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## INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: 24<sup>th</sup> November 2014

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<b>Country</b>	Botswana
<b>Description of the assignment</b>	Private Finance / Business Expenditure Review Consultant
<b>Project Name</b>	Biological Diversity Finance Initiative (BIOFIN)
<b>Period of assignment / services</b>	14 weeks (70 days) over a period of 6 months
<b>Deadline for submission of proposal</b>	4th December 2014 at 16:00pm (Botswana Time)

### 1. BACKGROUND

Botswana has been party to the Convention on Biological Diversity (CBD) since 1995. As a signatory to the convention, Botswana supports the CBD's premise that biological diversity strengthens ecosystem functioning and the provision of ecosystem services essential for human well-being, and that its contribution to livelihoods gives it a key role in poverty reduction. The country formulated its first National Biodiversity Strategy and Action Plan (NBSAP) in 2004 (revised in 2007) as a guiding tool for conservation and management of biodiversity and ecosystems. The 2007 NBSAP is currently being reviewed (2014) to integrate global guidance contained in the CBD's Strategic Plan (2011-2020) and the Aichi Targets agreed at the 2010 Nagoya Conference of Parties. As the overarching management tool at the national level, there is need to ensure that the NBSAP is effectively implemented. Given the pressing development priorities that Botswana faces, this requires innovative sources of funding for biodiversity management that can be sustained over the long term. To effectively utilize existing sources of finance, and identify new innovative financing mechanisms, there is need to conduct detailed national level finance assessments to provide more robust information on the biodiversity finance gap. The Biodiversity Finance Initiative (BIOFIN) is designed to address the biodiversity finance challenge by building a sound business case for increased investments in the conservation and sustainable management of ecosystems and biodiversity.

Along with 19 other countries around the world, Botswana is participating in the BIOFIN initiative to develop and pilot a methodology for quantifying the biodiversity finance gap at the national level and provide a framework for undertaking “bottom-up” analyses and resource mobilisation strategies. The framework will support governments and other stakeholders to achieve the following goals:

- To analyze the impacts of current policies, institutions and expenditure, and to identify opportunities to mainstream biodiversity considerations into economic sectors and development planning, in order to reduce the pressures exerted by the drivers of biodiversity loss and to achieve cost-effectiveness;
- To undertake a comprehensive assessment of current funding and future needs to achieve the Aichi Targets, following the questions: (a) What are the cost coefficients of basic biodiversity management functions? What are opportunities and barriers to improve cost-effectiveness? (b) How much would it cost to remove the above barriers? (c) What financing is hence required to meet national targets set in terms of the global biodiversity targets adopted under the new CBD Strategic Plan for the period 2011-2020?
- To roll out appropriate national-level biodiversity financing strategies and mechanisms through which countries can identify, access, combine and sequence multiple sources of environmental and development finance for meeting their biodiversity needs and achieving the CBD’s Aichi Targets.

In light of the above, UNDP and other partners in the Initiative are seeking the services of a Private Finance/Business expert to undertake an analysis of finance flows for biodiversity-related expenditures by examining the level of mining and the tourism sector expenditures on biodiversity-related issues, and in collaboration with other members of the national and international team, support the development of a resource mobilization strategy (financial strategy) to cover the cost of implementing the NBSAP. The Private Expenditure Review exercise will utilise an existing tool/workbook to assess four (4) key areas of biodiversity management as outlined below:

- **Biodiversity mainstreaming** at institutional/organisational level – strategic and operational plans;
- **Protection** of ecosystems, species and genetic diversity;
- **Restoration** of ecosystems and habitats;
- **Access and benefits sharing** from the use of genetic resources

The specific Terms of Reference for the Private Expenditure Review are outlined in Annex 1.

## **2. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS**

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

### **a. Technical Proposal:**

- i. Explain why they are the most suitable for the work
- ii. Articulate understanding of Biodiversity in general, and in the context of Botswana.
- iii. Provide a brief methodology on how they will approach and conduct the work, individually and as part of a team, potential sources of information.

### **b. Offeror's letter to the UNDP confirming interest and availability for the contract assignment**

### **c. All-inclusive financial proposal (daily rate) proposal**

### **d. Personal CV including past experience in similar projects and at least 3 referees (CONTACTS)**

## **3. FINANCIAL PROPOSAL**

### **3.1 Lump sum contracts**

The financial proposal shall specify a total lump sum amount, and payment terms around specific and measurable (qualitative and quantitative) deliverables. Payments are based upon output, i.e. upon delivery of the services specified in the TOR.

In order to assist the requesting unit in the comparison of financial proposals, the financial proposal will include a breakdown of this lump sum amount (including professional fees, travel, per diems, and number of anticipated working days).

### **3.2 Travel**

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class he/she should do so using their own resources. In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

## **4. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS**

### **4.1 Education:**

- Master's Degree, or above, in Business Administration, Finance, Economics or a closely related field, or equivalent relevant work experience.

### **4.2 Competencies:**

- Strong analytical, writing and communication skills.
- Ability to prepare publications, reports and presentations.
- Ability to work with a multidisciplinary and multicultural team.
- Strong motivation and ability to work and deliver under short deadlines.
- Focus on impact and result for the client and ability to respond positively to critical feedback.
- Ability to work independently with little or no supervision.
- Familiarity with government strongly desired.

### **4.3 Experience:**

- At least 3-5 years of senior level experience, preferably in private sector business planning and budgeting, cost-benefit analysis, investing strategies and business development, environmental planning in private sector business development, and cost-accounting.
- In-depth knowledge of Botswana's private business sector in sectors that are considered drivers of biodiversity loss, in particular, mining and tourism.
- Knowledge of Botswana's national budgetary processes and financing mechanisms (desirable)
- Knowledge of Botswana's NBSAP process is desirable.
- Experience in dealing with international and national experts and institutions.
- Exposure to environmental issues or biodiversity desirable, but not required.
- Sound understanding of key software packages (MS Office)
- Fluency in written and spoken English

## **5. EVALUATION**

Individual consultants will be evaluated based on the following methodology:

### **Cumulative analysis**

When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:

- a) responsive/compliant/acceptable, and
- b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.

\* Technical Criteria weight; [70%]

\* Financial Criteria weight; [30%]

Only candidates obtaining a minimum of 70% point would be considered for the Financial

<b>Criteria</b>	<b>Weight</b>	<b>Max. Point</b>
<b><u>Technical Evaluation</u></b>		
<b>Criteria A:</b> Qualifications (academic & technical, minimum Masters)	YES/NO	-
<b>Criteria B:</b> Adequate work and/or professional experience	YES/NO	-
<b>Criteria C:</b> Complete Consultancy package submitted (Technical and Financial Proposal)	YES/NO	-
<b>Criteria D: Context</b> - Knowledge of the environmental policy making and biodiversity management issues in Botswana and the region	20	20
<b>Criteria E: Technical Competence</b> - Knowledge of Botswana's: private business sector; business strategy development and development planning frameworks	30	30
<b>Criteria F: Relevant Professional /Work Experience</b> - Experience in private investments and public finance review, research and practice.	30	30
<b>Criteria G: Methodology/Approach</b> Demonstrated understanding of the assignment; Response to the terms of reference and strategy of implementing actions.	10	10
<b>Criteria H: Presentation &amp; Packaging</b> – good writing, interpretation and communication skills.	10	10

## ANNEX 1: Terms of Reference (TOR)

<b>Assignment Title</b>	Botswana Private Finance / Business Expenditure Review Consultant
<b>Project Name</b>	Biological Diversity Finance Initiative (BIO-FIN)
<b>Country/Station</b>	Gaborone, Botswana
<b>Period of assignment / services</b>	14 weeks(70 days) over a period of 6 months
<b>Supervision</b>	Project Lead and Senior Public Finance Expert (UNDP)

### 1. BACKGROUND AND INTRODUCTION

In recognition of immense biodiversity losses, and the immeasurable value of biodiversity and ecosystems in sustaining human life, 193 of the world's governments agreed in 2010 to an ambitious set of 20 targets for biodiversity conservation, sustainable use and equitable benefits sharing, as part of the Strategic Plan for Biodiversity. These targets, known as the Aichi Biodiversity Targets cover a broad range of biodiversity-related issues that fall into five strategic goals: a) addressing the underlying causes of biodiversity loss by mainstreaming biodiversity across governments and society; b) reducing the direct pressures on biodiversity and promoting sustainable use; c) improving the status of biodiversity by safeguarding ecosystems, species and genetic diversity; d) enhancing the benefits to all from biodiversity and ecosystem services; and e) enhancing implementation. **Target 17** calls for each country to revise their National Biodiversity Strategies and Action Plans (NBSAPs), the primary national planning instrument for implementing the Convention on Biological Diversity, to be aligned with the Aichi Biodiversity Targets. **Target 20** calls for countries to assess the financial resource needs and mobilize financial resources for effectively implementing the Strategic Plan.

Governments have demonstrated clear commitment to fulfilling their mandates for biodiversity conservation and sustainable use in ways that are compatible with national development goals, and to finding a diverse range of funding sources for biodiversity management. However, there is need to unlock resources and transform the way that biodiversity finance is planned and managed in order to meet the **Aichi Targets** defined in the **Convention on Biological Diversity (CBD)** Strategic Plan 2011-2020.

Botswana is currently reviewing its National Biodiversity Strategy and Action Plan to integrate global guidance contained in the CBD's Strategic Plan (2011-2020) and the Aichi Targets agreed at the 2010 Nagoya Conference of Parties. During the review process, it has been revealed that several key multilateral environmental agreements (MEAs), policies and strategies supportive to

biodiversity conservation are in place, however there is need to ensure effective implementation and enforcement of these.

While on the one side, an in-depth analysis of the country's policies and institutional framework is being conducted, there is also need to undertake an analysis of finance flows for biodiversity-related expenditures by examining the level of national private expenditures on biodiversity-related issues, and develop a resource mobilization strategy, in line with the development and piloting of a methodology for quantifying the biodiversity finance gap at the national level and providing a framework for undertaking "bottom-up" analyses and resource mobilisation strategies.

## **2. THE BIODIVERSITY FINANCE AND INITIATIVE (BIOFIN)**

Botswana has been party to the Convention on Biological Diversity (CBD) since 1995. As a signatory to the convention, Botswana supports the CBD's premise that biological diversity strengthens ecosystem functioning and the provision of ecosystem services essential for human well-being, and that its contribution to livelihoods gives it a key role in poverty reduction. The country formulated its first National Biodiversity Strategy and Action Plan (NBSAP) in 2004 (revised in 2007) as a guiding tool for conservation and management of biodiversity and ecosystems. The NBSAP is currently being reviewed (2014) to integrate global guidance contained in the CBD's Strategic Plan (2011-2020) and the Aichi Targets agreed at the 2010 Nagoya Conference of Parties. As the overarching management tool at the national level, there is need to ensure that the NBSAP is effectively implemented. Given the pressing development priorities that Botswana faces, this requires innovative sources of funding for biodiversity management that can be sustained over the long term. To effectively utilize existing sources of finance, and identify new innovative financing mechanisms, there is need to conduct detailed national level finance assessments to provide more robust information on the biodiversity finance gap. The Biodiversity Finance Initiative (BIOFIN) is designed to address the biodiversity finance challenge by building a sound business case for increased investments in the conservation and sustainable management of ecosystems and biodiversity.

Along with 19 other countries around the world, Botswana is participating in the BIOFIN initiative to develop and pilot a methodology for quantifying the biodiversity finance gap at the national level and provide a framework for undertaking "bottom-up" analyses and resource mobilisation strategies. The framework will support governments and other stakeholders to achieve the following goals:

- To analyze the impacts of current policies, institutions and expenditure, and to identify opportunities to mainstream biodiversity considerations into economic sectors and



development planning, in order to reduce the pressures exerted by the drivers of biodiversity loss and to achieve cost-effectiveness;

- To undertake a comprehensive assessment of current funding and future needs to achieve the Aichi Targets, following the questions: (a) What are the cost coefficients of basic biodiversity management functions? What are opportunities and barriers to improve cost-effectiveness? (b) How much would it cost to remove the above barriers? (c) What financing is hence required to meet national targets set in terms of the global biodiversity targets adopted under the new CBD Strategic Plan for the period 2011-2020?
- To roll out appropriate national-level biodiversity financing strategies and mechanisms through which countries can identify, access, combine and sequence multiple sources of environmental and development finance for meeting their biodiversity needs and achieving the CBD's Aichi Targets.

In light of the above, UNDP and other partners in the Initiative are seeking the services of a Private Finance / Business expert to undertake an analysis of finance flows for biodiversity-related expenditures by examining the level of mining and the tourism sector expenditures on biodiversity-related issues, and in collaboration with other members of the national and international team, support the development of a resource mobilization strategy (financial strategy) to cover the cost of implementing the NBSAP. The Private Expenditure Review exercise will utilise an existing tool/workbook to assess four (4) key areas of biodiversity management as outlined below to classify selected expenses in private sector financial planning:

- **Biodiversity mainstreaming** at institutional/organisational level – strategic and operational plans;
- **Protection** of ecosystems, species and genetic diversity;
- **Restoration** of ecosystems and habitats;
- **Access and benefits sharing** from the use of genetic resources

The key components of this initiative are as follows:

- a. Integrating biodiversity and ecosystem services in sectoral and national development policy, planning and budgeting;
- b. Assessing the financing and governance needs for the management and conservation of biodiversity and ecosystem services;
- c. Identify, access, combine and sequence different sources of funds to meet biodiversity-financing needs; and

- d. Initiate implementation of the resource mobilization strategies at national level.

### **3. COORDINATION OF IMPLEMENTATION OF THE BIODIVERSITY FINANCE INITIATIVE**

A team of experts responsible for the overall implementation of this initiative has been set up and is based at the UNDP Botswana country office. The Department of Environmental Affairs (DEA) under the Ministry of Environment, Wildlife and Tourism as the focal point for CBD and for most of Multilateral Environmental Agreements (MEA), shall be the lead government entity. The Ministry of Environment, Wildlife and Tourism will closely coordinate the work with the Ministry of Finance and Development Planning as the government entity responsible for national planning and budgeting. The National Biodiversity Authority (NBDA), a committee made up of government officials, private sector, Non-Governmental Organisations and the academia serves as the Project Steering Committee. The team will periodically report to the NBDA for policy direction and oversight support.

Under the overall coordination the Resident Representative of the UNDP Botswana and direct supervision by the Energy and Environment Unit, the Private Finance / Business Expert will work closely with the Project Lead and Senior Public Finance Expert and the Project Management Officer based at the UNDP Botswana Country Office to deliver the results of the assignment.

### **4. OBJECTIVES OF THE ASSIGNMENT**

- a. To provide an overview of finance flows for biodiversity-related private expenditures by examining the level of national expenditures, both public and private, on biodiversity-related issues;
- b. To support identification of a full suite of potential finance actors and opportunities, screen and prioritize specific biodiversity finance mechanisms; provide revenue projections, develop an operational plan with timeframe and budget.

### **c. SCOPE OF WORK**

#### **5.1 Responsibilities:**

The Private Finance / Business Expert will be responsible to start the BIOFIN process at the national level and to complete parts of Workbook 1c (**Public and Private Expenditure Review**) and Workbook 3, support the development of a **Strategy for Mobilizing Public and Private Resources**. He/she will play a leading role in the conduction and write-up of the Private Expenditure Review and the Strategy for Mobilizing Public and Private Resources (with focus on private/innovative finance components) under the BIOFIN process together with Government

and private counterparts; as well as provide horizontal input to all other national BIOFIN outputs, including Policy and Institutional Review, Public Expenditure Review, Finance Needs and Gap Assessment; as well as the Summary for Policy Makers, and provide input to the feedback on the methodological framework.

The Private Expenditure Review will entail the following;

- i. Review available background material and methodologies.
- ii. Develop work plan
- iii. Analyze the full range of private business and investors that fund biodiversity-related actions in the **mining, agriculture, tourism and the construction** sectors (using BIOFIN Workbook 1B as a reference when appropriate).
- iv. **Assessment of selected private sector budgetary allocations (in business or investment plans) and identify environment/biodiversity related expenditures:** an analysis of the total annual investment plan and expenditure (allocated /executed), sources of funding, level of investment in environment/biodiversity related activities, subsidies and level of investment in potential biodiversity degrading activities; and multi-year trends (2008-2014).
- v. Analyze the total biodiversity-related expenditures filtered by major strategy groups using BIOFIN taxonomy.
- vi. **Estimated future funding baseline under a “Business-As-Usual Scenario:** an analysis of projected estimated funding in the future, based on a set of “business-as-usual” assumptions about future funding flows.
- vii. In coordination with the lead public expenditure review, incorporate private sector expenditure data to Workbook 1c.
- viii. Document the step-by-step approach to complete this task and prepare reports.
- ix. Contribute to the preparation of monthly reports and participate in monthly technical calls and regional calls.

Resource mobilisation strategy will entail the following;

- i. In collaboration with the national technical lead and international advisor, define the step-by-step approach (method) to develop the financial strategy.
- ii. Prepare work plan
- iii. Support the screening, selection, and feasibility analysis of potential revenue mechanisms to determine financial viability, break-even point, assess complexity vs. return, contribution of each mechanisms to fill the financial gap, projection of estimated revenue in the short and medium (at least 5 year horizon)
- iv. Define the step-by-step approach to establish each of feasible financial mechanisms: steps, financial target level (and as percentage of the financial gap), actors and cost of establishing the mechanisms.
- v. Assess market-based and non-market based financial mechanisms, public and private, both domestic and international; to create a diversified financial strategy.
- vi. Formulate an implementation plan for each financial mechanisms and for the entire financial strategy
- vii. Support the pilot implementation of at least one financial mechanism.
- viii. **Implications of financial mechanisms and key recommendations:** an analysis of the social, economic and political implications of implementing key financial mechanisms and undertaking key decisions, and an exploration of the key operational implications, including start-up costs (as above), staffing, capacity and safeguards required.

#### **d. Expected Outputs and Deliverables**

- a. Inception report and work plan for PER
- b. Private Expenditure Review – step-by-step methodology, report outline, draft and final reports, based on and completing related Workbook 1c
- c. Strategy for Mobilizing Public and Private Resources – step by-step methodology, based on and completing Workbook 3
- d. Feasibility analyses of financial mechanisms analyses, draft and final reports

- e. Peer review other reports:
  - i. Policy and Institutional Review
  - ii. Public Expenditure Review
  - iii. Finance Needs and Gap Assessment
  - iv. Project Synthesis Report (with recommendations to government) and Summary for Policy Makers.
- f. Provisional and final feedback on the BIOFIN methodology including the assessment frameworks (workbook).
- g. Contribution to overall transformational process

#### e. Payment Milestones

The contract will be performance-based. Payments will be made against the following deliverables:

%	Milestone
10%	On submission and approval of an Inception Report detailing <ul style="list-style-type: none"> <li>i. work plan</li> <li>ii. Step – by – step methodology for conducting the Private Expenditure Review and developing the Resource Mobilization Strategy based on completion of workbooks 1c, 3a and 3b</li> <li>iii. Outline for the reports</li> </ul>
40%	On submission and approval of the 1st draft Reports and Workbooks (1c, 3a and 3b): <ul style="list-style-type: none"> <li>i. Private Expenditure Review based on and completing of Workbooks (1c)</li> <li>ii. Resource Mobilization Strategy based on and completion of Workbooks 3a and 3b</li> <li>iii. Feasibility analysis of financial mechanisms</li> </ul>
10%	Peer Review and contribution to other Reports <ul style="list-style-type: none"> <li>i. Policy and Institutional Review</li> <li>ii. Public Expenditure Review</li> <li>iii. Finance Needs and Gap Assessment</li> <li>iv. Project Synthesis Report (with recommendations to government) and Summary for Policy Makers</li> </ul>
40%	Following submission and approval of final Reports and Workbooks (1c and 3) <ul style="list-style-type: none"> <li>i. Private Expenditure Review based on and completing of Workbooks (1c)</li> <li>ii. Resource Mobilization Strategy based on and completion of Workbooks 3a and 3b</li> <li>iii. Feasibility analysis of financial mechanisms</li> </ul>

**UNDP**  
**GENERAL CONDITIONS OF CONTRACT 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 Agreement, 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 Agreement signed by the Contractor and jointly by the UNDP Authorized Official.