



**TERMS OF REFERENCE  
INDIVIDUAL CONSULTANT PROCUREMENT NOTICE  
International GEF Project Design Specialist**

Date: 18 December 2015

<b>Country</b>	Botswana
<b>Description of the assignment</b>	Local Lead Consultant
<b>Project Name</b>	Managing the human-wildlife interface to sustain the flow of agro-ecosystem services and prevent illegal trafficking of wildlife in the Kgalagadi and Gantsi Drylands
<b>Period of assignment / services</b>	12 weeks over a period of 10 Months
<b>Deadline for submission of proposal</b>	4 <sup>th</sup> January 2016

## **1. BACKGROUND**

As part of its commitment to protecting Botswana's biodiversity, especially its wildlife species, and promote the role of natural resources in contributing to the livelihoods and well-being of rural communities, particularly those residing close to protected areas, the Government of Botswana has made a decision to allocate the entire Biodiversity and Land Degradation Focal Area resources earmarked by the Global Environment Facility (GEF) for development of one Full Sized Project titled *Managing the human-wildlife interface to sustain the flow of agro-ecosystem services and prevent illegal wildlife trafficking in the Kgalagadi and Ghanzi Drylands*. The government has further identified the United Nations Development Programme (UNDP) as the GEF Agency to support the development and implementation of this project over a five-year period. Due to its contribution to addressing the global crisis on poaching and illegal trafficking of endangered wildlife species, the said project form will form part of a Global Wildlife Partnership on Wildlife Conservation and Crime Prevention for Sustainable Development, a partnership

of 20 similar projects coordinated by the World Bank Group and UNDP globally, with a total of 18 countries from across Africa and Asia participating<sup>1</sup>.

The GEF, through UNDP, has approved a grant for Botswana to prepare a GEF CEO Endorsement Request and a UNDP Project Document outlining the strategy for implementing the project on ‘Managing the human-wildlife interface to sustain the flow of agro-ecosystem services and prevent illegal wildlife trafficking in the Kgalagadi and Ghanzi Drylands’ for the GEF Council to consider for approval at its October 2016 Council Meeting. The total grant to be requested from the GEF is \$6,000,000 to be implemented over a period of 5 years.

In light of this, UNDP Botswana and the Ministry of Environment, Wildlife and Tourism’s Department of Wildlife and National Parks (DWNP), in collaboration with the Departments of Environmental Affairs (DEA) and the Department of Forestry and Range Resources (DFRR) are launching the process of developing the proposal to the GEF and are seeking several individual consultants to conduct baseline studies and stakeholder consultations in the project area (Kgalagadi and Ghanzi Districts). The consultants sought are as follows: Land-Use Planning and NRM Specialist (to also act as Lead National Consultant); Wildlife Management Specialist; Range Management Specialist; and Sustainable Livelihoods and NRM Specialist. These consultants will be recruited at a national level (i.e. from within Botswana) and be coordinated by an International UNDP/GEF Project Design Specialist. Collectively, they will make contributions to the development of Full-Sized UNDP Project Document (PRODOC) and a GEF CEO Endorsement Request using templates to be provided by UNDP. The UNDP/GEF Regional Coordination Unit will facilitate further contributions for region-based Technical Advisors and an International Wildlife Management and Policy Specialist to ensure close linkages to the Global Wildlife Programme as agreed with between the World Bank and UNDP at the global level.

## **2. Scope of Work**

The Land Use Planning and NRM Specialist will be the overall lead expert for project preparation at the national level, working closely with the International GEF Project Design Specialist, and coordinating the national consultants/experts. The Specialist will also be responsible for conducting the review of the policy, legal and institutional frameworks for dryland ecosystem management, rangeland management and protected area management/wildlife management in Botswana’s dryland areas (Component 1). The Specialist will in particular lead on the following tasks:

### **a. Coordination of baseline studies and informational gap analysis:**

- Current use and management practices of rangeland resources; extent of land degradation and bush encroachment;
- Government, private sector and farmer investments in SLM within rangelands of Kgalagadi and Ghanzi Districts;
- An assessment of the threats to the range resources emanating from unsustainable utilisation of range resources in the surrounding areas;

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<sup>1</sup> The partnership is expected to a total of 18 countries over the coming months.

- An analysis of the current financial investments in SLM and the level of coordination of SLM financing. This review will generate a consolidated and detailed picture on the status of SLM financing in the Kgalagadi and Ghanzi District.
- Market analysis and opportunities for alternative income generating activities for local communities in communal areas;
- Targets and indicators linked to the project interventions, including those specified in the LD and BD Tracking Tools;
- An inventory of policies and plans guiding the management of range resources including shortcomings and gaps that may affect the efficacy of project activities proposed, and recommendations on how to mitigate these constraints;
- An analysis of climate change scenarios, likely impacts on livelihoods, livestock production and its implications on project interventions and their sustainability;
- A gender analysis to identify the relationships between the various groups (men, women, youth) to natural resources, and the influence these relations have on control and access to resources, natural resource management, and implications to the project initiatives.

b. Assessment of the capacity of different agencies to engage in mainstreaming sustainable land management into land use and livestock production, wildlife management (including addressing wildlife crime) and implementation of other project activities.

This component is relevant for all PIF outcomes, and is designed to ensure that implementation arrangements, partnership strategies and capacities are in place and adequate for the successful project implementation and its sustainability. Data will be collected on:

At communal farming level: Analysis of governance and organization at community level, focusing particularly on existing mechanisms for planning, monitoring and regulation of rangeland management and their effectiveness;

Policy and regulatory framework: Analysis of the institutional arrangements and agencies of governance and their capacity, focusing particularly on existing mechanisms for planning, monitoring and regulation of Sustainable Land Management and their effectiveness;

At private commercial farming level: Analysis of the existing capacity for SLM and the current management practices including their effectiveness;

At civil society organisations level: Analysis of civil society organisations, their capacity in terms of resources and their governance and organization, particularly their effectiveness as it relates to SLM and biodiversity conservation;

At district administration level: Analysis of the capacity of institutions (state and local authorities) to effectively plan and implement SLM and biodiversity conservation interventions and monitor their impact;

Identification of needs and opportunities for strengthening SLM at each of the above levels;

Development of recommendations of how these can be improved; how to set up effective district coordination mechanisms in order for the project to be implemented successfully, including how the role of indigenous knowledge, involvement of youth and gender issues will be incorporated.

The work will also entail assisting the International GEF Project Design Specialist in preparing the Project Document (PRODOC) and GEF CEO Endorsement Request. The local lead consultant will also ensure the completeness of the required annexes to the CEO Endorsement Request i.e. LD tracking tools PMAT Capacity scorecards; co-financing letters, and last but not least, the consultant will address UNDP, STAP, GEF Secretariat and GEF Council comments as applicable.

Specifically, PRODOC preparation will consist of the following:

- Articulation of the Project Strategy/Logframe- This will include further definition of project outcomes, outputs and activities informed by the baseline studies; project risks mitigation measures; indicators and quantified targets;
- Institutional arrangements to support project implementation- describing roles and responsibilities of the different institutions;
- Budget: Costing of the expected outcomes and outputs;
- Monitoring strategy for the project to track project progress and effectiveness;
- Assessment of the alternatives to the project strategy and establishing the cost-effectiveness analysis of the preferred strategy and suite of activities;
- Assessment of social aspects- including gender aspects;
- Co-financing sources and secure commitments;
- GEF Tracking Tools; and
- ToRs for the key consultants/contracts to be employed by the project.

c. Coordinate the design of a locally-driven multi-stakeholder biodiversity monitoring program, including a wildlife enforcement program (Component 4) through contributions from the other national specialists (NC 2, NC3 and NC4).

#### **Qualifications:**

Interested candidates should possess a high-level of experience in developing project documents particularly for UNDP or GEF, preferably in the area of Sustainable Land Management and Natural Resources Planning or disciplines related chiefly to natural resources management. This should include proven ability to verify, critically analyse data and information and to present finished work with a high degree of accuracy and technical quality in a relatively short time.

The minimum qualifications are as follows:

- An advanced degree (i.e. Masters or equivalent) in Natural Resource Management or related work.
- Ability to communicate effectively orally and in writing, in order to communicate complex, technical information to both technical and policy and general audiences, including strong policy advice skills.
- Full command of and fluency in English, with a high degree of proficiency in writing in this language is a requirement.
- Full command of and fluency in Setswana proven international and/or national experience in preparing strategic programmes.

### **3. Payment Milestones**

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

%	Milestone
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10%	On submission and approval of an Inception Report detailing <ul style="list-style-type: none"> <li>i. Work plan for carrying out the assignment</li> <li>ii. Step – by – step approach for conducting the baseline studies and stakeholder consultations as per the ToRs.</li> <li>iii. Outline for the reports</li> </ul>
20%	On submission and presentation of the draft baseline studies report/s (as per the ToRs) to a stakeholder workshop and subsequent incorporation of stakeholder comments.
40%	On submission and approval of final draft of PRODOC and GEF CEO Endorsement Request incorporating comments from validation workshop and UNDP/GEF
30%	On approval of the PRODOC and GEF CEO Endorsement Request by UNDP/GEF and GEF Secretariat

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

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

- a. Offeror's letter to the UNDP confirming interest and availability for the contract assignment
  - I. Explain why they are the most suitable for the work.
  - II. Articulate understanding of natural resource management/drylands issues in the context of Botswana.
  - III. Articulate understanding of biodiversity conservation and land degradation and sustainable land management/land use planning issues in Botswana.
  - IV. Provide a brief description on how to approach the task, individually and as part of a team, potential sources of information.
- b. All-inclusive financial proposal (daily rate) proposal
- c. Personal CV including past experience in similar or related projects sponsored by the government or donor agencies.
- d. Provide at least 3 referees (CONTACTS)

#### **5. FINANCIAL PROPOSAL**

##### **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).

#### **6. 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 Individual Consultant 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.

## 7. EVALUATION

Individual consultants will be evaluated based on the following methodology:

### a. Cumulative analysis

When using this weighted scoring method, the award of the contract will 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

Criteria	Weight	Max. Point
<b><u>Technical Evaluation</u></b>		
<b>Criteria A:</b> Qualifications (academic & technical, minimum university degree)	10	10
<b>Criteria B:</b> Adequate work experience	20	20
<b>Criteria C:</b> Complete Consultancy package submitted (Technical and Financial Proposal)	5	5
<b>Criteria D: Context</b> - Knowledge of Biodiversity and Land Degradation Focal Areas of the GEF 6 Strategy	10	10
<b>Criteria E: Technical Competence</b> - Knowledge of biodiversity conservation, land degradation and land use planning and management	20	20

issues in Botswana, particularly in dryland ecosystems		
<b>Criteria F: Relevant Professional /Work Experience</b> - Experience in natural resources management and development and management of donor-funded projects, in particular GEF-funded projects	20	20
<b>Criteria G: Approach</b> - Demonstrated understanding of the assignment; and response to the terms of reference.	10	10
<b>Criteria H: Presentation &amp; Packaging</b> – good writing, interpretation and communication skills.	10	10

## 8. SUBMISSION REQUIREMENTS

Proposals should be submitted in a sealed envelope clearly labeled: *‘Managing the human-wildlife interface to sustain the flow of agro-ecosystem services and prevent illegal trafficking of wildlife in the Kgalagadi and Gantsi Drylands’* and be submitted to:

*The Resident Representative*  
*United Nations Development Programme*  
*P.O. Box 54*  
*Gaborone, Botswana* **OR** by email to [procurement.bw@undp.org](mailto:procurement.bw@undp.org)

## 9. SUBMISSION DATE

Proposals should be submitted to the address above no later than **12:00 noon** Botswana Time on the **4<sup>th</sup> January 2016**

**10. REQUEST FOR CLARIFICATION:** Any request for clarification must be sent in writing, or by standard electronic communication to [enquiries.bw@undp.org](mailto:enquiries.bw@undp.org) UNDP Botswana will respond in writing or by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of the inquiry to all prospective candidates.

**NOTE:** *Consultancy firms/companies interested in applying for this assignment are free to do so provided they submit a CV of only one qualified consultant and present its bid in a manner that would allow for evaluation of the bid in accordance with the evaluation criteria specified in these*

solicitation documents. That is, the experience required is that of the individual whose CV would have been submitted by the company rather than that of the company. In this regard, the company by submitting a CV is bidding as an individual bidder rather than a company/firm. Further, if the submitted bid wins, the ensuing contract will be between the UNDP and the company/firm, not the individual.

## **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.