of contract, without incurring any liability, or obligation to inform the affected Bidder(s) of the grounds for UNDP's action. Furthermore, UNDP is not obligated to award the contract to the lowest price offer.

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

### **34. Award Criteria**

Prior to expiration of the period of Bid validity, UNDP shall award the contract to the qualified and eligible Bidder that is found to be responsive to the requirements of the Schedule of Requirements and Technical Specification, and has offered the lowest price (See DS No. 32).

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

At the time of award of Contract, UNDP reserves the right to vary the quantity of the goods and/or related services, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

### **36. Contract Signature**

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

Failure of the successful Bidder to comply with the requirement of ITB Section F.3 and this provision shall constitute sufficient grounds for the annulment of the award, and forfeiture of the Bid Security if any, and on which event, UNDP may award the Contract to the Bidder with the second highest rated Bid, or call for new Bid.

### **37. Performance Security**

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

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

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

### **39. Vendor Protest**

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

## Instructions to Bidders

### DATA SHEET

The following data for the supply of goods and related services shall complement / supplement the provisions in the Instruction to Bidders. In the case of a conflict between the Instruction to Bidders and the Data Sheet, the provisions in the Data Sheet shall prevail.

<b>DS No.</b>	<b>Cross Ref. to Instructions</b>	<b>Data</b>	<b>Specific Instructions / Requirements</b>
1		Project Title:	Intelligent Document Capture Software
2		Title of Goods/Services/Work Required:	See Project Title
3		Country:	United States of America (USA)
4	C.13	Language of the Bid:	<input checked="" type="checkbox"/> English
5	C.20	Conditions for Submitting Bid for Parts or sub-parts of the Total Requirements	<input checked="" type="checkbox"/> Not allowed
6	C.20	Conditions for Submitting Alternative Bid	<input checked="" type="checkbox"/> Shall not be considered
7	C.22	A pre-Bid conference will be held on:	No pre-proposal conference will be held
8	C.21.1	Period of Bid Validity commencing on the submission date	<input checked="" type="checkbox"/> 90 days
9	B.9.5 C.15.4 b)	Bid Security	<input checked="" type="checkbox"/> Not Required
10	B.9.5	Acceptable forms of Bid Security	<input checked="" type="checkbox"/> Not Applicable
11	B.9.5 C.15.4 a)	Validity of Bid Security	<input checked="" type="checkbox"/> Not Applicable
12		Advanced Payment upon	<input checked="" type="checkbox"/> Not allowed

		signing of contract	
13		Liquidated Damages	<input checked="" type="checkbox"/> Will not be imposed
14	F.37	Performance Security	<input checked="" type="checkbox"/> Not Required
15	C.17 C.17.2	Preferred Currency of Bid and Method for Currency conversion	<input checked="" type="checkbox"/> United States Dollars (US\$)
16	B.10.1	Deadline for submitting requests for clarifications/ questions	UNDP will provide responses to vendors' requests for clarification on a rolling basis with last responses provided by no later than 10 calendar days before submission deadline. All responses provided by UNDP will be also posted on the UNDP procurement website, as an update to this ITB on <a href="http://procurement-notice.undp.org/">http://procurement-notice.undp.org/</a>
17	B.10.1	Contact Details for submitting clarifications/questions <sup>1</sup>	E-mail address dedicated for this purpose: <a href="mailto:ugyen.tobgay@undp.org">ugyen.tobgay@undp.org</a> with a copy to <a href="mailto:bakhtiyor.khamraev@undp.org">bakhtiyor.khamraev@undp.org</a>
18	B.11.1	Manner of Disseminating Supplemental Information to the ITB and responses/clarifications to queries	<input checked="" type="checkbox"/> Direct communication to prospective Bidders by email and posting on the website <a href="http://procurement-notice.undp.org/">http://procurement-notice.undp.org/</a>
19	D.23.3	No. of copies of Bid that must be submitted	Original : 1 Copies : 1
20	D.23.1 b) D.23.2 D.24	Bid submission address	United Nations Development Programme Procurement Support Office (PSO) Central Procurement Unit (CPU) 1 UN Plaza, DC1-17th Floor, Room 1765 New York, NY 10017  <b>Attention: Ugyen Wangmo</b>
21	C.21.1	Deadline of Bid Submission	<b>Date and Time : 12 December, 2013</b>

<sup>1</sup> This contact person and address is officially designated by UNDP. If inquiries are sent to other person/s or address/es, even if they are UNDP staff, UNDP shall have no obligation to respond nor can UNDP confirm that the query was officially received.

	D.24		[12.00 PM New York Local time]
22	D.23.2	Manner of Submitting Bid	<input checked="" type="checkbox"/> Courier/Hand Delivery <input checked="" type="checkbox"/> Electronic submission of Bid
23	D.23.2 D.26	Conditions and Procedures for electronic submission and opening, if allowed	<input checked="" type="checkbox"/> Official Address for e-submission: <a href="mailto:cpu.bids@undp.org">cpu.bids@undp.org</a> <input checked="" type="checkbox"/> Free from virus and corrupted files <input checked="" type="checkbox"/> Format : PDF files only, password protected <input checked="" type="checkbox"/> <b>Max. File Size per transmission: 5 Mega Bytes</b> <input checked="" type="checkbox"/> <b>Max. No. of transmission : Unlimited</b> <input checked="" type="checkbox"/> Mandatory subject of e-mail: <b>ITB/UNDP/OIST/LTA/001/2013 - Intelligent Document Capture Software</b>  <input checked="" type="checkbox"/> Virus Scanning Software to be Used prior to transmission: Yes  <input checked="" type="checkbox"/> <b>Digital Certification/Signature: [All bids must be signed by signatory authority of submitting bidder]</b> <input checked="" type="checkbox"/> Time Zone to be Recognized: New York Eastern Daylight Time (EDT)  <input checked="" type="checkbox"/> Other conditions: See below <i>further instructions for electronic submission</i> <b>Bidders may send as many e-mails as needed; however, the size of each e-mail should not exceed five megabytes (5 MB). As an e-mail can take some time to arrive after it is sent, we advise all Bidders to send e-mail submissions well before the deadline. Please be aware that bids e-mailed to UNDP will be rejected if they are received after the deadline for bid submission.</b>  <b>When choosing to submit their bids electronically, Bidders are solely responsible for ensuring that any and all files sent to UNDP are readable, that is, uncorrupted, in the indicated electronic format, and free from</b>

			<p>viruses and malware. Failure to provide readable files will result in the proposal being rejected.</p> <p>Please Note: Any bid sent to the private email addresses of any procurement staff will not be accepted.</p>
24	D.23.1 c)	Date, time and venue for opening of Bid	<b>Not applicable to this ITB</b>
25	E 28	<p>Evaluation method to be used in selecting the most responsive Bid</p> <p>Preliminary Examination</p>	<p><input checked="" type="checkbox"/> Non-Discretionary “Pass/Fail” Criteria on the Technical Requirements; and</p> <p><input checked="" type="checkbox"/> Lowest price offer of technically qualified/responsive Bid</p> <p><b>Memo to Bidders (<u>Examples of Bid Rejection</u>)</b></p> <p>Bids have been rejected at the submission stage or found to be technically noncompliant due to errors in presentation and failure to follow bidding instructions.</p> <p>Below are some of the more common examples of why bids are rejected. Bidders are urged to read this before submission and to check that their bids conform to each of these points and the instructions as noted in the bidding documents.</p> <ul style="list-style-type: none"> <li>➤ Bid is submitted <u>after</u> the deadline for submission, either by hand or electronically. Emailed bids sent just before the deadline may arrive after the deadline and be rejected. Therefore, make sure to submit your bids beforehand.</li> <li>➤ Bids <u>not</u> submitted to correct physical or electronic address. Note that the address for bid submission is different from the address for bid questions.</li> <li>➤ Bid is <u>not</u> signed as per the instructions in the ITB.</li> </ul>

			<ul style="list-style-type: none"> <li>➤ <u>Not</u> all sufficient documents have been provided.</li> <li>➤ Documents provided are <u>not</u> in English.</li> <li>➤ Documents provided do <u>not</u> directly address each point of the evaluation criteria.</li> <li>➤ Bid not specifically addressing the evaluation criteria of the ITB and Technical Specifications.</li> <li>➤ Bid does <u>not</u> offer services which have been specifically requested in the Technical Specifications.</li> <li>➤ Failure to enclose the Bids Submission Form (see Section 4).</li> <li>➤ The Bidder failed to consult the UNDP procurement website before the deadline for bid submission and did not see the changes to the ITB listed there which need to be incorporated in the bid.</li> <li>➤ The Bidder declines or proposes a major deviation to Software License and Services Agreement.</li> <li>➤ Bids contain viruses and/or corrupted files. The Bidders should ensure that submitted bids DO NOT contain viruses and/or corrupted files. Such bids will be rejected.</li> </ul> <p>The above examples illustrate some errors which may be made by Bidders. This is a partial list. The bidding documents contain additional instructions which should be followed carefully.</p>
26	C.15.1	Required Documents that must be Submitted to Establish Qualification of Bidders	<ul style="list-style-type: none"> <li>☒ Company Profile including printed brochures and product catalogues relevant to the goods/services being procured. Company profile is a set of information used by the bidder for marketing purposes.</li> <li>☒ Certificate of Registration of the business, including Articles of Incorporation, or equivalent document if Bidder is not a corporation</li> <li>☒ References: Provide contact names, email and</li> </ul>

			<p>phone number of Top <i>three</i> Clients in the past 2 years.</p> <p><input checked="" type="checkbox"/> Information regarding any past and current litigation during the last three (3) years, in which the bidder is involved, indicating the parties concerned, the subject of the litigation, the amounts involved, and the final resolution if already concluded.</p>
27		Other documents that may be Submitted to Establish Eligibility	N/A
28	C.15	Structure of the Technical Bid and List of Documents to be Submitted	N/A
29	C.15.2	Latest Expected date for commencement of Contract	<b>February 1, 2014</b>
30	C.15.2	Maximum Expected duration of contract	<b>3 years, subject to satisfactory contract performance</b>
s31		UNDP will award the contract to:	<input checked="" type="checkbox"/> The vendor that is found technically responsive and proposed the lowest price will be selected for the provision of these services.
32	F.34	Criteria for the Award and Evaluation of Bid	<p><b><u>Award Criteria</u></b></p> <p>See item 25 above</p>
33	E.29	Post qualification Actions	<p><input checked="" type="checkbox"/> Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;</p> <p><input checked="" type="checkbox"/> Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team;</p> <p><input checked="" type="checkbox"/> Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed;</p>



34		Conditions for Determining Contract Effectivity	<input checked="" type="checkbox"/> Agreement with UNDP's General Terms and Conditions for Services as attached in the ITB and based on date of countersignature of the and duly executed contract
35		Other Information Related to the ITB	<p>Services will be used on an on-demand basis annually.</p> <p>Payment Terms: 100% within 30 days upon UNDP's acceptance of the software delivered .</p>

## Section 3: TERMS OF REFERENCE

### Intelligent Document Capture Software

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#### 1. BACKGROUND

UNDP has initiated a programme to implement an electronic records and document management practice in order to provide a systematic method of registering, classifying, indexing, tracking, storing, disposing, and reporting of official UNDP documents and records. This functionality must be secured to ensure that the confidentiality, data integrity and availability of the records is maintained at a level consistent with UNDP business requirements.

It has been identified that a key entry point of documents into UNDP is through each operating unit's Registry in the form of paper documents. Currently many of these paper documents are handled inconsistently across UNDP's 200+ operating units. Some paper documents are being digitized and some are not, with the vast majority of those that are being digitized being stored locally in isolated electronic systems. Conversely, those digitized documents that are being stored on the Corporate Intranet platform (which is where the electronic records and document management programme is mandating) are not searchable leading to low levels of find-ability and incentive.

It has been recommended that UNDP invest in Intelligent Document Capture Software that will streamline the scanning, classifying, indexing and routing of paper documents at their point entry into the UNDP system (each operating unit's Registry) in electronic format. The IDCSS will serve as a major component of the overall electronic records and document management programme within UNDP.

#### 2. REQUIREMENTS

We are looking for an Intelligent Document Capture Software that will allow any Operating Unit to submit scanned images of documents to a centralized location where it they can be captured, classified, indexed and released to our content management system (Microsoft SharePoint).

UNDP currently operates a decentralized organization comprised of both Country Offices (165+) and HQ Units (40+). The main source of connectivity between Country Offices and HQ Units to central systems is via the Internet. The existing SharePoint Intranet Platform is hosted centrally with an initiative to leverage the cloud based version of SharePoint (Office 365) in the near future.

Assumptions

- A Statement of Work covering required services will be finalized, in line with submitted Bid Pricing Schedule, after an award of contract and before engagement of services.
  - Any required services work including installation, configuration, customizations and training can be carried out either remotely or on-site as agreed by the Bidder and UNDP. The Bidder should propose the most cost effective option.
  - Existing SharePoint environments have been configured and deployed by UNDP
  - SharePoint Document Libraries with metadata columns will be setup and configured by UNDP
  - If required, any on-premise servers will be configured with OS and pre-requisite software by UNDP as directed by the Bidder
- 
- UNDP anticipates lower volume of documents being captured during the first year as the programme is rolled out
  - Major Document Classes (not including sub-classes) will include:
    - Documents(e.g. Agreements, Contracts)
    - Financials (e.g. Invoices, Purchase Orders)
    - Correspondence (e.g. Letters, Memorandums, Bulletins)
    - Forms (e.g. HR Forms, Travel Expense)
  - Data Extraction Fields (excluding Invoices)
    - Each Document Class will have up to 7 fields extracted for Indexing
    - The 7 fields extracted for Indexing per Document Class can be different across Document Classes
  - Invoice Data Extraction fields will be limited to the following:
    - Invoice Number
    - Invoice Amount
    - Invoice Date
    - Reference Number
    - Vendor

- Purchasing Unit

## TECHNICAL REQUIREMENTS

Bidders are requested to confirm compliance of mandatory technical requirements.

## MADATORY REQUIREMENTS

No.*	Title	Description	Component
R02	Profiles	The software should have the ability to create "profiles." For example, each Operating Unit could have its own "profile" with specific document classes, index columns, default values and release destination.	General
R10	Import Locations	The software should be able to capture documents from standard secure locations including but not limited to: <ol style="list-style-type: none"> <li>1. Network File Shares (Optional)</li> <li>2. Email Mailboxes using IMAPS/POP</li> <li>3. FTPS sites</li> </ol>	Capture
R11	Email Import Location	If importing documents from an e-mail, the software should have the ability to separate attachments from the message and the option to import together or separately.	Capture
R12	Email Import Location	If importing documents from an e-mail, the software should have the ability to extract the sender and subject information from the email and assign to index columns.	Capture
R16	File Types	The capture process should have the ability to process the following file formats: PDF, JPEG, TIFF	Capture
R19	Limit Page Processing	The software should have the ability to stop processing pages in a batch after a certain number of pages has been processed (i.e. only process the first 10 pages of any document)	Capture
R20	OCR Indexing	The software should include advanced OCR & ICR capabilities when capturing and indexing documents	Classify
R21	Document Classes	The software should support the ability to create document classes that can each have their own release location and index columns.	Classify

R23	Classification Learning	The software should have the ability to "learn" how to classify and extract data from document classes. If yes, please specify details in the comments section.	Classify
R30	Default Values	The software should have to ability to set default values for index columns for each document class that is configured.	Index/Extract
R31	OCR/Index Language	The OCR/Indexing components of the software should be configurable to support UN Languages (English, Spanish, French)	Index/Extract
R33	Data Extraction	The software should have the ability to extract data based on the document class that has been recognized and populate index fields for that document class.	Index/Extract
R40	SharePoint On-Premise Support	The software should be supported against SharePoint 2010/2013 On-Premise versions	Releasing
R41	Release Locations	The software should have the ability to release documents to the following types of locations: 1. SharePoint Document Library (On-Premise version of SharePoint) 2. File System w/ index data 3. Other CMS systems	Releasing

\*= UNDP Requirement Number for internal reference only

## OPTIONAL REQUIREMENTS

No .*	Title	Description	Component
R01	Extensibility - Development API	The software should have a well-documented API included for extending functionality by UNDP	General
R03	Platform Independent	The software should not be tied to a specific platform or product (i.e. SharePoint). It should be able to function and add value if SharePoint is replaced with another system in the future.	General
R04	Centralized Server	The software will have a centralized server that will capture, classify, index and release documents.	General

R1 3	Local Client	The software should have the option of installing a local client for remote offices at no additional cost. The local client will transfer documents to the server over HTTPS.	Capture
R1 7	Batch Upload	The software should have the ability to upload documents to the server in batch as required, in order to address low bandwidth remote offices.	Capture
R1 8	Support Hot/Watched Folders	The software should have the ability to capture documents from a local folder as documents are dropped/added to that folder.	Capture
R2 2	Document Classes	The software should have the ability to “copy” a document class once it has been created to create similar document classes.	Classify
R2 4	Assign SharePoint Content Types	The software should have the ability to assign a SharePoint Content Type to the captured image using Content Types from the destination SharePoint library. The index columns should reflect the assigned Content Type.	Classify
R3 2	Integration with SharePoint Columns for Indexing	The software should have the ability the index the captured document using SharePoint columns and column types (i.e. Managed Metadata, Choice, Date & Time etc.)	Index/Extract
R3 4	Validation Access	The software should have the ability to validate processing on the server via a remote client or web interface.	Index/Extract
R4 2	Import Locations	The software should be able to capture documents from some form of Cloud Document Storage (SkyDrive, Dropbox, Google Drive, Box) over HTTPS	Capture
R4 3	SharePoint Online Support	The software should be supported against SharePoint Online (Office 365)	Releasing
R4 4	Release Locations	The software should have the ability to release documents to the following types of locations: 1. SharePoint Document Library (Online versions of SharePoint)	Releasing

\*= UNDP Requirement Number for reference only

#### Section 4: Bid Submission Form<sup>2</sup>

***(This should be written in the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this template.)***

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Insert: Location

Insert: Date

To:

Dear Sir/Madam:

We, the undersigned, hereby offer to supply the goods and related services required for *[insert: title of goods and services required as per ITB]* in accordance with your Invitation to Bid dated *Insert: bid date*. We are hereby submitting our Bid, which includes the Technical Bid and Price Schedule.

We hereby declare that:

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

We confirm that we have read, understood and hereby fully accept the Schedule of Requirements and Technical Specifications describing the duties and responsibilities required of us in this ITB, and the General Terms and Conditions of UNDP's Standard Contract for this ITB.

We agree to abide by this Bid for *[insert: period of validity as indicated in Data Sheet]*.

We undertake, if our Bid is accepted, to initiate the supply of goods and provision of related services not later than the date indicated in the Data Sheet.

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

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<sup>2</sup> No deletion or modification may be made in this form. Any such deletion or modification may lead to the rejection of the Bid.

We remain,

Yours sincerely,

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

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

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

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

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

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**Section 5: Documents Establishing the Eligibility and Qualifications of the Bidder**

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**Bidder Information Form<sup>3</sup>**Date: *[insert date (as day, month and year) of Bid Submission]*ITB No.: *[insert number of bidding process]*

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

1. Bidder's Legal Name <i>[insert Bidder's legal name]</i>		
2. In case of Joint Venture (JV), legal name of each party: N/A		
3. Actual or intended Country/ies of Registration/Operation: <i>[insert actual or intended Country of Registration]</i>		
4. Year of Registration in its Location: <i>[insert Bidder's year of registration]</i>		
5. Countries of Operation	6. No. of staff in each Country	7. Years of Operation in each Country
8. Legal Address/es in Country/ies of Registration/Operation: <i>[insert Bidder's legal address in country of registration]</i>		
9. Value and Description of Top three (3) Biggest Contract for the past five (5) years		
10. Latest Credit Rating (Score and Source, if any)		
11. Brief description of litigation history (disputes, arbitration, claims, etc.), indicating current status and outcomes, if already resolved.		
12. Bidder's Authorized Representative Information  Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>		
13. Are you in the UNPD List 1267.1989 or UN Ineligibility List ? <input type="checkbox"/> YES or <input type="checkbox"/> NO		

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<sup>3</sup> The Bidder shall fill in this Form in accordance with the instructions. Apart from providing additional information, no alterations to its format shall be permitted and no substitutions shall be accepted.

14. Attached are copies of original documents of:

- ☒ Company Profile including printed brochures and product catalogues relevant to the goods/services being procured. Company profile is a set of information used by the bidder for marketing purposes.
- ☒ References: Provide contact names, email and phone number of Top three Clients in the past 2 years.
- ☒ Information regarding any past and current litigation during the last three (3) years, in which the bidder is involved, indicating the parties concerned, the subject of the litigation, the amounts involved, and the final resolution if already concluded..

## Section 6: Technical Bid Form

### ITB/UNDP/OIST/LTA/001/2013- Intelligent Document Capture Software

<b>Name of Bidding Organization / Firm:</b>	
<b>Country of Registration:</b>	
<b>Name of Contact Person for this Bid:</b>	
<b>Address:</b>	
<b>Phone / Fax:</b>	
<b>Email:</b>	

### MADATORY REQUIREMENTS

The Bidder has to pass all Mandatory Requirements to be eligible for price evaluation

No.*	Title	Description	Component	Pass	Fail	Comments
R02	Profiles	The software should have the ability to create "profiles." For example, each Operating Unit could have its own "profile" with specific document classes, index columns, default values and release destination.	General			
R10	Import Locations	The software should be able to capture documents from standard secure locations including but not limited to: <ul style="list-style-type: none"> <li>4. Network File Shares (Optional)</li> <li>5. Email Mailboxes using IMAPS/POP</li> <li>6. FTPS sites</li> </ul>	Capture			
R11	Email Import Location	If importing documents from an e-mail, the software should have the ability to separate attachments from the message and the option to import together or separately.	Capture			
R12	Email Import Location	If importing documents from an e-mail, the software should have the ability to extract the sender and subject information from the email and assign to index columns.	Capture			
R16	File Types	The capture process should have the ability to process the following file formats: PDF, JPEG, TIFF	Capture			
R19	Limit Page Processing	The software should have the ability to stop processing pages in a batch after a certain number of pages has been processed (i.e. only process the first	Capture			

		10 pages of any document)				
R20	OCR Indexing	The software should include advanced OCR & ICR capabilities when capturing and indexing documents	Classify			
R21	Document Classes	The software should support the ability to create document classes that can each have their own release location and index columns.	Classify			
R23	Classification Learning	The software should have the ability to "learn" how to classify and extract data from document classes. If yes, please specify details in the comments section.	Classify			
R30	Default Values	The software should have to ability to set default values for index columns for each document class that is configured.	Index/Extract			
R31	OCR/Index Language	The OCR/Indexing components of the software should be configurable to support UN Languages (English, Spanish, French)	Index/Extract			
R33	Data Extraction	The software should have the ability to extract data based on the document class that has been recognized and populate index fields for that document class.	Index/Extract			
R40	SharePoint On-Premise Support	The software should be supported against SharePoint 2010/2013 On-Premise versions	Releasing			
R41	Release Locations	The software should have the ability to release documents to the following types of locations: 4. SharePoint Document Library (On-Premise version of SharePoint) 5. File System w/ index data 6. Other CMS systems	Releasing			

\*= UNDP Requirement Number for internal reference only

## OPTIONAL REQUIREMENTS

The Bidder is encouraged to provide information on Optional Requirements if such is available.

No. *	Title	Description	Component	YES/NO	Comment
R01	Extensibility - Development API	The software should have a well-documented API included for extending functionality by UNDP	General		

R0 3	Platform Independent	The software should not be tied to a specific platform or product (i.e. SharePoint). It should be able to function and add value if SharePoint is replaced with another system in the future.	General		
R0 4	Centralized Server	The software will have a centralized server that will capture, classify, index and release documents.	General		
R1 3	Local Client	The software should have the option of installing a local client for remote offices at no additional cost. The local client will transfer documents to the server over HTTPS.	Capture		
R1 7	Batch Upload	The software should have the ability to upload documents to the server in batch as required, in order to address low bandwidth remote offices.	Capture		
R1 8	Support Hot/Watched Folders	The software should have the ability to capture documents from a local folder as documents are dropped/added to that folder.	Capture		
R2 2	Document Classes	The software should have the ability to “copy” a document class once it has been created to create similar document classes.	Classify		
R2 4	Assign SharePoint Content Types	The software should have the ability to assign a SharePoint Content Type to the captured image using Content Types from the destination SharePoint library. The index columns should reflect the assigned Content Type.	Classify		
R3 2	Integration with SharePoint Columns for Indexing	The software should have the ability the index the captured document using SharePoint columns and column types (i.e. Managed Metadata, Choice, Date & Time etc.)	Index/Extract		
R3 4	Validation Access	The software should have the ability to validate processing on the server via a remote client or web interface.	Index/Extract		
R4 2	Import Locations	The software should be able to capture documents from some form of Cloud Document Storage (SkyDrive, Dropbox, Google Drive, Box) over HTTPS	Capture		
R4 3	SharePoint Online Support	The software should be supported against SharePoint Online (Office 365)	Releasing		
R4 4	Release Locations	The software should have the ability to release documents to the following types of locations: 2. SharePoint Document Library (Online versions of SharePoint)	Releasing		

\*= UNDP Requirement Number for reference only

### EXPERTISE OF FIRM/ ORGANISATION

*This section should fully explain the Bidder's resources in terms of personnel and facilities necessary for the performance of this requirement.*

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

**1.2. Financial Capacity:** Based on the latest Audited Financial Statement (Income Statement and Balance Sheet) describe the financial capacity (liquidity, stand-by credit lines, or D&B report etc.) of the bidder to engage into the contract. Include any indication of credit rating, industry rating, etc.

**1.3. Track Record and Experiences:** Provide the following information regarding corporate experience within at least the last two (2) years which are related or relevant to those required for this Contract.

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

## Section 7: Price Schedule Form

The Bidder is required to prepare the Price Schedule as indicated in the Instruction to Bidders.

All fees/rates quoted must be exclusive of all taxes, since the United Nations, including its subsidiary organs, is exempt from taxes as detailed in Clause 18 of the UNDP General Conditions for Contract.

A Bidder must include a pricing table for step-up costs to increased Pages Per Annum volume for all tiers that are offered including Unlimited Pages Per Annum if available.

### PRICE TABLE

<b>Volume based on:</b> <ul style="list-style-type: none"> <li>• 36% of Total Pages Per Annum being Invoices</li> <li>• 15% Estimated Annual Increase</li> </ul>				
<b>Year 1 – up to 550,000 Estimated Total Pages Per Annum</b> <b>Year 2 – up to 632,500 (and above 550,000) Estimated Total Pages Per Annum</b> <b>Year 3 – up to 727,375 (and above 632,500) Estimated Total Pages Per Annum</b>				
Item/Period	Year 1	Year 2	Year 3	Total Price per Line Item
1. Perpetual Production Software Licensing*				
2. Maintenance and Standard Support				
3. Non-Production Software Licensing		N/A	N/A	
4. Services for:  - Installation Configuration Training	160 Hours,  including	N/A	N/A	
TOTAL				

\*All quotes must include a breakdown of software licensing costs and what modules/components that are included.

## Section 8: Contract

### SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement is made as of \_\_\_\_\_ ("**Effective Date**") by and between the United Nations Development Programme, a subsidiary organ of the United Nations, an international intergovernmental organization established by treaty, having its headquarters at 304 East 45<sup>th</sup> Street, New York, NY 10017 ("**UNDP**") and \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_, ("**Licensor**"). UNDP and Licensor are hereinafter collectively referred to as the "Parties".

Part i

Master Terms and Conditions

**WHEREAS**, the UNDP desires to obtain a reliable software system for the purposes of \_\_\_\_\_;

**WHEREAS**, Licensor agrees to furnish to the UNDP and the UNDP agrees to accept, on the terms and conditions set forth in this Agreement, a non-exclusive, non-transferable, royalty-free, perpetual license to use the \_\_\_\_\_ Software System(s) ("**Software**") configured by the Licensor, as appropriate, to meet the UNDP requirements<sup>4</sup>; and

**Whereas**, Licensor represents that it possesses the requisite knowledge, skill, personnel, resources and experience and that it is fully qualified, ready, willing and able provide the Software, and such support, maintenance services and warranty services on the terms and conditions of this Software License and Services Agreement.

**Now, Therefore**, the Parties hereto agree as follows:

#### **1. DEFINITIONS**

- (A) "**Software**" means all or any portion of the binary computer software programs and related source code (except as otherwise provided in a Schedule), listed on Schedule 1 and subsequent schedules licensed by UNDP, which is delivered by Licensor to UNDP. Software also includes any updates, modifications and enhancements to, or derivative works of the foregoing.
- (B) "**Documentation**" means all technical publications relating to the Software, such as reference, user, installation, systems administrator and technical guides, all training materials, and all information delivered by Licensor to UNDP, reflected in Schedule 1 or subsequent schedules;

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- (C) **“Services”** means Support Services, Installation Services and training provided by Licensor to or for the benefit of UNDP pursuant to this Agreement and listed in Annex C;
- (D) **“Site”** shall mean a computer system or systems comprised of one or more CPUs that are located at the same physical address;
- (E) **“Territory”** means worldwide for purposes of this Agreement;
- (F) **“UN Convention”** shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations in 1946;
- (G) **“Updates”** shall mean those subsequent releases and upgrades of current releases of the Software and Documentation which are generally made available to licensors of the Software which are similarly situated to UNDP, as part of Support Services at no additional charge, other than the fees for Support Services, media and handling charges. Updates are delivered only if and when available.

## 2. CONTRACT TERMS

This Software License and Services Agreement, together with the exhibits described below and which are or which shall be attached hereto, incorporated herein and made a part hereof (**“Contract Documents”**) constitute the entire contract between the Parties (**“Agreement”**). The documents comprising this Agreement are complementary of one another but in the case of any ambiguity, discrepancy, or inconsistency between or among the Contract Documents, the following order of precedence shall apply:

1. UNDP Special Conditions for Software Agreements (**“Annex A”**);
2. The UNDP General Conditions for Professional Services (**“Annex B”**);
3. This Software License and Services Agreement;
4. Schedule 1 and any other subsequent Schedule(s) to the Agreement;
5. Support Services, Installation Services, and Training (**“Annex C”**);
6. Software Source Code Escrow Agreement (**“Annex D”**);
7. UNDP’s Request for Proposal dated \_\_\_\_\_;
8. The Licensor’s Proposal dated \_\_\_\_\_.

## PART II

### LICENSE TO AND [CUSTOMIZATION OF,] [CONFIGURATION OF,] DELIVERY, INSTALLATION AND TESTING OF THE SOFTWARE SYSTEM(S)

## 3. SOFTWARE SYSTEM

- (A) The Software, as described and as specified in Schedule 1, shall consist of a fully integrated set of computer software programs which shall operate on the Designated CPUs at the Sites set forth in the Schedule and which shall be the latest version of the

Software that Licensor has made available to its customers as of the time of installation of the Software in accordance with this Agreement.

- (B) The Software delivered to the UNDP by the Licensor shall generally be capable of \_\_\_\_\_ in order to allow the UNDP to \_\_\_\_\_ and to \_\_\_\_\_.

#### **4. LICENSE**

- (A) Licensor grants UNDP a perpetual, nonexclusive, nontransferable license to make, use and run copies of the Software for access by UNDP for internal data processing operations, [including for its development projects,] on one or more servers and/or workstations located at facilities owned or leased by UNDP, in the Territory, subject to the limitations contained in this Agreement and the applicable Annexes and Schedule(s). The right to use the Software granted under this Agreement shall include the right to provide authorized users access to the Software from various remote locations worldwide. Licensor grants UNDP a nonexclusive, nontransferable license to: (i) modify or merge the Software with other software, and use such modified or merged software; (ii) make, modify and use an unlimited number of copies of the Documentation, and (iii) make a reasonable number of copies of the Software for testing, archival and backup purposes; in accordance with the terms of this Agreement. No modification or merger of the Software with other software or modification of the Documentation, however extensive, shall diminish Licensor's right, title or interest in the Software and Documentation. UNDP Modifications as defined herein shall not be deemed to be creation of new modules or new products.
- (B) Within \_\_\_\_\_ (\_\_\_\_\_) days of the Effective Date of this Agreement, Licensor shall provide UNDP with the number of copies of the Software in a readable format as specified in Schedule 1, and shall provide UNDP with an equal number of copies of the Documentation.

#### **5. LIMITATIONS ON LICENSE**

- (A) UNDP shall not:
- a. Access or use any portion of the Software not expressly licensed and paid for by UNDP;
  - b. Invoke any Software, except through application program interfaces documented by Licensor;
  - c. Cause or permit decompilation or reverse assembly of all or any portion of the Software, except as permitted by applicable law;
  - d. Disclose or publish performance benchmark results for Software (as delivered or subsequently modified) without Licensor's prior written consent;
  - e. Delete, fail to reproduce or modify any copyright, trademark or other proprietary rights notices which appear on or in the Software or Documentation; or

- f. Directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Software or any portion thereof, for third party use, training, facilities management, time-sharing, use as an application service provider, or for the purpose of operating a service bureau.

5.2 Licensor reserves all rights not expressly granted herein.

6. **TRAINING:** Details regarding training at UNDP's site are reflected in the Training section of Annex C.

## 7. **INSTALLATION**

- (A) The Licensor shall supply, install and configure properly functioning and fully tested Software, in full conformity with the terms and conditions of this Agreement. The Software shall not be considered to have been installed unless and until all data sets or other information which is required for the Software to fully function in the UNDP's hardware and software environment have been fully configured by the Licensor in accordance with the Installation Services section of Annex C.
- (B) Within thirty (30) days of the Effective Date, Licensor will install at the site defined in Schedule 1, the Software.
- (C) UNDP, at its sole discretion, may delay installation for up to ninety (90) days, upon written notice to the Licensor.
- (D) The Licensed Software shall be deemed to be installed upon UNDP's approval. The installation procedures are in addition to all acceptance test procedures required under Section 8.

8. **ACCEPTANCE:** For a period of ninety (90) days after the installation of the Software licensed herein ("**Acceptance Period**"), UNDP shall have the opportunity to load and run the Software in order to test that all Software licensed pursuant to this Agreement operates substantially in accordance with the Contract Documents. UNDP shall provide to Licensor a description of any deviation from the Contract Documents ("**Deviation List**") prior to the expiration of the Acceptance Period in accordance with the notice requirements set forth in this Agreement. Upon receipt of such notice, Licensor shall have thirty (30) days to cure any such deviation listed on the Deviation List such that the Software operates substantially in accordance with the Documentation ("**Cure Period**"). Notwithstanding the foregoing, any deviation that occurs as a result of UNDP's (1) not adhering to the guidelines and recommendations contained in the Licensor's written guidelines provided to UNDP hereunder; (2) not having CPU capacity which is sufficient to run all of the software loaded thereon, except where Licensor has represented that CPU capacity would be sufficient to run the software; (3) modifying the Software or the database on which it was designed to run in a manner inconsistent with this Agreement; or (4) not using workstations that meet minimal standards set for the workstation configuration; will not be considered deviations for purposes of non-

acceptance of the Software. In the event that: (i) UNDP provides notice to Licensor that it has accepted the Software; or (ii) the Acceptance Period expires without UNDP providing Licensor a Deviation List; or (iii) Licensor is not able to reproduce any of the alleged deviations cited on the Deviation List; or (iv) Licensor cures the deviations cited on the Deviation List within the applicable cure period; UNDP shall be deemed to have accepted the Software ("**Acceptance**"). If Acceptance has not occurred by the final day of the cure period ("**Final Date**"), UNDP, at its sole discretion, may postpone the final date for Acceptance. Otherwise, UNDP shall have the option of terminating the license for the Software pursuant to this Agreement. Software licensed pursuant to this Agreement that fails to reach Acceptance may be terminated by doing the following, on or before the Final Date: (A) providing notice of such decision to Licensor; and (B) uninstalling and returning all copies of the concerned Software and Documentation, at the cost of the Licensor. Immediately upon receipt of such Software by Licensor, Licensor shall return to UNDP any license fees paid for such Software.

## **9. SOURCE CODE ESCROW**

9.1 No later than the time of delivery of the Software and Documentation, the Licensor shall place the Escrow Material into escrow pursuant to the Source Code Escrow Agreement, as set forth in Annex D. The Licensor shall continuously and promptly improve, add to, or otherwise modify the Escrow Material placed in escrow prior to or at the same time any Updates, modifications or corrections to the Software are made available to the UNDP. Licensor shall maintain all Escrow Material for as long as the UNDP has the right to use the Software, including any and all Updates thereto, together with all Documentation in accordance with this Agreement.

### **part iii**

#### **PRICE AND PAYMENT**

## **10. FEES AND PAYMENT TERMS**

- (A) UNDP shall pay Licensor, on the basis of original invoices with appropriate substantiating documentation, as provided for in the Invoicing section of the attached Price and Payment Schedule.
- (B) The license fees shall be paid in accordance with the schedule set forth in the Payment Schedule section of the attached Price and Payment Schedule.
- (C) All fees are payable in U.S. dollars and shall be sent to the attention of \_\_\_\_\_.

### **part iv**

#### **LICENSOR'S WARRANTIES**

## **11. LIMITED WARRANTY**

- (A) This Software is subject to a limited warranty. Licensor warrants to UNDP that the Software, as delivered, for a period of \_\_\_\_\_ (\_\_\_\_\_) months from the date of

Acceptance of the Software shall be free from material defects and under normal use the Software will perform substantially in accordance to the Documentation, provided that: (a) UNDP is using the Software in accordance with Licensor's hardware and software guidelines provided to the UNDP; (b) any error or defect detected is reproducible by Licensor; (c) the performance issue, error or defect does not relate to Third Party Software which is not embedded in the Software; and (d) UNDP notifies Licensor of such nonconformance within the warranty period.

- (B) Licensor warrants to UNDP that the Documentation is accurate and conforms to the requirements of this Agreement and corresponds to the functions of the Software.
- (C) Licensor warrants to UNDP that Licensor has fully power and authority to grant rights under this Agreement to UNDP with respect to the Software, that neither the performance of any services or obligations by the Licensor in accordance with the Agreement nor the license to UNDP to and use of the Software and Documentation will in any way constitute an infringement or other violation of any rights of any third party, and that there is currently no actual or threatened violation of such right by Licensor.
- (D) Licensor warrants that any maintenance services or other services provided by Licensor hereunder shall be performed in a timely and professional manner by qualified professional personnel, that such services shall conform to the standards generally observed in the industry for similar services and that such services shall be sufficient to enable the Software to perform in accordance with the specifications.
- (E) Licensor warrants that the storage media on which the Software is furnished will be free from defects under normal use for a period of thirty (30) days, commencing on the delivery date of the Software.
- (F) Licensor warrants that the Software shall not contain any computer code (i) intentionally or unintentionally designed to disrupt, disable, harm, or otherwise impede in any manner the operation of the Software, or any associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms"), (ii) that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding the authorized number of copies, or advancement to a particular date or other numeral, or (iii) that would permit Licensor to access the Software to cause such disablement or impairment, or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such Software to cease functioning or to damage or corrupt data, storage media, Software, equipment or communications, or otherwise interfere with operations.
- (G) In case of a breach of the Limited Warranty, Licensor shall:
  - a. For Services, at the option of UNDP, (i) re-perform the Services which were not as warranted at no additional charge by Licensor to UNDP, or (ii) promptly refund the fees paid to Licensor for the Services which were not as warranted.

- b. For Software which does not conform to the warranties contained in this Agreement, Licensor will, at the sole discretion of UNDP, (i) repair or replace the nonconforming Software within a commercially reasonable time period of receiving notice from UNDP of such nonconformance, or (ii) refund the amounts paid by UNDP for the nonconforming Software module immediately upon return of the Software, and promptly execute with UNDP an amendment to the Agreement for the nonconforming Software pursuant to which the license is terminated for the Software module for which UNDP is receiving a refund.
- (H) Licensor will pass through to UNDP, to the fullest extent possible, the warranties from Licensor's licensors as they relate to Third Party Software, if any.
- (I) EXCEPT AS EXPRESSLY STATED IN THIS SECTION ENTITLED "LIMITED WARRANTY", THERE ARE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE, DOCUMENTATION, OR ANY SERVICES OR SOFTWARE PROVIDED BY LICENSOR TO UNDP INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND LICENSOR EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES.

## **PART V**

### liability of the parties

- 12. LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES RESULTING FROM LOST PROFITS, HOWEVER ARISING, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION HEREIN SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS ARISING UNDER ARTICLE 1 OF ANNEX A, OR TO DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LICENSOR.

## **PART VI**

### ownership

### **13. TITLE AND PROTECTION**

- (A) The Software and Documentation contain valuable proprietary information. Licensor (or its licensors) retains title, copyright and other proprietary rights to all portions of the Software and Documentation, and all modifications and alterations thereto, and all copies thereof. If UNDP creates an enhancement, modification or alteration to the Software that remains after the Software, Documentation and the physical media on which they are contained have been separated out from the enhancements, modifications or alterations ("**UNDP Application**"), UNDP shall have a perpetual, royalty-free license to use

the UNDP Applications in accordance with this Agreement. UNDP does not acquire any rights, express or implied, in the Software and Documentation, except as specified herein. No license, right, or interests in any Licensor trademark, trade name, or service mark is granted pursuant to this Agreement.

- (B) Title to the physical media for the Software vests in UNDP upon Licensor shipment to UNDP.

part vii  
miscellaneous provisions

14. **TERM AND TERMINATION:** This Agreement will take effect on the Effective Date. This Agreement will remain in effect for as long as UNDP uses the contract, unless and until terminated pursuant to Article 15 of the General Conditions and Paragraph 2 of the Special Conditions.
15. **NOTICE:** All notices required by this Agreement shall be in writing and sent by overnight courier, personal delivery, or facsimile (if confirmed by overnight courier, or personal delivery) to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to Licensor shall be sent to the attention of \_\_\_\_\_ General Counsel. Notices to UNDP shall be sent to the attention of **[UNDP's Chief Information Officer]**.<sup>5</sup> Notice will be effective on the date shown on the delivery receipt or facsimile confirmation or, where there is no written evidence of delivery, on actual receipt or refusal of receipt.
16. **SURVIVABILITY:** The terms of Sections herein entitled "Title and Protection", "Term and Termination", "Limited Warranty", "Limitation of Liability", "Notice", "Survivability", "Contract Terms", and "Definitions", as well as all Special Conditions of Annex A, and Sections entitled "Use of Name, Emblem or Official Seal of UNDP or the United Nations", "Privileges and Immunities", and "Settlement of Disputes" as set forth in the UNDP General Conditions for Professional Services of Annex B shall survive termination of this Agreement.
17. **EXPORT CONTROL:** The Parties acknowledge that the Software may be subject to export control laws and regulations. As used in this Section, the term "Controlled Material" means (a) the Software, any Updates, Documentation and (b) any related proprietary information of Licensor. The term "Controlled Material" does not include UNDP Applications to the extent that UNDP Applications do not contain the Software. Pursuant to Article II, Section 7(b) of the UN Convention, the United Nations, including its subsidiary organs such as UNDP, is exempt from customs duties and prohibitions and restrictions on exports in respect of articles imported or exported by the United Nations,

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<sup>5</sup> Insert title of authorized UNDP representative.

including its subsidiary organs, for its official use. Accordingly, in light of the exemptions from export restrictions to which UNDP is entitled pursuant to the UN Convention, and without otherwise limiting or derogating from the privileges and immunities and exemptions of the United Nations, including its subsidiary organs, pursuant to the UN Convention, UNDP agrees and warrants that:

- (A) UNDP shall comply with all export control laws and regulations of to the extent that such export control laws and regulations are applicable to UNDP;
- (B) UNDP shall not directly or indirectly export or transmit any Controlled Material to any country, at any time and in any manner which would violate export control laws and regulations, to the extent that such export control laws and regulations are applicable to UNDP;
- (C) UNDP shall not export or re-export any Controlled Material other than for its official use; and
- (D) UNDP shall cooperate with Licensor to determine a mutually acceptable solution should any Governmental authority fail to recognize the UN's exemption from export restrictions set forth in the UN Convention.

18. **GENERAL:** The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party's right to exercise or enforce such right or any other right in the future. This Agreement may not be modified by custom and usage. This Agreement replaces and supersedes any prior verbal or written understandings, communications, and representations between the parties. This Agreement may be amended only by a written document executed by [a duly authorized representative of each of the parties]<sup>6</sup>, unless expressly provided otherwise herein. Transmitted copies are considered documents equivalent to original documents. Any refund made hereunder shall be made promptly and paid by check to the attention of [UNDP's Chief Information Officer]<sup>7</sup>, at [the address noted in the first paragraph herein]<sup>8</sup>.

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<sup>6</sup> Insert title of authorized representatives.

<sup>7</sup> Insert title of authorized UNDP representative.

<sup>8</sup> Change where appropriate.



The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Software License and Services Agreement and to bind their respective party thereto.

**UNITED NATIONS DEVELOPMENT  
PROGRAMME**

**[Licensor Name]**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Annex A**  
**Special Conditions for Software Licensing and Services Agreement**

**1. Article 7 (Indemnification) of the General Conditions is hereby replaced with the following:**

(a) To the fullest extent permitted by law and as agreed hereunder, Licensor shall indemnify, defend and hold harmless, UNDP, at its own expense, against any claims, suits, proceedings, or demands that the Software, Services or Documentation infringes any copyright, trade secret, trademark, patent and other proprietary right. Licensor shall be given notice of such claim, suit, proceeding or demand, within a reasonable amount of time of UNDP receiving notice of such alleged infringement. Failure to give such notice shall not affect Licensor's obligation to indemnify UNDP to the extent that failure to give, or delay in giving such notice does not materially prejudice Licensor. Licensor shall be given information, reasonable assistance, and sole authority to defend or settle the claim, provided that Licensor's choice of counsel is acceptable to UNDP, and subject to the privileges and immunities of UNDP, which UNDP shall assert to the extent permitted by its regulations. In the event of any threatened claim, Licensor may, in its reasonable judgment and at its expense: (i) obtain for UNDP the right to continue using the Software; (ii) replace or modify the Software so that they become non-infringing; or (iii) terminate the license for the allegedly infringing Software, and upon receipt of the Software, return the license fees paid by UNDP for such Software, pro-rated over the term of the Agreement from the Acceptance of such Software. Licensor shall have no obligation to indemnify or defend UNDP for any liability arising out of or relating to any allegations or claims of infringement, to the extent the alleged infringement is based on: (a) a UNDP Modification; (b) use of the Software other than in accordance with the Documentation or the terms of this Agreement; (c) any Third Party Software, not embedded in the Software; or (d) in the event that UNDP agrees to settle any claim without the prior written consent of the General Counsel for \_\_\_\_\_, Inc. Licensor will pass through to UNDP, to the fullest extent possible, the copyright indemnifications from Licensor's licensors as they relate to Third Party Software. UNDP shall have the right to be represented in any suit or proceeding, at its own expense, by independent counsel of UNDP's own choosing.

(b) In addition to (a) above, Licensor shall also pay UNDP promptly for all loss, destruction or damage to its property and to the fullest extent permitted by law, indemnify, hold and save harmless, and defend, at its own expense, UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability, including all litigation costs, attorney's fees, settlement payments and damages, arising out of Licensor's or Licensor's employees, officers, agents or sub-contractors, acts or omissions, including regarding workmen's compensation and products liability.

(c) Licensor shall pay all fees arising under this section as they become due, including without limitation fees arising from any claim to enforce the indemnification obligations set forth herein.

2. ARTICLE 15 (TERMINATION) OF THE GENERAL CONDITIONS IS HEREBY MODIFIED SUCH THAT THE FOLLOWING ADDITIONAL CLAUSES ARE INCORPORATED:

(A) Effect of Termination: Upon termination, Licensor shall promptly refund to UNDP a commensurate pro-rata share of any pre-paid fees for the unexpired portion of the applicable payment period. Licensor shall also cease using and destroy or return to UNDP all UNDP confidential information. UNDP shall cease using and destroy or return to Licensor all copies of Licensor's Confidential Information, including, without limitation, Software and Documentation in any form, including partial copies and modified versions, and shall certify in writing to Licensor that all such copies have been destroyed or returned.

(B) Remedies: Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it.

3. ARTICLE 13.1 (CONFIDENTIALITY) OF THE GENERAL CONDITIONS IS HEREBY REPLACED WITH THE FOLLOWING:

(A) During the course of the Parties' relationship, they may have access to confidential information of the other ("Confidential Information"). Licensor Confidential Information includes, without limitation, the Software and Documentation, information proprietary to Licensor, this Agreement and the terms, conditions and pricing contained herein. UNDP's Confidential Information includes all maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents, and all other data received by Licensor under this Agreement. Confidential information shall not be disclosed, orally or in writing, to any third party without the prior written consent of the owner of such information, except as provided below.

(B) The Parties shall protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the receiving party utilizes for its own information that it does not wish disclosed to the public.

(C) This Agreement imposes no obligation upon either party ("Recipient") with respect to the other party's ("Discloser's") Confidential Information which Recipient can establish by legally sufficient evidence: (a) was, prior to receipt from Discloser, in the possession of, or rightfully known by Recipient, without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this

Agreement or without a violation of an obligation of confidentiality owed to the Discloser; or (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality.

(D) Recipient may provide access to and use of the Discloser's Confidential Information only to those third parties that: (a) provide services to Recipient concerning Recipient's use of the Discloser's Confidential Information; (b) have a need to use and access the Confidential Information; and (c) have agreed to substantially similar non-disclosure obligations as those contained herein. Disclosure of Discloser's Confidential Information by any such third party will be deemed a breach by Recipient hereunder. To the extent Recipient may be required to disclose Confidential Information in a legal proceeding (in the case that UNDP is the Recipient, any such disclosure in a legal proceeding would be subject to the privileges and immunities of UNDP), Recipient may make such disclosure, provided that Recipient notifies Discloser of such requirement prior to disclosure, and provided further that Recipient makes diligent efforts to avoid and/or limit disclosure.

4. THE FOLLOWING PROVISIONS SHALL GOVERN THE LICENSOR'S PERSONNEL:

(A) The Licensor shall be responsible for the professional and technical competence of its employees, and will select reliable and competent individuals who will perform effectively in the implementation of this Agreement, who will respect the local customs and who will conform to a high standard of moral and ethical conduct.

(B) The Licensor's employees assigned to provide services or carry out any obligations hereunder shall be professionally qualified and must be able to work effectively with the staff of the UNDP. At the sole option of UNDP, any of the Licensor's employees may be interviewed by officials of UNDP and their qualifications may be reviewed by UNDP prior to the commencement of such services or carrying out of such obligations hereunder. UNDP reserves the right to refuse any employees assigned by the Licensor to provide services or carry out any obligations hereunder.

(C) The qualifications of any employees whom the Licensor may assign to provide services or carry out any obligations hereunder shall be substantially the same, or better, [as the qualifications of those employees specified in the Proposal.]<sup>9</sup>

(D) The requirements for the number of the Licensor's employees assigned to provide services or carry out any obligations hereunder may change over time. Any changes in the number of the Licensor's employees assigned to provide services or carry out any obligations hereunder shall be agreed to by UNDP and shall be done only by

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<sup>9</sup> Ensure that such specifications exist in a Proposal, which should be clearly referenced and appended. Otherwise, all such specifications should be included in Annex C.

means of an exchange of correspondence between the Parties.

(E) Any employees assigned by the Licensor to provide services or carry out any obligations hereunder shall not be withdrawn or replaced without the prior written consent of UNDP, which consent shall not be unreasonably withheld. Where such withdrawal or replacement is intended by the Licensor, the Licensor will provide the UNDP with as much advanced written notice as possible of such intent to withdraw or replace an employee assigned to provide services or carry out any obligations hereunder. Replacement of any of the Licensor's employees assigned to provide services or carry out any obligations hereunder shall be effected in accordance with this Agreement and shall be done as quickly as possible by the Licensor and in a manner that will not adversely effect the performance of any services or obligations hereunder. All actual expenses related to withdrawal or replacement of any employee assigned by the Licensor to provide services or carry out any obligations shall, in all case, be borne exclusively by the Licensor.

(F) UNDP may, at any time, request, in writing, the withdrawal and replacement of any of the Licensor's employees performing any services or carrying out any obligations hereunder.

(G) Any request by UNDP for withdrawal or replacement of any employee assigned by the Licensor to provide services or carry out any obligations hereunder shall not be considered as termination, in whole or in part, of this Agreement.

(H) For the entire term of this Agreement, UNDP may, at the request of the Licensor, provide reasonable workspace for Licensor's personnel assigned to perform services hereunder. Access to and use of facilities in the UN's premises by personnel of the Licensor shall at all times be subject to rules and regulations of UNDP relating to such use, including, but not limited to, those relating to security. While present at UNDP's premises, personnel of the Licensor shall at all times obey and conform to all requests and instructions of UNDP officials, including security staff.

(I) The Licensor shall be responsible for requiring all of its personnel, when entering, exiting or while within the UN's premises, to display such identification as may be approved and furnished by UNDP. Upon completion of Licensor's obligations under this Agreement or upon release of any personnel provided by the Licensor under this Agreement, all of such prescribed identification shall immediately be delivered to UNDP for cancellation.

(J) All operations of the Licensor (including storage of equipment, materials, supplies and parts) within UNDP premises shall be confined to areas authorized or approved by UNDP. The Licensor and its personnel shall engage in no unauthorized or unwarranted entry within, passage through, or storage or disposal of equipment, materials, supplies or parts within, UNDP's premises.

**ANNEX B**  
**UNITED NATIONS DEVELOPMENT PROGRAMME GENERAL CONDITIONS OF CONTRACT**

**1. LEGAL STATUS**

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

**2. SOURCE OF INSTRUCTIONS**

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

**3. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES**

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

**4. ASSIGNMENT**

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

**5. SUB-CONTRACTING**

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

**6. OFFICIALS NOT TO BENEFIT**

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

## **7. INDEMNIFICATION**

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

## **8. INSURANCE AND LIABILITIES TO THIRD PARTIES**

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

8.5 The Contractor shall, upon request, provide UNDP with satisfactory evidence of the insurance required under this Article.

## **9. ENCUMBRANCES/LIENS**

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

## **10. TITLE TO EQUIPMENT**

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

## **11. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS**

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, documentation, or modifications thereof, which are produced, prepared or collected in consequence of or in the course of the execution of this Agreement, excluding the Software and the Documentation. At the UNDP's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to UNDP in compliance with the requirements of the applicable law.

## **12. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS**

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

## **13. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION**

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract



shall be the property of UNDP, shall be treated as confidential and shall be delivered only to UNDP authorized officials on completion of work under this Contract.

- 13.2 The Contractor may not communicate at any time to any other person, Government or authority external to UNDP, any information known to it by reason of its association with UNDP which has not been made public except with the authorization of UNDP; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

#### **14. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

- 14.1 Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.

- 14.2 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to UNDP, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify UNDP of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, UNDP shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

- 14.3 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, UNDP shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

#### **15. TERMINATION**

- 15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Settlement of Disputes" below shall not be deemed a termination of this Contract.
- 15.2 UNDP reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case UNDP shall reimburse the

Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

15.3 In the event of any termination by UNDP under this Article, no payment shall be due from UNDP to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimize losses and further expenditures.

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

## **16. SETTLEMENT OF DISPUTES**

### **16.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

### **16.2 Arbitration**

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

## **17. PRIVILEGES AND IMMUNITIES**

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

## **18. TAX EXEMPTION**

18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

18.2 Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

## **19. CHILD LABOUR**

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

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

## **20. MINES**

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

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

## **21. OBSERVANCE OF THE LAW**

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

## **22. AUTHORITY TO MODIFY**

No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with the Contractor shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the authorized official of UNDP.

## **ANNEX C**

### **SUPPORT SERVICES, INSTALLATION SERVICES AND TRAINING**

*[This Annex contains no model terms. Each of the following sections must be negotiated and filled out for the specific agreement. Provided below are example terms that may be incorporated as appropriate.]*

#### **I. Installation Services:**

#### **II. Acceptance Plan:**

*[Include this section only if a tailored acceptance plan is required and referenced in Article 8 of the Software License and Services Agreement]*

#### **III. Support Services:**

#### **IV. Training:**

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#### **EXAMPLE TERMS:**

##### Installation Services:

(A) The Licensor shall deliver and install the Software in accordance with this Contract at [time], [place] and [order of delivery].

(B) Without limiting the generality of the foregoing, when installing the Software, the Licensor shall ensure the:

(1) Conversion of data maintained by UNDP from both existing live-production and from archives to formats capable of being processed by the Software as well as configuration of the Software System to operate in the UNDP hardware and software environment;

(2) Conversion of and development of all reports currently used by UNDP;

(3) Integration of data processed by the Software with standard applications of the UNDP such as, but not limited to \_\_\_\_\_; and

(4) Integration of the Software for operation on a \_\_\_\_\_ platform.

(C) The Licensor shall be responsible for ensuring that the Software, and Installation Services accurately reflect the requirements of the UNDP.

##### Support Services:

(A) General

(1) Commencing upon the expiration of the relevant Warranty Period governing the Software, and for the full Maintenance Period specified herein, the Licensor shall provide full, on-site maintenance and support services ("**Maintenance Services**") for the Software, and any updates to or subsequent changes thereof provided by the Licensor in accordance with this Agreement. Such Maintenance Services shall be in addition to the Licensor's warranty obligations in accordance with this Agreement.

(2) The Licensor shall maintain the Software so that it, at a minimum, it operates in accordance with the requirements of this Agreement and with all descriptions and specifications herein.

(3) Without limiting the generality of the foregoing, the Maintenance Services to be provided by the Licensor include, but are not limited to, the following:

(a) Periodic, preventive maintenance, Software improvements and other Updates according to the specific requirements of the Software;

(b) Unscheduled, remedial maintenance and support services for any Errors, defects or problems experienced by UNDP in the use of the Software, including, but not limited to, making necessary adjustments, corrections, alterations, improvements or modifications thereto;

(c) Restoring, from regular back-ups maintained by UNDP, damaged data files in the Software;

(d) Maintaining and providing a comprehensive "help-desk" facility accessible by UNDP end-users by telephone and via remote communications (e.g., modem, e-mail, etc.) during Licensor's Regular Hours of Service as specified herein;

(e) Providing advice to UNDP end-users regarding the proper and efficient use of the Software and any feature thereof;

(f) Providing, and installing on the Software, Updates and any Subsequent Changes to the Software; and

(g) As necessary, or as required by UNDP, making all arrangements with any of the Licensor's sub-contractors for the provision of any of the Maintenance Services.

(B) Exclusions:

The Maintenance Services to be provided by the Licensor in accordance with this Agreement shall not include support or services that have been made necessary solely by any unreasonable alteration of the Software by UNDP without the knowledge or authorization of

the Licensor. Additionally, the Licensor shall not be responsible for the restoration of damaged or lost data that cannot be restored solely because of UNDP's failure to properly conduct a regularly scheduled back-up.

(C) Hours of Service:

(1) The Licensor shall provide the Maintenance Services between the hours of \_\_\_\_\_ and \_\_\_\_\_, Monday through Friday, except on those days observed as holidays by the Licensor. ("**Regular Hours of Service**").

(2) Solely upon the written authorization of UNDP, the Licensor shall provide the Maintenance and Services for the Software after Regular Hours of Service, during weekends or on holidays at the Time and Materials Rate set forth in Schedule 1 or subsequent schedules hereof.

(D) Scheduled Maintenance Services:

(1) The Licensor shall prepare and deliver to UNDP a schedule of services to be rendered by the Licensor pursuant to this Article for periodic, preventive maintenance and support of the Software. The Schedule shall be subject to approval in writing by UNDP and incorporated herein by reference. At the request of UNDP, or as may be necessary, the Licensor shall update the schedule to meet the requirements for the Maintenance Services in accordance with this Agreement.

(2) On a monthly basis, the Licensor shall provide UNDP with a detailed list of known or suspected problems relating to or in connection with the operation of the Software.

(E) Unscheduled Maintenance Services:

(1) All remedial actions undertaken by the Licensor in respect of the Software shall be completed as soon as possible. The timeliness of remedial action for problems shall be determined according to the following two (2) levels of problem severity:

(a) Problem Severity Level One: If UNDP notifies the Licensor that it is experiencing a problem with the Software, or any feature or module thereof, and that such problem is preventing day-to-day normal user access to data from or input to the Software, the Licensor shall use its best efforts to remedy the problem within two (2) to four (4) hours following notification by UNDP.

(b) Problem Severity Level Two: If UNDP notifies the Licensor that it is experiencing a problem that impairs the functionality of the Software in a non-immaterial manner but is not preventing day-to-day, normal user access to data from or input to the Software, the Licensor shall remedy the problem within five (5) business days of receipt by the Licensor of notification from UNDP, unless otherwise mutually

agreed by both Parties.

(2) In resolving problems or performing any Maintenance Services, the Licensor may, if appropriate and adequate under the circumstances, correct the problem or perform the Maintenance Service by providing a “patch,” as a temporary solution, but only until an upgraded version of the corrected module of the Software is available for installation at the UNDP site.

(3) It is understood by the Parties that the Licensor may require access to the Software, the UNDP hardware and software and the Sites in order to correct a problem and that if all information necessary to diagnose the cause of the problem is not available upon notification to the Licensor, or if the Licensor cannot readily obtain suitable materials or supplies required to remedy a problem, the Licensor will have an additional reasonable period of time to remedy the problem.

(F) Maintenance Log:

The Licensor shall keep a separate log for all of the Maintenance Services rendered in accordance with this Agreement. The log shall at all times be available for inspection by UNDP at its request.

(G) Maintenance of Documentation:

The Licensor shall provide all enhancements, modifications, corrections, updates and new releases of the Documentation for the Software in connection with the provision of the Maintenance Services in accordance with this Agreement. At the request of UNDP, the Licensor shall make changes to the Documentation in order to correct any discrepancies between such Documentation and the functioning of the Software.

#### Training:

(A) Within \_\_\_\_\_(\_\_\_\_) days following the delivery and installation of the Software in accordance with the Agreement, the Licensor shall provide training to not less than \_\_\_\_\_(\_\_\_\_) end-users designated by the UNDP, as follows:

(1) The training conducted by the Licensor shall provide the UNDP end-users with instructions necessary for fully utilizing all of the functions and specifications of the Software as described herein.

(2) The training provided by the Licensor to the UNDP in accordance with the Agreement shall be done without additional cost to the UNDP beyond the maximum contract price set forth herein and the itemized price for training services set forth herein. At the sole option of the UNDP and upon written request by the UNDP, the Licensor shall provide additional training (i.e., such training as is beyond the scope of the training which the Licensor is required to provide in accordance with this Contract) to UNDP end-users at the Licensor's standard prices then in effect for such training services.



(B) Once the Software has been delivered and installed at the UNDP site and has been made fully operational by the Licensor and after the training has been completed in accordance with this Contract, the Licensor shall notify the UNDP that the Software is installed and fully operational and is ready for acceptance testing.

**ANNEX D**  
**SOURCE CODE ESCROW AGREEMENT**

This SOURCE CODE ESCROW AGREEMENT dated as of \_\_\_\_\_, by and among (i) the United Nations Development Programme, a subsidiary organ of the United Nations, an international intergovernmental organization created pursuant to the Charter of the United Nations signed in San Francisco on 26 June 1945 and having its Headquarters in New York, New York 10017, (“**UNDP**”) and (ii) \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_, (“**Licensor**”); and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and having its principal offices at \_\_\_\_\_ (hereafter the “**Escrow Agent**”).

WITNESSETH

WHEREAS, the Licensor and the UNDP have entered into a software license and services agreement dated \_\_\_\_\_ (the “Software License and Services Agreement”), a copy of which is appended hereto and made part hereof, pursuant to which the Licensor has licensed to the UNDP certain computer software, including all updates, improvements, enhancements thereof from time to time developed by the Licensor, and such additional program changes as the UNDP may order from Licensor from time to time, and all documentation therefore developed by the Licensor (hereinafter collectively referred to as the “**Product**”);

WHEREAS, it is the policy of the Licensor not to disclose the source codes and related documentation for the Product to its customers except as provided in an applicable Escrow Agreement;

WHEREAS, Licensor or UNDP agree that upon the occurrence of certain events described herein, the UNDP shall be able to obtain the source code, related documentation, and all revisions thereof, and accordingly, the Licensor agrees to deliver said materials to the Escrow Agent; and

NOW, THEREFORE, in consideration of the mutual covenants exchange herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Licensor, the UNDP and the Escrow Agent hereby act and agree as follows:

**1. DEFINITIONS**

Except as provided herein, the parties agree that the words and phrases set out herein shall have the same meanings as set forth in Article 1 of the Software License and Services Agreement. The following additional terms shall have the following meanings (the definitions to be applicable to both the singular and the plural forms of each term defined in this Escrow Agreement):

- (a) **“Escrow Material”** shall refer to all materials required to be delivered into Escrow under this Annex and Article 9 of the Software License and Services Agreement, including materials required for the Initial Escrow Deposit under Article 2(a), and for Escrow Material Updates under Article 2(b).
- (b) **“Source Code Copy”** shall mean a sealed package containing the source code form of the Product and related documentation on reliable media. Included therein shall be a fully commented and documented copy of the source code form of the Product, all relevant commentary, including explanation, flow charts, algorithms and subroutine descriptions, memory and overlay maps, and other documentation of the source code.

## 2. DEPOSITS

- (a) **Initial Escrow Deposit:** Licensor agrees to place a Source Code Copy into escrow pursuant to Section 9 of the Software License and Services Agreement. Licensor shall deliver to Escrow Agent the Source Code Copy after Licensor has demonstrated to the UNDP’s satisfaction that the Source Code Copy is a true and accurate copy of the Product.
- (b) **Escrow Material Updates:** Prior to or at the same time as software updates, improvements or enhancements are delivered to the UNDP pursuant to the Agreement, Licensor shall deliver to and deposit with Escrow Agent, at Licensor’s expense:
  - (1) A revised Source Code Copy for such Product, which includes and incorporates such updates, improvements or enhancements;
  - (2) A written explanation or listing of the changes made to such Product by such updates, improvements or enhancements; and
  - (3) Revised Documentation (if any);

So that the Source Code Copy constitutes a readable program for the current release of the Product utilized by the UNDP. Upon the UNDP’s written request, Licensor shall demonstrate that the Source Code Copy is a true and accurate copy of the updated Source Code for the Product.

## 3. MAINTENANCE OF THE ESCROW MATERIAL

The Escrow Agent will hold the Escrow Material in a safe place. The Escrow Agent will retain the Escrow Material until such time as it receives notice pursuant to the terms of

this Escrow Agreement that the Escrow Agent is to deliver the Escrow Material to the UNDP or until this Escrow Agreement is terminated pursuant to Section 9 below. The Escrow Agent is authorized to deliver a copy of the Escrow Material to the UNDP provided the UNDP has given an affidavit to Escrow Agent stating that the UNDP has demanded the Escrow Material from Licensor, which has not provided the Escrow Material within three (3) days of the UNDP's demand, and that any one or more of the following events has occurred:

- (a) Licensor is unable or unwilling to discharge any of its obligations (including but not limited to maintenance) with respect to the Product in accordance with the warranties, representations or other standards set forth in the Agreement and/or Purchase Order; and/or
- (b) The sale, assignment or other transfer by Licensor of such of Licensor's rights in the Product as would prevent Licensor from discharging its obligations with respect to the performance of the Product or from discharging its maintenance obligations under the Agreement and/or Purchase Order; and/or
- (c) Licensor ceases to market the Product; and/or
- (d) A trustee of Licensor or receiver of Licensor's assets is appointed by any court, or Licensor:
  - (1) makes an assignment for the benefit of creditors;
  - (2) is unable to pay debts as they mature;
  - (3) is designated the debtor in any proceeding instituted under any provision of any bankruptcy or similar code;
  - (4) undergoes a change which is in essence one of ownership or control, including but not limited to, merger, asset sale, transfer of a substantial portion of business, or sale of a substantial share of Licensor's general voting securities; or
  - (5) voluntarily ceases to be active in developing, marketing or maintaining computer software services to the commercial market.

#### **4. RELIANCE ON AFFIDAVIT OF UNDP**

The parties hereto agree that the Escrow Agent shall rely upon the affidavit provided by the UNDP without any requirement to ascertain the facts or the veracity of any of the

statements contained therein.

## **5. LIABILITY OF THE ESCROW AGENT**

Escrow Agent shall not be liable or responsible for any transactions between Licensor and the UNDP or for any loss or damage to any of the Escrow Material. Licensor agrees to defend and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, actions and suits and from and against any and all loss (including, but not limited to settlement costs) incurred by Escrow Agent on account of any act or omission of Escrow Agent in respect of or with regard to this Escrow Agreement or the Escrow Material as contemplated herein. In no event shall Escrow Agent be liable for consequential or special damages.

## **6. NOTICE OF TERMINATION**

Upon the termination of the Agreement, Licensor may obtain the return of the Escrow Materials by furnishing written notice of the termination, agreed to by authorized and notarized signature of the UNDP.

## **7. DISPUTES**

- (a) In the event that Licensor and UNDP have a valid dispute concerning the release of the Escrow Material, the Escrow Agent shall not release the Escrow Materials to either party except in accordance with (i) a final decision of the arbitration panel as hereinafter provided, or (ii) receipt of an agreement with authorized and notarized signatures of both Licensor and UNDP, authorizing the release of the Source Code to one of the parties hereto.
- (b) Any dispute, controversy or claim between the Parties arising out of or relating to this Escrow Agreement or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The number of arbitrators shall be three (3), unless the parties mutually agree that there shall be only one (1) arbitrator. The arbitral tribunal shall have no authority to award punitive damages nor to award interest in excess of six percent (6.0 %) per annum, such interest being simple interest only. The parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such dispute, controversy or claim.
- (c) Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

**8. PAYMENT TO ESCROW AGENT**

As payment for its services hereunder, the Escrow Agent shall receive a fee in an amount agreed to by both parties or, if there is no agreement, by the arbitration panel, to be paid by the Licensor.

**9. TERMINATION**

This Escrow Agreement shall terminate on the delivery of the Escrow Materials to either party in accordance with the terms of this Agreement.

**10. WAIVER, AMENDMENT OR MODIFICATION; SEVERABILITY**

This Escrow Agreement shall not be waived, amended, or modified except by the written agreement of all the parties hereto. Any invalidity, in whole or in part, of any provision of this Escrow Agreement shall not affect the validity of any other of its provisions.

**11. NOTICES**

All notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses hereinabove written, or at such other address as shall be specified hereinabove in writing to all other parties.

[This Schedule should list the Software and Documentation that UNDP is licensing, as well as the pricing information, including for training, support, etc. The Licensor should provide specifications of the Software and Documentation as part of this Schedule. UNDP must ensure that requirements stipulated in the Request For Proposal and the Proposal are duly reflected here and other exhibits as appropriate. Provided below are example terms that should be incorporated as appropriate. Additional Schedules may be included as needed or appended by later amendment to extend the contract term.]

#### I. Software

*[List Software and Documentation and unit prices.]*

#### II. Contract Price

#### III. Payment Schedule

#### IV. Invoicing

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#### **EXAMPLE TERMS:**

##### **Contract Price**

##### **(A) Maximum Contract Price:**

In full consideration of the provision and license by the Licensor of the Software and the satisfactory performance by the Licensor of all the services and all obligations in accordance with the Agreement, the UNDP shall pay to the Licensor a Maximum Contract Price of US \$\_\_\_\_\_ (US \$\_\_\_\_\_). Actual payments by the UNDP to the Licensor shall be made in amounts and at times required by or which are otherwise in accordance with the Agreement. The Licensor shall not do any work, provide any goods or materials or perform any Services which would result in any payment or payments by the UNDP of any amount in excess of the Maximum Contract Price without a valid amendment of the Agreement or otherwise without written authorization therefore in accordance with the Agreement by the UNDP.

##### **(B) Itemized Prices:**

(1) Actual payments made by the UNDP to the Licensor hereunder shall reflect the following amounts in respect of the following items:

(2) For the License to the UNDP to use the Software, US \$\_\_\_\_\_ (“License Fee”);

(3) For the delivery and installation of the Software in accordance with the Agreement, US \$ \_\_\_\_\_;

(4) For all training of the UNDP's end-users in the use of the Software to be provided by the Licensor to the UNDP in accordance with the Agreement, US \$ \_\_\_\_\_; and

(5) For the Maintenance Services to be provided to the UNDP by the Licensor in accordance with the Agreement, US \$ \_\_\_\_\_ annually/semi-annually ("Maintenance Fee").

(C) Time and Materials Rate:

(1) The Time and Material Rate for Licensor's services shall be \_\_\_\_\_ per hour.

(D) Escalation of Rates Upon Renewal or Extension:

(1) Upon any renewal of the Agreement or any extension of the term hereof, the Parties shall agree in writing to the Maintenance Fee and the Time and Materials Rate applicable to the period of such renewal or extension.

(2) It is agreed and understood by the parties that, for and during the period of any such renewal or extension, the Licensor shall not propose and the UNDP shall not be liable to pay any increase in the Maintenance Fee and the Time and Materials Rate, which is greater than \_\_\_\_\_ percent (\_\_\_\_%) more than the Maintenance Fee and the Time and Materials Rate during the previous period of the term of the Agreement (or a renewal or extension thereof), as adjusted for inflation, in accordance with [ \_\_\_\_\_ ]<sup>10</sup>.

Payment Schedule:

(A) Payment of the Contract Price shall be made by the UNDP to the Licensor in accordance with the following Payment Schedule, showing when payments are due:

(B) Upon Notification of Delivery and Installation of the Software,<sup>11</sup> \_\_\_\_\_

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<sup>10</sup> Example: "the Consumer Price Index (calculated for the New York City metropolitan statistical area) of the United States Department of Labor, as of the date of the renewal or extension."

<sup>11</sup> It is preferred that contracts be entered into with no up-front payment. However, in order to receive the best deal, on a case-by-case basis, ACP can approve an initial payment "upon signature."

For example: "Upon the effective date of the Agreement, \_\_\_\_\_ percent (\_\_\_\_%) of the License



percent (\_\_\_\_%) of the License Fee, or US \$\_\_\_\_\_;

(C) Upon Final Acceptance of the Software, the remaining balance of the License Fee, or US \$\_\_\_\_\_;

(D) Upon completion of the training in accordance with the Agreement, the amount of US \$\_\_\_\_\_;

(E) Monthly, in arrears, for the fees payable for the performance of services, for the integration of the Software, or for the fees payable in respect of any other services at the Time and Materials Rate; and

(F) Annually/semi-annually upon expiration of the Licensor's Warranty Period in accordance with the Agreement, the Maintenance Fee set forth in Article 10.2.5 hereof.

Invoicing:

(A) All payments made by the UNDP to the Licensor shall be payable by the UNDP only in response to the Licensor's original invoice therefore and certification by the UNDP that the materials or services reflected in such invoice have been provided by the Licensor in accordance with the Agreement.

(B) The Licensor's invoices shall contain, at a minimum, the Agreement number and a complete description of the item provided or the Service performed in accordance with the Agreement. The Licensor shall be solely responsible for ensuring that all supporting documentation sufficient for the UNDP to identify the payment requested in relation to the relevant provision(s) of the Agreement accompanies each invoice. The Agreement shall submit its invoices in triplicate (an original and two (2) copies) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(C) The UNDP shall notify the Licensor within fifteen (15) days following receipt of any of Licensor's invoices, if the UNDP intends to dispute any such invoice or any portion thereof. Such notification shall include a brief explanation of the reasons why the UNDP disputes the invoice. The UNDP and the Licensor shall consult in good faith to promptly resolve outstanding issues with respect to any such disputed invoice.

(D) The UNDP shall make full payment against the Licensor's invoice within thirty (30) days

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Fee, or US \$\_\_\_\_\_;"

of the receipt of the invoice, unless the UNDP disputes the invoice or a portion thereof.

(E) In cases of disputes regarding only a portion of a Licensor's invoice, the UNDP shall pay the Licensor the amount of the undisputed portion within thirty (30) days of the receipt thereof.

(F) Once a dispute regarding an invoice or a portion thereof has been resolved, the UNDP shall pay the Licensor within thirty (30) days following the resolution of such dispute.

(G) It is acknowledged and agreed by the Licensor that each invoice paid by the UNDP shall be subject to a post-payment audit by the UNDP's auditors (whether internal or external) and, further, that, at any time during the term of the Agreement and for a period of two (2) years following the expiration or prior termination of the Agreement, the UNDP may be entitled to a refund from the Licensor of any amounts shown by such audits to have been unauthorized or not in accordance with this Agreement.