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GHANA

## **INDIVIDUAL CONTRACT (IC) PROPOSAL SUBMISSION FORM**

### **RECRUITMENT OF INDIVIDUAL CONTRACTOR (IC) AS A RAPPORTEUR FOR "GHANA'S NATIONALLY DETERMINED CONTRIBUTIONS INVESTMENT FORUM"**

**Procurement Notice Ref. No.: UNDP/GHA/2019/029/IC**

**Published (Posted on): February 21, 2019**

**Submission Deadline: February 27, 2019 @ 4:30 PM in the  
Afternoon (UTC+00:00) Accra/Monrovia  
Time Zone**

*Note: those who submit afterwards will  
automatically be rejected. Proposers are strongly  
advised to meet the submission deadline and avoid  
IT related glitch while sending to secured email at  
last hour due to File size limitation, internet down,.*



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## INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Procurement Notice Ref. No.: UNDP/GHA/2019/029/IC

Date: February 21, 2019

Country: Ghana

Description of the Assignment: **RECRUITMENT OF INDIVIDUAL CONTRACTOR (IC)  
AS A RAPPOREUR FOR "GHANA'S NATIONALLY  
DETERMINED CONTRIBUTIONS INVESTMENT FORUM"**

Name of Agency: UNDP

Post Title: National Consultant

Period of Assignment/Services: 10 days

Proposal should be submitted no later than **February 27, 2019 at 4:30 PM in the Afternoon, UTC+00:00 Accra/Monrovia Time Zone** via the secure email address:

**[bids.gh@undp.org](mailto:bids.gh@undp.org)**

Your technical and financial proposals shall be sent **into two separate files but in one email** under Subject Line: UNDP-GHA-2018-029-IC

**The File Name for Technical and Financial Proposals MUST BE:**

1. **For Technical:** UNDP-GHA-2019-029 -IC - TP - [insert your name]
2. **For Financial** -UNDP-GHA-2019-029-IC- FP - [insert your name]

Any request for clarification and/or additional information on this Procurement Notice shall be sent in writing to UNDP Ghana Country Office or send standard electronic communication to the Contact Person e-mail at [procurement.gh@undp.org](mailto:procurement.gh@undp.org) **(please note that it is only dedicated for enquiry and confirmation for proposal submission. Do not submit both Technical and Financial proposals to this account. If you**  
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**UNDP-GHA-2019-029-IC: RECRUITMENT OF INDIVIDUAL  
CONTRACTOR (IC) AS A RAPPOREUR FOR "GHANA'S NATIONALLY  
DETERMINED CONTRIBUTIONS INVESTMENT FORUM"**

**do so, your proposals will be rejected and UNDP will not be accountable for it).** While the Procurement Unit would endeavour to provide clarification expeditiously, only requests receiving at least 5 days period to the submission deadline will be entertained. The procuring UNDP entity will respond in writing by standard electronic mail, including an explanation of the query without identifying the source of inquiry, to all consultants. Any delay in providing such information will not be considered as a reason for extending the submission deadline.

## **I. BACKGROUND**

At the UN climate change conference in Paris in December 2015, 196 countries adopted the Paris Agreement – the first ever, legally binding universal pact that sets out a global action plan for limiting global warming to “well below 2°C” starting from 2020. This Paris Agreement requires all Parties to put forward their best efforts in a form of Nationally Determined Contributions (NDCs) and to accelerate these efforts in the years ahead. This includes requirements that all countries report regularly on their emissions and on their implementation efforts.

Ghana is one of the countries, despite little historical contribution to today’s negative impact of climate change, who demonstrate commitment both nationally and globally to pursue coordinated actions to reduce the negative impacts of climate change on its citizenry and to create a low carbon emission development pathway. Ghana has been making best endeavours to finalise and present its ambitious NDCs soon on the basis of the Intended Nationally Determined Contributions (INDC) plan containing a set of 31 climate actions covering seven sectors with a budget of \$22.6 billion for 10 year period starting from 2020.

*For detailed information, please refer to Annex I- Terms of Reference (ToR) attached separately*

## **II. SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION**

The main objective of the assignment is to support the preparation and organisation of the Gh-NDC Investment Forum.

*For detailed information, please refer to Annex I- Terms of Reference (ToR) attached separately*

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

### **Education:**

- Master’s degree in a relevant field such as banking, economics, finance, business administration, social science, or related areas.

### **Work Experience:**

- At least 7 years work experience in Banking and Finance;
- Demonstrated profound understanding of financing in relation to Paris Agreement including Nationally Determined Contributions and Sustainable Development Goals;



- Certified Financial Analyst is an asset;
- Experience and/or familiarity with the work of UNDP and/or other multilateral, bilateral and civil society development partners;
- Excellent communication skills with analytical ability to express ideas clearly, concisely and effectively, both orally and in writing;
- Fluency in English;
- Demonstrated ability to work in an independent manner.

**Language:**

- Fluency in written and spoken English;
- Capacity to communicate fluently with different stakeholders (civil society, government authorities, traditional authorities, local communities, project staff);
- Knowledge of UN official languages is an asset.

**Functional Competencies:**

- Excellent analytical and organizational skills;
- Excellent oral and written communication skills, with analytic capacity and demonstrated ability to synthesize complex information in high quality papers/reports and in effective presentations to different audiences;
- Skills in note taking and news gathering;
- Exercise the highest level of responsibility and can handle confidential and politically sensitive issues in a responsible and mature manner.

**Core Competencies:**

- Demonstrates integrity by modelling the UN's values and ethical standards;
- Promotes the vision, mission, and strategic goals of UNDP;
- Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability;
- Treats all people fairly without favouritism;
- Fulfils all obligations to gender sensitivity and zero tolerance for sexual harassment.

**Important Note:**

The Consultant is required to have the above mentioned professional and technical qualifications. Only the applicants who hold these qualifications will be shortlisted and contacted.

**IV. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE TECHNICAL PROPOSALS**

Interested offeror/Individual Consultant (IC) must submit the following documents before the deadline stipulated in the IC Procurement Notice. Such documents are:

- Technical Proposal as per the prescribed format (see template in Annex II), which includes Duly Signed Offeror's Letter to UNDP Confirming Interest and Availability, Duly Signed Personal CV and Duly signed Personal History Form (P 11)
- Financial Proposal as per prescribed format (see template in Annex III)

## V. FINANCIAL PROPOSAL

### LUMP-SUM CONTRACTS

The Financial Proposal shall specify a total lump-sum amount **all-inclusive**<sup>1</sup>, and payment terms around specific and measurable (qualitative and quantitative) deliverables (i.e. whether payments fall in installments or upon completion of the entire contract). 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 travel, per diems, and number of anticipated working days).

## VI. EVALUATION

Upon the advertisement of the Procurement Notice, qualified Individual Consultant is expected to submit both the Technical and Financial Proposals. Accordingly; Individual Consultants will be evaluated based on Cumulative Analysis as per the following scenario:

- Responsive/compliant/acceptable, and
- Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation. In this regard, the respective weight of the proposals are:
  - a. Technical Criteria weight is 70%
  - b. Financial Criteria weight is 30%

### Technical criteria (70%):

Criteria	Weight	Max. Point
<b>Technical Competence (based on CV, Proposal and interview (if required))</b>	<b>70%</b>	<b>100</b>
▪ Master's degree in a relevant field such as banking, economics, finance, business administration, social science, or related areas	20	20 pts
▪ At least 7 years work experience in Banking and Finance with engagement/dealing with SMEs	20	30 pts
▪ Knowledge, past experience and/or proven track record of rapporteur activity backed up by proven evidence of high level engagement of rapporteuring	15	15 pts

<sup>1</sup> The term "All inclusive" implies that all costs (professional fees, travel costs, living allowances, communications, consumables, etc.) that could possibly be incurred by the Contractor are already factored into the final amounts submitted in the proposal  
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▪ Knowledge of and experience in climate change, environment, Nationally Determined Contributions (NDCs) and Sustainable Development Goals (SDGs)	10	10 pts
▪ Participation in a course for, or possession of Certificate, of Certified Financial Analyst is an asset	5	5 pts
<b>Financial (Lower Offer/Offer*100)</b>	<b>30%</b>	<b>100</b>
<b>Total Score</b>	<b>Technical Score * 70% + Financial Score * 30%</b>	

**Evaluation legend:**

Weight per Technical Competence	
Weak: below 70%	The individual consultant/contractor has demonstrated a <b>WEAK</b> capacity for the analyzed competence
Satisfactory: 70-75%	The individual consultant/contractor has demonstrated a <b>SATISFACTORY</b> capacity for the analyzed competence
Good: 76-85%	The individual consultant/contractor has demonstrated a <b>GOOD</b> capacity for the analyzed competence
Very Good: 86-95%	The individual consultant/contractor has demonstrated a <b>VERY GOOD</b> capacity for the analyzed competence
Outstanding: 96-100%	The individual consultant/contractor has demonstrated an <b>OUTSTANDING</b> capacity for the analyzed competence.

**ANNEXES**

ANNEX I - Terms of References (ToR) attached separately

ANNEX II - Template for Technical Proposal along with Offeror's Letter to UNDP Confirming Interest and Availability attached separately

ANNEX III – Template for Financial Proposal attached separately

ANNEX IV - General Conditions of Contract: For the Services of Individual Contractors (IC)

ANNEX V- Personal History Form attached separately

Yours sincerely,

  
**Rokya Ye Dieng**  
**Deputy Resident Representative (Operations)**  
**United Nations Development Programme**  
**(UNDP) - Accra, Ghana**

## INSTRUCTION TO OFFERORS

No.	Data	Specific Instructions / Requirements
1	Country / Region of Work Location:	<input checked="" type="checkbox"/> Ghana
2	Language of the Proposal:	<input checked="" type="checkbox"/> English
3	Period of Proposal Validity commencing on the submission date	<input checked="" type="checkbox"/> 60 days
4	Preferred Currency of Proposal and Method for Currency conversion	<input checked="" type="checkbox"/> GHC
5	Deadline for submitting requests for clarifications/ questions	<input checked="" type="checkbox"/> Two (2) days before the submission date
6	Contact Details for submitting clarifications/questions	<input checked="" type="checkbox"/> Focal Person in UNDP Procurement Team <input checked="" type="checkbox"/> Address: United Nations Development Programme (UNDP) UN House No. 7 Ring Road, near Fire Service HQ; 6th Floor; North Wing; Accra, Ghana <input checked="" type="checkbox"/> Facsimile: +233 302 215 670 / +233 302 773 899 <input checked="" type="checkbox"/> P.O. Box: 1423 <input checked="" type="checkbox"/> E-mail address dedicated for this purpose: <a href="mailto:procurement.gh@undp.org">procurement.gh@undp.org</a> <b>(only for enquiry/request for clarification)</b> <input checked="" type="checkbox"/> Any delay in UNDP's response shall be not used as a reason for extending the deadline for submission, unless UNDP determines that such an extension is necessary and communicates a new deadline to the Proposers.
7	Manner of Disseminating Supplemental Information to the IC and responses/clarifications to queries	<input checked="" type="checkbox"/> Direct communication to prospective Bidders by email - <a href="mailto:procurement.gh@undp.org">procurement.gh@undp.org</a>
8	Allowable Manner of Submitting Proposals	<input checked="" type="checkbox"/> Electronic submission of Bid <b><a href="mailto:bids.gh@undp.org">bids.gh@undp.org</a></b>

No.	Data	Specific Instructions / Requirements
9	<b>Proposal Submission Address</b>	<input checked="" type="checkbox"/> Via our secured mail address: <b><u><a href="mailto:bids.gh@undp.org">bids.gh@undp.org</a></u></b>
10	Deadline of Submission	<input checked="" type="checkbox"/> Date and Time: February 27, 2019 @ 4:30 PM in the Afternoon <input checked="" type="checkbox"/> Time Zone: (UTC+00:00) Accra/Monrovia
11	Conditions and Procedures for <b>electronic submission</b> and opening, if allowed	<input checked="" type="checkbox"/> Official Address for e-submission: <b><u><a href="mailto:bids.gh@undp.org">bids.gh@undp.org</a></u></b> <input checked="" type="checkbox"/> Free from virus and corrupted files  <input checked="" type="checkbox"/> Format: <b>PDF files only</b> <input checked="" type="checkbox"/> For electronically transferred data, the maximum capacity is <b>9MB</b> . Thus, if the size of the file is greater than <b>9MB</b> attach them with two or more email. <input checked="" type="checkbox"/> No. of copies to be transmitted: <b>only One</b> , do not send the proposals time and again to avoid confusion in locating the right proposals. UNDP/Procurement Unit will not be liable for failing to locate a right proposal owing to repetitively sending revised proposals. <input checked="" type="checkbox"/> <b>Subject of email (Mandatory):</b> your proposals shall be sent <b>into two separate files but in one email</b> under <b>Subject Line: UNDP-GHA-2019-029-IC</b> <input checked="" type="checkbox"/> <b>Proposals File Name (Mandatory): The File Name for Technical and Financial Proposals MUST BE:</b> 3. <b>For Technical</b> – <u>UNDP-GHA-2019-029-IC - TP - [insert your name]</u> 4. <b>For Financial</b> – <u>UNDP-GHA-2019-029-IC - FP - [insert your name]</u> <input checked="" type="checkbox"/> For failing and/or incorrectly state the <b>above subject line</b> may result in failing to exactly locate your proposals as the Procurement Unit processes several of such type proposal invitations at a time and will not be liable for any consequences thereof. <input checked="" type="checkbox"/> <b>COMPULSORY: Once you submitted your proposals electronically to designated Secured Email; kindly confirm same (<u>without attaching the proposals for the purpose keeping its integrity</u>) to the Focal Person. The Attn: Procurement Team at <u>procurement.gh@undp.org</u></b> <b>Your confirmation is important in order to ensure all Proposing Firms' Quotations are not missed and considered for subsequent Technical Evaluation.</b>



No.	Data	Specific Instructions / Requirements
13	Evaluation method to be used in selecting the most responsive Proposal	<input checked="" type="checkbox"/> Combined Scoring Method, using the 70%-30% distribution for Technical and Financial proposals, respectively, where the minimum passing score of technical proposal is 70%
14	Post-Qualification Actions	<input checked="" type="checkbox"/> Inquiry and background checking with referees or any other entity that may have done business with the offeror.



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## GENERAL CONDITIONS OF CONTRACT

### For the Services of Individual Contractors (IC)

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#### 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 s/he 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 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 done 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.

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