



14<sup>th</sup> April 2015

**POSTPONEMENT DEADLINE**

**IC 28008/2015 - INTERNATIONAL IC CONSULTANT UNDP BRAZIL**

**"Definition of a Global Dialogue Forum on Extractive Industries and the Sustainable Development Goals"**

Please find enclosed Terms of Reference and Evaluation Criteria for a Selection Process of an IC - Individual Contractor for hiring an International Consultant to support UNDP and its partners in preparing a concept/proposal for a Global Forum.

The Procurement Unit of UNDP Office in Brazil would appreciate receiving technical and financial proposals for the above mentioned selection.

The submission of technical proposal (CV) and financial proposal (Annex I Price), in separate files, should reach the e-mail

[ic.procurement.br@undp.org](mailto:ic.procurement.br@undp.org) no later than **19<sup>th</sup> April 2015**.

Only complete applications that meet the aforementioned requirements will be considered. Applications received after the deadline will not be accepted.

The Financial proposal duly signed should be sent in a separate PDF file. All presented documents must carry the identification on the name of the file and subject fields as:

*"IC 28008/2015 – UNDP INTERNATIONAL IC CONSULTANT – DEFINITION OF GLOBAL DIALOGUE FORUM ON EXTRACTIVE INDUSTRIES & SUSTAINABLE DEVELOPMENT GOALS".*

If you request any additional information it will be provided by e-mail [ic.procurement.br@undp.org](mailto:ic.procurement.br@undp.org)

PLEASE REFER TO "IC 28008/2015 – UNDP INTERNATIONAL IC CONSULTANT – DEFINITION OF GLOBAL DIALOGUE FORUM ON EXTRACTIVE INDUSTRIES & SUSTAINABLE DEVELOPMENT GOALS".

\* Proposals sent to any different e-mail than the one indicated ([ic.procurement.br@undp.org](mailto:ic.procurement.br@undp.org)) or copied to different e-mails will not be accepted for the selection.

IC Selection Team  
Procurement Unit  
UNDP Brazil  
[ic.procurement.br@undp.org](mailto:ic.procurement.br@undp.org)



Annex I – Offeror's Price Proposal

Ref: "IC 28008/2015 – UNDP INTERNATIONAL IC CONSULTANT – DEFINITION OF GLOBAL DIALOGUE FORUM ON EXTRACTIVE INDUSTRIES & SUSTAINABLE DEVELOPMENT GOALS".

I hereby declare that:

- a) I have read, understood and hereby accept the Terms of Reference describing the duties and responsibilities of this selection process under UNDP Office.
- b) I have also read, understood and hereby accept UNDP's General Conditions of Contract for the Services of the Individual Contractors;
- c) I hereby propose my services and I confirm my interest in performing the assignment through the submission of my CV which I have duly signed and attached hereto;
- d) In compliance with the requirements of the Terms of Reference, I hereby confirm that I am available for the entire duration of the assignment, and I shall perform the services in the manner described in my proposed approach/methodology which I have attached hereto;
- e) I hereby propose to complete the services based on the following payment rate:  
A total lump sum of R\$ \_\_\_\_\_, payable in the manner described in the Terms of Reference.
- f) I recognize that the payment of the abovementioned amounts due to me shall be based on my delivery of outputs within the timeframe specified in the TOR, which shall be subject to UNDP's review, acceptance and payment certification procedures;
- g) This offer shall remain valid for a total period of 90 days after the submission deadline;
- h) I confirm that I have no first degree relative (mother, father, son, daughter, spouse/partner, brother or sister) currently employed with any UN agency or office [disclose the name of the relative, the UN office employing the relative, and the relationship if, any such relationship exists];
- i) If I am selected for this assignment, I shall:  
( ) Sign an Individual Contract with UNDP;

j) I hereby confirm that:

- ( ) At the time of this submission, I have no active Individual Contract or any form of engagement with any Business Unit of UNDP;
- ( ) I am currently engaged with UNDP and/or other entities for the following work:

Assignment	Contract Type	UNDP Business Unit / Institution/Company	Contract Duration	Contract Amount

- ( ) I am also anticipating conclusion of the following work from UNDP and/or other entities for which I have submitted a proposal:

Assignment	Contract Type	Institution/Company	Contract Duration	Contract Amount

k) I fully understand and recognize that UNDP is not bound to accept this proposal, and I also understand and accept that I shall bear all costs associated with its preparation and submission and that UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

l) If you are a former staff member of the United Nations recently separated, pls. add this section to your letter: I hereby confirm that I have complied with the minimum break in service required before I can be eligible for an Individual Contract.

m) I also fully understand that, if I am engaged as an Individual Contractor, I have no expectations nor entitlements whatsoever to be re-instated or re-employed as a staff member.

Full Name and Signature:

Date Signed:



Annex II – Terms of Reference (ToR)

RC 28008

IC CONSULTANT

**"Definition of a Global Dialogue Forum on Extractive Industries and the Sustainable Development"**

**1. Background**

Recognizing the far-reaching development impacts of the extractive sector, UNDP has recently adopted a Strategy for Supporting Sustainable and Equitable Management of the Extractive Industries. Through the Strategy, implemented via global, regional and country initiatives, UNDP helps countries to reduce the risks and realize the benefits of resource extraction. By working with governments, the private sector, civil society, academia, local communities and other affected groups, UNDP's mission is to ensure that natural wealth is used to improve people's lives and that the so called "natural resource curse" is avoided.

As part of its global initiative on Extractives Industries for Sustainable Development, UNDP in collaboration with the Government of Brazil and other partners organized an event on the *"Extractive Sector and Sustainable Development – Enhancing Public-Private-Community Cooperation in the context of the Post-2015 Agenda"*. The event took place from December 3-5 2014 in Brazil.

As background and inputs to the event, a number of papers were prepared to frame the discussions and provide an overview of the issues, existing resources, tools and experiences to draw on along with key questions to be addressed to scale up action going forward. Papers were prepared on the role of the extractive sector in contributing to the following themes, which are essential for sustainable development and that are aligned with the proposed Sustainable Development Goals (SDGs): i) Promoting sustainable economic growth and employment generation through industrialization; ii) Ensuring access to basic services; iii) Protecting the environment and iv) Promoting human rights and social cohesion. Within these thematic areas, a select number of topics were identified which the papers focused on and which were also be the focus of dedicated sessions at the Dialogue.

The Extractive Dialogue in Brasilia was an initial event that aimed to advance the post-2015 sustainable development agenda in the extractive sector. One of the main outcomes of the Dialogue was the conclusion that different sectors share similar concerns and that there were no major discrepancies with regard to the issues seen as important by them, nor the ways to achieve progress, namely through dialogue, governance, improved regulation and capacity building among all those involved. It was commonly accepted that the sector has a history of not being people-centered and that has to change in order to achieve sustainable development.

Participants also expressed a clear interest in continuing and deepening the dialogue about the extractive sector and sustainable development, including at global, regional and country levels. It was recognized that for dialogue to generate practical results and solutions and contribute to real change in the sector, more structured and systematic engagement is needed over a longer period of time. It also requires a clear agenda with a clear purpose and achievable goals in the short, medium and long term.

There is currently no dialogue forum dedicated specifically to the topic of the extractive industries and the Sustainable Development Goals, although there are a number of initiatives that in different ways aim to promote better development outcomes from extractive industry activities.



In the Brasilia event, UNDP committed to further explore how the agenda on extractive industries and the SDGs can be advanced through structured multi-stakeholder dialogue and by bringing together existing initiatives as well as new institutional partners that showed interest in collaborating on the follow-up to the first Dialogue.

The aim of this consultancy is to assist UNDP and its partners, including the country Working Group in Brazil made up of the Government of Brazil, extractive industry representatives and civil society institutions, to explore and define what a global dialogue forum, which also has national (and potentially regional) presence, could look like.

## 2. Objective

This consultancy will support UNDP and its partners in preparing a concept / proposal for a Global Forum/Dialogue on the Extractive Industries and the Sustainable Development Goals. The proposal should define how dialogue and related activities could be organized and managed at global level as well as at country level, the idea being that the global dialogue would serve as an umbrella and link to select country level dialogues on extractive industry and national sustainable development priorities.

## 3. Scope of Work

- Under the guidance of UNDP's Global Extractive Industries Team and UNDP Brazil and based on the results of the 1<sup>st</sup> Dialogue on Extractive Industries and Sustainable Development as well as on the Brazil Working Group deliberations to date, prepare a proposal for a global dialogue Forum, including:
  - a) key purpose and objectives of the proposed Forum
  - b) proposed format;
  - c) scope and potential membership;
  - d) organizational and management structures;
  - e) funding mechanism;
  - f) outline of what a typical national level dialogue forum could look like that would be linked to the global dialogue forum.
- Prepare and implement a key stakeholder and partner mobilization work-plan.
- Consult (virtually) with key global stakeholders as well as country level stakeholders in Brazil and in select other countries to gather inputs and ideas.
- Prepare and facilitate an international workshop on the proposed forum.
- Prepare a final draft of the proposal based on the results of the international workshop, including partnership (financial and non-financial) mobilization plan

## 4. Expected Outputs and Deliverables (Products)

Deliverables	Description	Delivery Dates	Payment
1	Proposed agenda for a workshop on EI & SDG Forum and the list of invitees.	May 31, 2015	15%
2	1 <sup>st</sup> draft of the proposal.	June 15, 2015	25%
3	Presentation for the international workshop on EI & SDG Forum	June 30, 2015	25%
4	Final draft of the proposal.	August 15, 2015	35 %



## 5. Qualifications of the Individual Contractor

Eligibility Criteria and Technical Competencies.

### Mandatory CV criteria:

- Master's degree in development studies, with focus on extractive industries, natural resources, governance, sustainable development or international relations. \* (see addendum below)
- Minimum of 10 years of relevant experience.
- Proven track record in designing and facilitating stakeholder events and discussions and in leading / mediating negotiations between different stakeholders.
- Excellent knowledge of English.

*\*Addendum: Master's degree in development studies, with focus on extractive industries, natural resources, governance, sustainable development, international relations or in another relevant field.*

### Qualifying CV criteria:

- Experience of work related to extractive industries / natural resources, sustainable development (additional years).
- Experience in the UN Human Rights system, including human rights instruments and mechanisms.
- Experience of work on issues related to sustainable development at the field level in a developing country context.
- Familiarity with the current Millennium Development Goals (MDGs) agenda and the future proposed Post-2015 agenda and Sustainable Development Goals.
- Familiarity with the UNDP Extractive industries strategy and the wider landscape of global actors working on in the nexus between extractive industry and development issues.
- Excellent analytical and writing skills with proven ability to produce high quality analytical reports and policy papers in relevant area.
- Skills in process facilitation, team building, facilitating group and organizational dynamics, communication skills.
- Fluency in Spanish, Portuguese or French

## 6. Duration of the Work

Six months.

## 7. Duty Station

Home-based.

## 8. Supervision

The Consultant will be working under the supervision of the Project Managers of UNDP Brazil and New York.

## 9. Scope of Price Proposal and Schedule of Payments

The candidate will receive the payments upon delivery and approval of due products and according to the calendar of the expected output and deliverables above (Item 4).



### Anex III – Evaluation and Selection Criteria

The proposal submitted will be disregarded in breach of the provisions of this Notice: File 1 containing the CV and File 2 containing the Proposed Price. The final criteria for this procurement process will be **TECHNICAL CAPACITY** and **PRICE** for the final evaluation and selection.

The maximum score in the Technical Qualification is 100 points.

Qualification criteria are divided into 02 (two) steps:

- a) **Step 1 (qualification / no scoring):** analysis of the CV relating to compliance with the mandatory requirements specified in the Terms of Reference.

Candidates who do not meet the minimum mandatory criteria described in Item 5 of the Terms of Reference will be disqualified at this stage.

- b) **Step 2 (classification / scoring):** CV analysis

#### CV scoring (100 points)

The criteria for CV analysis are contained in the table below. Only will be analyzed the resumes of candidates accepted under Step 1 of the Qualification (desk review of the CVs on mandatory requirements).

#### 1. CLASSIFICATION OF THE TECHNICAL PROPOSALS (CV)

**CVs Evaluation (100%).** The maximum score in the Technical Qualification is 100 points.

CV - Phase 1 of Technical Qualification			
Criteria	Score	Weight	Maximum Score
Experience of work related to extractive industries / natural resources, sustainable development (1 point for each additional year over 10 years required minimum).	1 to 5	4	20 points
Experience in the UN Human Rights system, including human rights instruments and mechanisms.	1 to 5	3	15 points
Experience of work on issues related to sustainable development at the field level in a developing country context.	1 to 5	3	15 points
Familiarity with the current Millennium Development Goals (MDGs) agenda and the future proposed Post-2015 agenda and Sustainable Development Goals.	1 to 5	3	15 points
Familiarity with the UNDP Extractive Industries strategy and the wider landscape of global actors working on in the nexus between extractive industry and development issues.	1 to 5	2	10 points
Excellent analytical and writing skills with proven ability to produce high quality analytical reports and policy papers in relevant area. *	1 to 5	2	10 points
Skills in process facilitation, team building, facilitating group and organizational dynamics, communication skills.	1 to 5	2	10 points
Fluency in Spanish, Portuguese or French	1 to 5	1	5 points
<b>Maximum score of the Technical Qualification</b>			<b>100 points</b>

\* The candidate should send 3 examples of texts in English (published or unpublished) written in part or solely by himself for evaluation of this criteria.



\*The score will be measured according to the following concept:

5 points → excellent  
4 points → very good  
3 points → good  
2 points → satisfactory  
1 point → poor

#### Scoring:

The Evaluation Committee will be composed of at least three members who assign individual evaluation scores. The final score of the consultant under evaluation will be the weighted average of individual scores of the evaluators.

Individual scores will be awarded in accordance with the information submitted in the candidate's Curriculum Vitae. Therefore, it is important that candidates **clearly indicate in their CV the professional experience required in both the qualification and classification phases**, so that the evaluation committee may conduct a proper analysis.

## 2. CLASSIFICATION OF BUSINESS PROPOSALS (PRICE) – FINAL

Only the business proposals (price) of the candidates who receive the final Technical Score with a minimum of 70 points in Step 2 (Phase 1 CV Review) will be taken into consideration.

The final Score – FS of the process will be given by the sum of the final Technical Score – TS multiplied by a factor of 0.70, with the PS Score of the price proposal multiplied by the factor 0.30, i.e:

$$FS = TS \times 0.70 + PS \times 0.30$$

The score of the Price Proposal – PS will be calculated according to the following:

$$PS = 100 \times LPP / Ppe$$

where:

PS = score of the price proposal  
LPP = lowest price proposal  
Ppe = price proposal under evaluation

The lowest price proposal will score one hundred (100).

It will be selected the proposal that achieves the higher final Score.

## 3. SPECIAL CONSIDERATIONS

This process will be conducted by UNDP, following the rules and guidelines of the organism (simplified selection and procurement through IC-Individual Contract).

***"According to the United Nations rules, hiring active servers of the Federal, State, Federal District or Municipal, direct or indirect, as well as employees of its subsidiaries, is allowed only in special circumstances."***



# Annex IV – Contract Model

## UNITED NATIONS DEVELOPMENT PROGRAMME



### Contract for the services of an Individual Contractor

No \_\_\_\_\_

This Contract is entered into on [insert date] between the United Nations Development Programme (hereinafter referred to as "UNDP") and \_\_\_\_\_ (hereinafter referred to as "the Individual Contractor") whose address is \_\_\_\_\_

WHEREAS UNDP desires to engage the services of the Individual Contractor on the terms and conditions hereinafter set forth, and:

WHEREAS the Individual Contractor is ready and willing to accept this Contract with UNDP on the said terms and conditions,

NOW, THEREFORE, the Parties hereby agree as follows:

#### 1. Nature of services

The Individual Contractor shall perform the services as described in the Terms of References which form an integral part of this Contract and are attached hereto as *Annex I* in the following Duty Station(s): \_\_\_\_\_

#### 2. Duration

This Individual Contract shall commence on [insert date], and shall expire upon satisfactory completion of the services described in the Terms of Reference mentioned above, but not later than [insert date], unless sooner terminated in accordance with the terms of this Contract. This Contract is subject to the General Conditions of Contract for Individual contractors which are available on UNDP website at [www.undp.org/procurement](http://www.undp.org/procurement) and are attached hereto as *Annex II*.

#### 3. Consideration

As full consideration for the services performed by the Individual Contractor under the terms of this Contract, including, unless otherwise specified, his/her travel to and from the Duty Station(s), any other travel required in the fulfillment of the Terms of Reference in Annex I, and living expenses in the Duty Station(s), UNDP shall pay the Individual Contractor a total of [currency] ----- in accordance with the table set forth below<sup>1</sup>. Payments shall be made following certification by UNDP that the services related to each Deliverable, as described below, have been satisfactorily performed and the Deliverables have been achieved by or before the due dates specified below, if any.

DELIVERABLE	DUE DATE	AMOUNT IN [CURRENCY]

If unforeseen travel outside the Duty Station not required by the Terms of Reference is requested by UNDP, and upon prior written agreement, such travel shall be at UNDP's expense and the Individual Contractor shall receive a *per diem* not to exceed United Nations daily subsistence allowance rate in such other location(s).

Where two currencies are involved, the rate of exchange shall be the official rate applied by the United Nations on the day the UNDP instructs its bank to effect the payment(s).

<sup>1</sup> For payments which are not output-based lump sum, indicate the maximum number of working days/hours/units, any out of pocket expense (travel, per diem...) and the corresponding fee/cost in the Deliverable (s) table.





**4. Rights and Obligations of the Individual contractor**

The rights and obligations of the Individual Contractor are strictly limited to the terms and conditions of this Contract, including its Annexes. Accordingly, the Individual Contractor shall not be entitled to any benefit, payment, subsidy, compensation or entitlement, except as expressly provided in this Contract. The Individual Contractor shall be solely liable for claims by third parties arising from the Individual Contractor's own acts or omissions in the course of performing this Contract, and under no circumstances shall UNDP be held liable for such claims by third parties.

**5. Beneficiary**

The Individual Contractor selects \_\_\_\_\_ as beneficiary of any amounts owed under this Contract in the event of death of the Individual Contractor while performing services hereunder. This includes the payment of any service-incurred liability insurance attributable to the performance of the services for UNDP.

Mailing address, email address and phone number of beneficiary:

\_\_\_\_\_

Mailing address, email address and phone number of emergency contact (if different from beneficiary):

\_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have executed this Contract.

By signing below, I, the Individual Contractor, acknowledge and agree that I have read and accept the terms of this Contract, including the General Conditions of Contracts for Individual contractors available on UNDP website at [www.undp.org/procurement](http://www.undp.org/procurement) and attached hereto in Annex II which form an integral part of this Contract, and that I have read and understood, and agree to abide by the standards of conduct set forth in the Secretary-General's bulletins ST/SGB/2003/13 of 9 October 2003, entitled "Special Measures for Protection from Sexual Exploitation and Sexual Abuse" and ST/SGB/2002/9 of 18 June 2002, entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission".

☐ The Individual Contractor has submitted a Statement of Good Health and confirmation of immunization.

**AUTHORIZING OFFICER:**  
United Nations Development Programme

**INDIVIDUAL CONTRACTOR:**

Name; \_\_\_\_\_

Name; \_\_\_\_\_

Signature; \_\_\_\_\_

Signature; \_\_\_\_\_

Date; \_\_\_\_\_

Date; \_\_\_\_\_



## GENERAL CONDITIONS OF CONTRACT FOR THE SERVICES OF INDIVIDUAL CONTRACTORS

1 February 2012

**1. LEGAL STATUS:** The Individual contractor shall have the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP), and shall not be regarded, for any purposes, as being either a "staff member" of UNDP, under the UN Staff Regulations and Rules, or an "official" of UNDP, for purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between UNDP and the Individual contractor. The officials, representatives, employees or subcontractors of UNDP and of the Individual contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and UNDP and the Individual contractor shall be solely responsible for all claims arising out of or relating to their engagement of such persons or entities.

**2. STANDARDS OF CONDUCT: In General:** The Individual contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of his or her obligations under the Contract. Should any authority external to UNDP seek to impose any instructions regarding the Individual contractor's performance under the Contract, the Individual contractor shall promptly notify UNDP and shall provide all reasonable assistance required by UNDP. The Individual contractor shall not take any action in respect of his or her performance of the Contract or otherwise related to his or her obligations under the Contract that may adversely affect the interests of UNDP. The Individual contractor shall perform his or her obligations under the Contract with the fullest regard to the interests of UNDP. The Individual contractor warrants that she or he has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee or other agent of UNDP. The Individual contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of his or her obligations under the Contract. In the performance of the Contract the Individual contractor shall comply with the standards of conduct set in the Secretary General's Bulletin ST/SGB/2002/9 of 18 June 2002, entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission". The Individual contractor must comply with all security directives issued by UNDP.

**Prohibition of Sexual Exploitation and Abuse:** In the performance of the Contract, the Individual contractor shall comply with the standards of conduct set forth in the Secretary-General's bulletin ST/SGB/2003/13 of 9 October 2003, concerning "Special measures for protection from sexual exploitation and sexual abuse". In particular, the Individual contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

The Individual contractor acknowledges and agrees that any breach of any of the provisions hereof shall constitute a breach of an essential term of the Contract, and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for suspension or termination of the Contract. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the foregoing standards of conduct or any other terms of the Contract to the relevant national authorities for appropriate legal action.

**3. TITLE RIGHTS, COPYRIGHTS, PATENTS AND OTHER PROPRIETARY RIGHTS:** Title to any equipment and supplies that may be furnished by UNDP to the Individual contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment and supplies shall be returned to UNDP at the conclusion of the Contract or when no longer needed by the Individual contractor. Such equipment and supplies, when returned to UNDP, shall be in the same condition as when delivered to the Individual contractor, subject to normal wear and tear, and the Individual contractor shall be liable to compensate UNDP for any damage or degradation of the equipment and supplies that is beyond normal wear and tear.

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 Individual contractor has developed for 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 Individual contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Individual contractor: (a) that pre-existed the performance by the Individual contractor of his or her obligations under the Contract, or (b) that the Individual contractor may develop or acquire, or may have developed or acquired, independently of the performance of his or her obligations under the Contract, UNDP does not and shall not claim any ownership interest thereto, and the Individual contractor grants to 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. At the request of UNDP, the Individual contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNDP in compliance with the requirements of the applicable law and of the Contract. 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 Individual contractor under the Contract shall be the property of UNDP, shall be made available for use or inspection by 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 services under the Contract.

**4. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that are considered proprietary by either UNDP or the Individual contractor or that are delivered or disclosed by one of them ("Discloser") to the other ("Recipient") during the course of performance of the Contract, and that are designated as confidential ("Information"), shall be held in confidence and shall be handled as follows. The Recipient of such Information shall 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 the Recipient may otherwise use the Discloser's Information solely for the



purpose for which it was disclosed. The Recipient may disclose confidential Information to any other party with the Discloser's prior written consent, as well as to the Recipient's officials, representatives, employees, subcontractors and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Contract. Subject to and without any waiver of the privileges and immunities of UNDP, the Individual contractor may disclose Information to the extent required by law, *provided that* the Individual contractor will give UNDP sufficient prior notice of a request for the disclosure of Information in order to allow UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. UNDP may disclose Information to the extent required pursuant to the Charter of the United Nations, resolutions or regulations of the General Assembly or its other governing bodies, or rules promulgated by the Secretary-General. 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. 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. Notwithstanding the foregoing, the Individual contractor acknowledges that UNDP may, in its sole discretion, disclose the purpose, type, scope, duration and value of the Contract, the name of the Individual contractor, and any relevant information related to the award of the Contract.

**5. TRAVEL, MEDICAL CLEARANCE AND SERVICE INCURRED DEATH, INJURY OR ILLNESS:** If the Individual contractor is required by UNDP to travel beyond commuting distance from the Individual contractor's usual place of residence, and upon prior written agreement, such travel shall be at the expense of UNDP. Such travel shall be at economy fare when by air.

UNDP may require the Individual contractor to submit a "statement of good health" from a recognized physician prior to commencement of services in any offices or premises of UNDP, or before engaging in any travel required by UNDP, or connected with the performance of the Contract. The Individual contractor shall provide such a statement as soon as practicable following such request, and prior to engaging in any such travel, and the Individual contractor warrants the accuracy of any such statement, including, but not limited to, confirmation that the Individual contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

In the event of death, injury or illness of the Individual contractor which is attributable to the performance of services on behalf of UNDP under the terms of the Contract while the Individual contractor is traveling at UNDP expense or is 2 February 2012 performing any services under the Contract in any offices or premises of UNDP, the Individual contractor or the Individual contractor's dependents, as appropriate, shall be entitled to compensation equivalent to that provided under the UNDP insurance policy, available upon request.

**6. PROHIBITION ON ASSIGNMENT; MODIFICATIONS:** The Individual contractor may not assign, delegate, transfer, pledge or make any other disposition of the Contract, of any part thereof, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licenses or other forms of Contract concerning any goods or services to be provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute a contract by UNDP thereto, unless any such undertakings, licenses or other forms of contract are the subject of a valid written undertaking by UNDP. No modification or change in the Contract shall be valid and enforceable against UNDP unless provided by means of a valid written amendment to the Contract signed by the Individual contractor and an authorized official or appropriate contracting authority of UNDP.

**7. SUBCONTRACTORS:** In the event that the Individual contractor requires the services of subcontractors to perform any obligations under the Contract, the Individual contractor shall obtain the prior written approval of UNDP for any such subcontractors. UNDP may, in its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefore, and such rejection shall not entitle the Individual contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of his or her obligations under the Contract. The Individual contractor shall be solely responsible for all services and obligations performed by his or her subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

**8. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS:** The Individual contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNDP, nor shall the Individual contractor, in any manner whatsoever, use the name, emblem or official seal of UNDP, or any abbreviation of the name of UNDP, in connection with his or her business or otherwise without the written permission of UNDP.

**9. INDEMNIFICATION:** The Individual contractor shall indemnify, defend, and hold and save harmless UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to: (a) allegations or claims that the use by UNDP of any patented device, any copyrighted material or any other goods or services provided to UNDP for its use under the terms of the Contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or (b) any acts or omissions of the Individual contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

**10. INSURANCE:** The Individual contractor shall pay UNDP promptly for all loss, destruction or damage to the property of UNDP caused by the Individual contractor, or of any subcontractor, or anyone directly or indirectly employed by them in the performance of the Contract. The Individual contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his or her obligations under the Contract, as well as for



arranging, at the Individual contractor's sole expense, such life, health and other forms of insurance as the Individual contractor may consider to be appropriate to cover the period during which the Individual contractor provides services under the Contract. The Individual contractor acknowledges and agrees that none of the insurance arrangements the Individual contractor shall, in any way, be construed to limit the Individual contractor's liability arising under or relating to the Contract.

**11. ENCUMBRANCES AND LIENS:** The Individual contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNDP against any monies due to the Individual contractor or to become due for any work donor or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Individual contractor.

**12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:** In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Individual contractor shall give notice and full particulars in writing to UNDP of such occurrence or cause if the Individual contractor is thereby rendered unable, wholly or in part, to perform his or her obligations and meet his or her responsibilities under the Contract. The Individual contractor shall also notify UNDP of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with the performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in conditions or occurrence, the Individual contractor shall also submit a statement to UNDP of estimated expenditures that will likely be incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, UNDP shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Individual contractor of a reasonable extension of time in which to perform any obligations under the Contract or suspension thereof.

*Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Individual contractor. The Individual contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Individual contractor must perform in or for any areas in which UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delay 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.

**13. TERMINATION:** Either party may terminate the Contract, in whole or in part, upon giving written notice to the other party. The period of notice shall be five (5) days in the case of contracts for a total period of less than two (2) months and fourteen (14) days in the case of contracts for a longer period. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract. UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that: (a) the Individual contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, applies for moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent; (b) the Individual contractor is granted a moratorium or a stay or is declared insolvent; (c) the Individual contractor makes an assignment for the benefit of one or more of his or her creditors; (d) a Receiver is appointed on account of the insolvency of the Individual contractor; (e) the Individual contractor offers a settlement in lieu of bankruptcy or receivership; or (f) UNDP reasonably determines that the Individual contractor has become subject to a materially adverse change in financial condition that threatens to endanger or otherwise substantially affect the ability of the Individual contractor to perform any of the obligations under the Contract.

In the event of any termination of the Contract, upon receipt of notice of termination by UNDP, the Individual contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing: (a) take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum; (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice; (c) deliver all completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to UNDP thereunder; (d) complete performance of the services not terminated; and (e) take any other action that may be necessary, or that UNDP may direct in writing, for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Individual contractor and in which UNDP has or may be reasonably expected to acquire an interest.

In the event of any termination of the Contract, UNDP shall only be liable to pay the Individual contractor compensation on a pro rata basis for no more than the actual amount of work performed to the satisfaction of UNDP in accordance with the requirements of the Contract. Additional costs incurred by UNDP as a result of termination of the Contract by the Individual contractor may be withheld from any amount otherwise due to the Individual contractor by UNDP.

**14. NON-EXCLUSIVITY:** UNDP shall have no obligation respecting, and no limitations on, its right to obtain goods of the same kind, quality and quantity, or to obtain any services of the kind described in the Contract, from any other source at any time.

**15. TAXATION:** Article II, section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, 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 exemptions of the United Nations from such taxes, restrictions, duties or charges, the Individual contractor shall immediately consult with UNDP to determine a mutually acceptable procedure. UNDP shall have no liability for taxes, duties or other similar charges payable by the Individual contractor in respect of any amounts paid to the Individual contractor under this Contract, and the Individual contractor acknowledges that UNDP will not issue any statements of earnings to the Individual contractor in respect of any such payments.



**16. AUDITS AND INVESTIGATIONS:** Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP. The Individual contractor acknowledges and agrees that UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, and the obligations performed thereunder.

The Individual contractor shall provide full and timely cooperation with any post-payment audits or investigations hereunder. Such cooperation shall include, but shall not be limited to, the Individual contractor's obligation to make available any relevant documentation and information for the purposes of a post-payment audit or an investigation at reasonable times and on reasonable conditions. The Individual contractor shall require his or her employees, subcontractors and agents, if any, including, but not limited to, the Individual contractor's attorneys, accountants or other advisers, to reasonably cooperate with any post-payment audits or investigations carried out by UNDP hereunder.

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

The Individual contractor shall refund to UNDP any amounts shown by a post-payment audit or investigation to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. Such amount may be deducted by UNDP from any payment due to the Individual contractor under the Contract.

The right of UNDP to conduct a post-payment audit or an investigation and the Individual contractor's obligation to comply with such shall not lapse upon expiration or prior termination of the Contract.

**17. SETTLEMENT OF DISPUTES:**

**AMICABLE SETTLEMENT:** UNDP and the Individual contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the 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 Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the parties in writing.

**ARBITRATION:** Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties 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.

**18. LIMITATION ON ACTIONS:** Except with respect to any indemnification obligations in Article 9, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 17, above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.

The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

**19. PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.