



## REQUEST FOR PROPOSAL (RFP)

<b>UNDP Europe and the CIS, Bratislava Regional Centre</b> <b>Grosslingova 35, 811 09 Bratislava, Slovak Republic</b>	DATE: March 26, 2014
	REFERENCE: 2014/07/RFP: Reform of the National Ecological Fund in Moldova: Study tour to Czech Republic

Dear Sir / Madam:

We kindly request you to submit your Proposal for **2014/07/RFP: Reform of the National Ecological Fund in Moldova: Study tour to Czech Republic**.

Please be guided by the form attached hereto as Annex 2, in preparing your Proposal.

Proposals may be submitted on or before **16:00 CET, Friday, April 14, 2014** via courier mail to the address below:

**United Nations Development Programme**  
**Bratislava Regional Centre**  
**Grosslingova 35, 811 09 Bratislava, Slovak Republic**  
**Mr. Miroslav Hrenovcik**  
Tel: 00421 2 59337 111

Your Proposal must be expressed in the English, and valid for a minimum period of 120 days.

In the course of preparing your Proposal, it shall remain your responsibility to ensure that it reaches the address above on or before the deadline. Proposals that are received by UNDP after the deadline indicated above, for whatever reason, shall not be considered for evaluation.

Services proposed shall be reviewed and evaluated based on completeness and compliance of the Proposal and responsiveness with the requirements of the RFP and all other annexes providing details of UNDP requirements.

The Proposal that complies with all of the requirements, meets all the evaluation criteria and offers the best value for money shall be selected and awarded the contract. Any offer that does not meet the requirements shall be rejected.

Any discrepancy between the unit price and the total price shall be re-computed by UNDP, and the unit price shall prevail and the total price shall be corrected. If the Service Provider does not accept the final price based on UNDP's re-computation and correction of errors, its Proposal will be rejected.

No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted by UNDP after it has received the Proposal. At the time of Award of Contract or Purchase Order, UNDP reserves the right to vary (increase or decrease) the quantity of services and/or goods, by up to a maximum twenty five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

Any Contract or Purchase Order that will be issued as a result of this RFP shall be subject to the General Terms and Conditions attached hereto. The mere act of submission of a Proposal implies that the Service Provider accepts without question the General Terms and Conditions of UNDP, herein attached as Annex 3.

Please be advised that UNDP is not bound to accept any Proposal, nor award a contract or Purchase Order, nor be responsible for any costs associated with a Service Providers preparation and submission of a Proposal, regardless of the outcome or the manner of conducting the selection process.

UNDP's vendor protest procedure is intended to afford an opportunity to appeal for persons or firms not awarded a Purchase Order or Contract in a competitive procurement process. In the event that you believe you have not been fairly treated, you can find detailed information about vendor protest procedures in the following link: <http://www.undp.org/procurement/protest.shtml>.

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

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers to adhere to the UN Supplier Code of Conduct found in this link : [http://www.un.org/depts/ptd/pdf/conduct\\_english.pdf](http://www.un.org/depts/ptd/pdf/conduct_english.pdf)

Thank you and we look forward to receiving your Proposal.

**Zuzana Cerna**  
*Administrative Analyst*  
26/03/2014

## Description of Requirements

Context of the Requirement	<p>The Project “Strengthening capacities to undertake environmental fiscal reform to meet national and global environmental priorities” is financed by the Global Environment Facility (GEF), with UNDP Moldova as GEF Implementing Agency and the Ministry of Environment of the Republic of Moldova as Executing Partner. The overall objective of the project is to build capacities for implementing environmental fiscal reforms (EFR) that will produce increased national and global environmental benefits through the adoption of selected economic and fiscal instruments. The reform of the NEF (National Ecological Fund), representing the major financing tool for the implementation of environmental policies, is part of this effort. Its reform also aims at positioning the Fund as key future instrument to leverage financial sources required for implementation of EU environmental acquis in Moldova to meet the commitments under the EU-Moldova Association Agreement.</p> <p>The development and implementation of environmental policies in Moldova still faces a lot of challenges, including weaknesses in the legal and institutional framework, lack of capacities for the elaboration of sound environmental and economic analysis for policy priorities and elaboration of programmes and plans, as well as securing substantive financing sources for implementation of approved environmental programs and projects. Given the realities of the Republic of Moldova, environment protection still doesn’t represent a top priority for the Government. The environmental sector’s budget in Moldova is very limited and constitutes 0.2% of the total national budget. Moreover, most of this funding covers staff costs and does not allow the Ministry of Environment (MoE) to implement its core activities nor to promote necessary policies.</p> <p>The NEF, created in 1998, is a key instrument for financing the implementation of environmental policies in Moldova. In 2012, the Ministry of Environment, with the support of the United Nations, initiated a comprehensive reform of the National Ecological Fund, in view of ensuring the sustainability and functionality of the Fund as an effective tool for financing the implementation of environmental policies and strategic priorities in Moldova. The new draft Regulation and Operational Manual shall adopt best international practices for public environmental expenditure and project cycle management.</p> <p>Currently, existing environmental pollution charges earmarked in the Law on Payment for Environmental Pollution, constituting the main revenue source of the NEF National and Local Environmental Funds mobilize yearly approximately 16 mln USD. Compared to the investment needs in the sector these sources are rather limited and don’t allow for the implementation of national and local environmental policies. Resources of the NEF are distributed on a competitive basis, providing grants to local authorities, businesses and the civil society. 250 projects were approved and financed during 2011. Although during the past years several modifications were made to the current regulatory framework of the Fund, an extensive reform of its governance structure and management practices are required in order to increase transparency and participation in the decision making process and ensure a better collaboration with other state institutions, as well as to improve the operational procedures and project management cycle in order to</p>
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	<p>ensure targeted and efficient use of the available financial resources.</p> <p><b><u>Specific Background:</u></b></p> <p>Against the background described above, UNDP Moldova through the GEF Environmental Fiscal Reform Project (EFRP) currently provides assistance to the Ministry of Environment NEF and other governmental stakeholders to improve the management and operational procedures of NEF, in view of increased efficiency and transparency. A new improved Fund Regulation and Operational Manual is being drafted, based on best practices in the region/internationally. At the same time, the spending priorities of the NEF will be aligned with the environmental protection priorities set in sector policy documents and according Moldova's international commitments. The priority in 2014 will be on finalizing and adopting the new regulatory and operational framework of the Fund and supporting their introduction and application, including the associated capacity development of the decision makers and NEF staff involved.</p> <p>The study tour to the Czech Republic will support this reform process by providing the Moldovan decision makers and practitioners with first-hand experience and lessons learned which will feed into the further reform development and implementation.</p> <p>Experience from EU candidate countries and new member states, including the Czech Republic, showed that the environmental sector investment needed to implement the EU environment acquis would amount to several percent of GDP over more than a decade. After these data had been published, a political debate started in the EU and all affected candidate countries. This debate focused on how estimated costs could be covered. The discussion eventually led to the allocation of significant additional funds for the environmental sector in all concerned countries, including increased allocations from the European Union, increased national budget allocations and in most cases, higher capitalization of National Environmental Funds for managing dedicated public environmental expenditure programs. Typically, Fund capitalization was achieved with earmarked revenues from environmental taxes. Eventually, all new EU Member States from Central and Eastern Europe have made extensive use of Environmental Funds to manage public environmental expenditure programs in support of financing the implementation of the EU environmental legislation, and Moldova wants to follow and learn from this practice.</p> <p>The experience of Czech Republic in establishing, developing and managing Environmental Funds is considered best practice and is highly relevant for the ongoing reform of the Moldova NEF, also in view of Moldova's EU integration aspirations. The Czech State Environmental Fund was established in 1992 and similar to the Moldovan Fund Its Major revenue sources are earmarked pollution/emission taxes. Grants and soft loans are the key instruments applied. Of particular interest to Moldovan decision makers are the experiences, practices and lessons learned of the Czech State Environmental Fund in view of (but not limited to):</p> <ul style="list-style-type: none"><li>• Governance models and decision making structures</li><li>• Accessing/managing EU funding and funds from other donors via Environmental Funds;</li><li>• Implementing call for projects/tenders according to EU regulations;</li></ul>
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	<ul style="list-style-type: none"> <li>• Project selection/appraisal procedures for different sectors;</li> <li>• Project implementation monitoring;</li> <li>• Procedures in case of project default;</li> <li>• Procedures and document/templates for soft loans;</li> </ul> <p>Management of public relations and performance reporting.</p>
Implementing Partner of UNDP	UNDP
Brief Description of the Required Services	EFRP seeks specialized Czech organization (hereinafter Service Provider) that have the capacity to prepare and organize a Study Tour on managing Environmental Funds in Czech Republic for 6 representatives from Moldova (representatives of the National Environmental Fund, Ministry of Environment, Ministry of Finance, State Chancellery and Parliament). See more information in Terms of Reference.
List and Description of Expected Outputs to be Delivered	<ul style="list-style-type: none"> <li>➤ <b>Preliminary Report</b> on study tour, incl. description of logistics arrangements</li> <li>➤ <b>Final Report</b> including a database of Czech experts and relevant institutions for further consultations and collected participants feedback</li> </ul>
Person to Supervise the Work/Performance of the Service Provider	<p>Programme Associate of the Czech-UNDP Trust Fund, UNDP Bratislava Regional Centre</p> <p>Programme Analyst, UNDP Moldova</p> <p>GEF Environmental Fiscal Reform Project Manager, UNDP Moldova</p>
Frequency of Reporting	The Contractor will report directly to the UNDP Programme Manager on IBM, Armenia; Programme Associate of Czech-UNDP Trust Fund. During the fulfillment of their works, the Contractor will ensure regular communication with the UNDP Programme Manager on IBM, Armenia; Programme Associate of Czech-UNDP Trust Fund prior to the delivery of expected results. The Contractor shall ensure quality and timely delivery of the expected results, and will regularly inform the UNDP Programme Manager on IBM, Armenia; Programme Associate of Czech-UNDP Trust Fund of the progress as well as any obstacles that might occur and on demand.
Progress Reporting Requirements	<p>Programmatic and financial reporting must conform to the requirements specified in the Contract, signed between the contractor and UNDP. Also the contractor will be responsible for the timely collection of all necessary documents, such as procurement related documents, account invoices, receipts, payroll records and other documents that confirm the legality of expenditures.</p> <p>In addition, the Contractor should provide to UNDP all photos and other visual materials collected/made during this project. Printed and electronic versions of reports should be delivered to UNDP BRC, electronic to UNDP Moldova. Electronic version of the report should be saved as MS Word. All reports must be typed in ARIAL, size 11, A4.</p>
Location of work	<p><input checked="" type="checkbox"/> Home based and 1 trip to Czech Republic</p> <p>Czech Republic: Prague (for learning national legal and strategic framework) and rural municipalities (to visit the proposed implemented best cases projects)</p>
Expected duration of	Maximum 3 months

work					
Target start date	28 April 2014				
Latest completion date	19 July 2014				
Travels Expected	<b>Destination/s</b>	<b>Estimated Duration</b>	<b>Brief Description of Purpose of the Travel</b>	<b>Target Date/s</b>	
	Czech Republic	Min. 4 working days (duration of study tour)	Study Tour	End of April / beg. of May (to be agreed with Supervisors)	
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<input checked="" type="checkbox"/> Travel costs of Moldovan participants from Moldova to Prague (return ticket)				
Implementation Schedule indicating breakdown and timing of activities/sub-activities	<input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required				
Names and curriculum vitae of individuals who will be involved in completing the services	<input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required				
Currency of Proposal	<input checked="" type="checkbox"/> United States Dollars				
Value Added Tax on Price Proposal	<input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes  Please note that the contract will be signed between UNDP Bratislava Regional Centre and the winning entity. For your information, we don't have Tax registration number assigned and have a status of Diplomatic mission in Slovakia. We recommend you to consult your local tax office to obtain correct information on VAT implications in this respect. The total price in the offer has to be calculated based on this information (i.e. – if VAT isn't applicable you shouldn't include it and vice versa).				
Validity Period of Proposals ( <i>Counting for the last day of submission of quotes</i> )	<input checked="" type="checkbox"/> 120 days  In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.				
Partial Quotes	<input checked="" type="checkbox"/> Not permitted				
Payment Terms	<b>Outputs</b>	<b>Percentage</b>	<b>Timing (preliminary)</b>	<b>Condition for Payment Release</b>	
	Preliminary report	30%	2 May 2014	a) UNDP's	

				written acceptance (i.e., not mere receipt) of the quality of the outputs; and b) Receipt of invoice from the Service Provider.
	Final report	70%	30 May 2014	
Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	Programme Associate UNDP Bratislava Regional Centre			
Type of Contract to be Signed	<input checked="" type="checkbox"/> Contract for Professional Services			
Criteria for Contract Award	<input checked="" type="checkbox"/> Highest Combined Score (based on the 70% technical offer and 30% price weight distribution). Only proposals that achieve at least 70% on the technical part will be considered as technically compliant. <input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criteria and cannot be deleted regardless of the nature of services required. Non acceptance of the GTC may be grounds for the rejection of the Proposal.			
Criteria for the Assessment of Proposal	<b><u>Technical Proposal (70%)</u></b> <input checked="" type="checkbox"/> Expertise of Firm / Organization submitting Proposal <input checked="" type="checkbox"/> Proposed Work Plan and Approach <input checked="" type="checkbox"/> Personnel <b><u>Financial Proposal (30%)</u></b> To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.  The Offeror shall seal the Proposal in one outer and two inner envelopes. Both inner envelopes shall indicate the name and address of the Offeror. The first inner envelope shall contain the information specified in Annex 2 (Proposal form), with the duly marked "Original". The second inner envelope shall include the price schedule duly identified as such.  A two-stage procedure is utilized in evaluating the proposals, with evaluation of the technical proposal being completed prior to any price proposal being opened and compared. The price proposal of the Proposals will be opened only for submissions that passed the minimum technical score of 70% of the obtainable score of 70 points in the evaluation of the technical proposals. The technical proposal is evaluated on the basis of its responsiveness to the Term of Reference (TOR).			

In the Second Stage, the price proposal of all contractors, who have attained minimum 30% score in the price evaluation, will be compared. The contractor will be awarded to the Contractor offering the lowest price.

Summary of Technical and Financial Proposal Evaluation		Points Obtainable	Company/Entity/Others		
			A	B	C
1.	Expertise of Firm / Organization submitting Proposal	20			
2.	Proposed Work Plan and Approach	20			
3.	Personnel	30			
<b>Total for technical proposal</b>		<b>70</b>			
<b>Total for financial proposal</b>		<b>30</b>			
<b>TOTAL – max obtainable points</b>		<b>100</b>			

#### **Technical Proposal (70%)**

The obtainable number of points specified for each evaluation criterion indicates the relative significance or weight of the item in the overall evaluation process. The Technical Proposal Evaluation Forms are:

Form 1: Expertise of Firm / Organisation Submitting Proposal

Form 2: Proposed Work Plan and Approach

Form 3: Personnel

Technical Proposal Evaluation Form 1		Points obtaina ble	Company / Other Entity		
			A	B	C
Expertise of firm / organisation submitting proposal					
1.1	At least 5 years of experience in preparation and facilitation of study tours and trainings.	5			
1.2	Previous experience of cooperation with international organizations on implementing technical assistance projects.	5			
1.3	Possesses technical and human resources for successful implementation of the assignment	5			



	and/or has capacities to subcontract external consultants or NGOs/companies.				
1.4	Track record of at least three relevant projects.	5			
<b>Total Part 1</b>		<b>20</b>			

  

Technical Proposal Evaluation Form 2		Points Obtainable	Company / Other Entity		
			A	B	C
Proposed Work Plan and Approach					
2.1	Is the scope of task well defined and does it correspond to the TOR?	5			
2.2	Is the methodology of elaboration of requested documents well prepared and complex?	5			
2.3	Is the proposal well structured, work plan clear and is the sequence of activities logical, realistic and promise efficient implementation to the project?	5			
2.4	Have the important aspects of the task been addressed in sufficient detail?	5			
<b>Total Part 2</b>		<b>20</b>			

  

Technical Proposal Evaluation Form 3		Points Obtainable	Company / Other Entity		
			A	B	C
Personnel					
QUALIFIED MANAGER					
3.1	University degree (or equivalent) in the areas relevant for the assignment (e.g. political studies, Environment, Economics, Law, Public Administration, or other relevant field). A higher degree shall be considered as an asset.	2.5			
3.2	At least 5 years of experience of project management in similar projects (preferred is including familiarity with projects in environment sector).	5			

	3.3	Good communication skills of the staff in English (both written and spoken). Knowledge of Russian or Romanian will be considered as an asset.	2.5			
	3.4	Knowledge and skills of MS Office, including Word, Excel, PowerPoint.	2.5			
	QUALIFIED EXPERT					
	3.5	Advanced degree in Economics, Environment, Law or similar field.	5			
	3.6	Minimum five years of working experience on environment issues.	5			
	3.7	Proven record of undertaking consultancy services/training/facilitation in the field of accessing/managing funds from Environmental Funds and other donors.	2.5			
	3.8	Communication and interpersonal skills required for collaboration with central/local public administration representatives and service providers. Excellent communication and facilitation skills as well as reporting experience.	2.5			
	3.9	Excellent command of English language. Knowledge of Romanian or Russian will be considered as an asset.	2.5			
		<b>Total Part 3</b>	30			
	UNDP will award the contract to:	<input checked="" type="checkbox"/> One and only one Service Provider				
Annexes to this RFP	<input type="checkbox"/> Form for Submission of Proposal (Annex 2) <input type="checkbox"/> Detailed TOR (Annex 3) <input type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 4) <sup>1</sup> <input type="checkbox"/> Form for Submission of Financial Proposal (Annex 5) – <b>THIS MUST BE SUBMITTED IN A SEPARATE ENVELOPE</b>  <b>In addition to one hard copy (1x technical proposal; 1x financial proposal in a separate envelope), please also provide all the information on CD-R (one CD for financial offer, one for technical offer).</b>					

<sup>1</sup> Service Providers are alerted that non-acceptance of the terms of the General Terms and Conditions (GTC) may be grounds for disqualification from this procurement process.

<p>Contact Person for Inquiries (Written inquiries only)<sup>2</sup></p>	<p>Murat Akin Procurement Associate <a href="mailto:murat.akin@undp.org">murat.akin@undp.org</a></p> <p>Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.</p>
<p>Other Information [pls. specify]</p>	

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

## FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>3</sup>

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

[insert: Location]

[insert: Date]

To:

UNDP, Europe and CIS Bratislava Regional Centre, Grosslingova 35, 811 09 Bratislava, Slovak Republic

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the **2014/07/RFP: Reform of the National Ecological Fund in Moldova: Study tour to Czech Republic** dated [specify date], and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions:

### A. Qualifications of the Service Provider

*The Service Provider must describe and explain how and why they are the best entity that can deliver the requirements of UNDP by indicating the following :*

- a) *Profile – describing the nature of business, field of expertise, licenses, certifications, accreditations;*
- b) *Business Licenses – Registration Papers, Tax Payment Certification, etc.*
- c) *Track Record – list of clients for similar services as those required by UNDP, indicating description of contract scope, contract duration, contract value, contact references;*
- d) *Certificates and Accreditation – including Quality Certificates, Patent Registrations, Environmental Sustainability Certificates, etc.*
- e) *Written Self-Declaration that the company is not in the UN Security Council 1267/1989 List, UN Procurement Division List or Other UN Ineligibility List.*

### B. Proposed Methodology for the Completion of Services

*The Service Provider must describe how it will address/deliver the demands of the RFP; providing a detailed description of the essential performance characteristics, reporting conditions and quality assurance mechanisms that will be put in place, while demonstrating that the proposed methodology will be appropriate to the local conditions and context of the work.*

### C. Qualifications of Key Personnel

*As required by the RFP, the Service Provider must provide:*

- a) *Names and qualifications of the key personnel that will perform the services indicating who is Team*

<sup>3</sup> This serves as a guide to the Service Provider in preparing the Proposal.

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

- Leader, who are supporting, etc.;*
- b) CVs demonstrating qualifications must be submitted if required by the RFP; and*
  - c) Written confirmation from each personnel that they are available for the entire duration of the contract.*

*[Name and Signature of the Service Provider's  
Authorized Person]  
[Designation]  
[Date]*

## ***General Terms and Conditions for Services***

### **1.0 LEGAL STATUS:**

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (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.

### **2.0 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 that may adversely affect UNDP or the United Nations and shall fulfill its commitments with the fullest regard to the interests of UNDP.

### **3.0 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.

### **4.0 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.

### **5.0 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 to the provisions of this Contract.

### **6.0 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.

### **7.0 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.

#### **8.0 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 the 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:
  - 8.4.1** Name UNDP as additional insured;
  - 8.4.2** Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the UNDP;
  - 8.4.3** Provide that the 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 the UNDP with satisfactory evidence of the insurance required under this Article.

#### **9.0 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 the 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.

#### **10.0 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.

#### **11.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

- 11.1** Except as is otherwise expressly provided in writing in the Contract, the UNDP shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UNDP under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP.

- 11.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to the UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 11.3** At the request of the UNDP; the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UNDP in compliance with the requirements of the applicable law and of the Contract.
- 11.4** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the UNDP at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNDP authorized officials on completion of work under the Contract.

**12.0 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 United Nations in connection with its business or otherwise.

**13.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

Information and data that is considered proprietary by either Party and that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

- 13.1** The recipient ("Recipient") of such information shall:
- 13.1.1** use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,
  - 13.1.2** use the Discloser's Information solely for the purpose for which it was disclosed.
- 13.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:
- 13.2.1** any other party with the Discloser's prior written consent; and,
  - 13.2.2** the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:



- 13.2.2.1** a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,  
**13.2.2.2** any entity over which the Party exercises effective managerial control; or,  
**13.2.2.3** for the UNDP, an affiliated Fund such as UNCDF, UNIFEM and UNV.

- 13.3** The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 13.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General.
- 13.5** The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 13.6** These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

#### **14.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

- 14.1** 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 the 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 the UNDP of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the 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.
- 14.2** 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, the 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.
- 14.3** 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.
- 14.4** The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which the UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract..

#### **15.0 TERMINATION**

- 15.1** Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), 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.
- 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, the UNDP may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UNDP of the occurrence of any of the above events.

## **16.0 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 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:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

## **17.0 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.

## **18.0 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 the 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 the UNDP before the payment thereof and the 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 the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

#### **19.0 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.

#### **20.0 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.

#### **21.0 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.

#### **22.0 SEXUAL EXPLOITATION:**

- 22.1** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons

engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle UNDP to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

- 22.2** The UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

**23.0 AUTHORITY TO MODIFY:**

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Contract signed by the Contractor and jointly by the UNDP Authorized Official.