



## REQUEST FOR PROPOSAL (RFP)

NAME & ADDRESS OF FIRM	DATE: September 3, 2019
	REFERENCE: 2019/UNDP-MMR/PN/081

Dear Sir / Madam:

We kindly request you to submit your Proposal for **Sector-Wide Impact Assessment of the Rubber Industry in Myanmar.**

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

Proposals may be submitted on or before **Friday, September 20, 2019** and via email, courier mail or fax to the address below:

**United Nations Development Programme (Myanmar)  
No.6, Natmauk Road, Tamwe Township, Yangon  
Ms. Payal Suri, Programme Support Unit Team Leader**

The proposal and accompanying documents should be applied through UNDP [bid.mm@undp.org](mailto:bid.mm@undp.org), as an alternative option (or e-tendering <https://etendering.partneragencies.org>).

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

In the course of preparing your Proposal, it shall remain your responsibility to ensure that it reaches the address above on or before the deadline. Proposals that are received by UNDP after the deadline indicated above, for whatever reason, shall not be considered for evaluation. If you are submitting your Proposal by email, kindly ensure that they are signed and in the .pdf format, and free from any virus or corrupted files.

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

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

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

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

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

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

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

<http://www.undp.org/content/undp/en/home/operations/procurement/business/protest-and-sanctions.html>

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

UNDP implements a zero tolerance on fraud and other proscribed practices, and is committed to preventing, identifying and addressing all such acts and practices against UNDP, as well as third parties involved in UNDP activities. UNDP expects its Service Providers to adhere to the UN Supplier Code of Conduct found in this link :

[https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unsccl/conduct\\_english.pdf](https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unsccl/conduct_english.pdf)

Thank you and we look forward to receiving your Proposal.

Sincerely yours,



Krishna Raj Adhikari

Common Services and Transaction Services Team Leader  
9/3/2019

## Description of Requirements

Context of the Requirement	Sector-Wide Impact Assessment of the Rubber Industry in Myanmar
Implementing Partner of UNDP	Partnership between the Government of Italy and the United Nations Development Programme to support REDD+ implementation in critical Forested Countries
Brief Description of the Required Services	<p>This activity, the aim is to gain an improved understanding of the linkages between rubber production systems in Myanmar and multiple sustainable development objectives in the development of national low-carbon development pathways, incorporating REDD+.</p> <p>Rubber is traditionally produced by smallholders in the south, but the recent growth in rubber production in the north is mainly by large-scale investors and in large plantations. Rubber sector contributes in a significant manner to employment, rural development and, more recently, export earnings. Myanmar ranks ninth in the world among rubber production countries. However, the level of value addition of the sector in Myanmar remains extremely low. When compared with the planting area, the production levels of rubbers across the country are very low. The majority of the rubber production has been oriented towards export to China for further transformation in manufacturing.</p> <p>A scoping study on rubber has previously been conducted by the Myanmar Centre for Responsible Business (MCRB), which included an overview of the rubber sector in Myanmar and the value chain development of rubber production, processing and marketing; identified linking of stakeholders; and the types of environmental, economic and social impacts, as well as human rights impact that could be assessed.</p> <p>UNDP is now recruiting a Myanmar-based organization to develop the scoping study into a full “sector wide impact assessment” (SWIA).</p> <p>SWIAs are intended for a wide audience, including government and parliamentarians, business, local communities, civil society, and workers and trade unions. They aim to shape policy, law and projects, looking at the national context, national frameworks, legal contracts (where available) and business practices, and identifies what actions will help shape or impede better human rights outcomes for the sector.</p> <p>The findings inform the analysis and recommendations at the core of the SWIA for a range of audiences. The rationale behind the SWIA is to make the document a public good for the purpose of informing and thereby improving practices and outcome of business investment. For this purpose, an SWIA looks at 3 levels of analysis: sector, operational and cumulative levels</p>
List and Description of Expected Outputs to be Delivered	<i>(Please see attached TOR)</i>

Person to Supervise the Work/Performance of the Service Provider	<i>Chief Technical Advisor of UN-REDD</i>
Frequency of Reporting	<i>(Please see attached TOR)</i>
Progress Reporting Requirements	<i>(Please see attached TOR)</i>
Location of work	<input checked="" type="checkbox"/> Home-based and with travel to rubber-producing areas in Myanmar
Expected duration of work	4 months
Target start date	1 October 2019
Latest completion date	31 January 2020
Travels Expected	Proposers are required to include a detail travel plan and schedule in the proposer methodology
Special Security Requirements	<input type="checkbox"/> Security Clearance from UN prior to travelling <input type="checkbox"/> Completion of UN's Basic and Advanced Security Training <input type="checkbox"/> Comprehensive Travel Insurance <input type="checkbox"/> Others <i>[pls. specify]</i>
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<input type="checkbox"/> Office space and facilities <input type="checkbox"/> Land Transportation <input checked="" type="checkbox"/> Not provide
Implementation Schedule indicating breakdown and timing of activities/sub-activities	<input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required
Names and curriculum vitae of individuals who will be involved in completing the services	<input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required
Currency of Proposal	<input checked="" type="checkbox"/> <b>United States Dollars</b> <input checked="" type="checkbox"/> <b>Local Currency</b>
Value Added Tax on Price Proposal	<input type="checkbox"/> must be inclusive of VAT and other applicable indirect taxes <input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes
Validity Period of Proposals <i>(Counting for the</i>	<input type="checkbox"/> 60 days <input type="checkbox"/> 90 days <input checked="" type="checkbox"/> 120 days

<i>last day of submission of quotes)</i>	In exceptional circumstances, UNDP may request the Proposer to extend the validity of the Proposal beyond what has been initially indicated in this RFP. The Proposal shall then confirm the extension in writing, without any modification whatsoever on the Proposal.		
Partial Quotes	<input checked="" type="checkbox"/> Not permitted		
Payment Terms	<b>Milestone</b>		<b>Payment</b>
	Finalization of workplan, including responses to review by UN-REDD CTA		30%
	Submission of draft SWIA report		55%
	Submission of final report following consultations		15%
Person(s) to review/inspect/ approve outputs/complete d services and authorize the disbursement of payment	Review and approval by Chief Technical Advisor, UN-REDD		
Type of Contract to be Signed	<input checked="" type="checkbox"/> Contract for Professional Services		
Criteria for Contract Award	<input checked="" type="checkbox"/> Highest Combined Score (based on the 70% technical offer and 30% price weight distribution) <input checked="" type="checkbox"/> Full acceptance of the UNDP Contract General Terms and Conditions (GTC). This is a mandatory criterion and cannot be deleted regardless of the nature of services required. Non-acceptance of the GTC may be grounds for the rejection of the Proposal.		
Criteria for the Assessment of Proposal	<b>Technical Proposal (70%)</b>		
	<input checked="" type="checkbox"/> Relevant accreditation 20%		
	<input checked="" type="checkbox"/> Proposed Work Plan and Approach 30%		
	<input checked="" type="checkbox"/> Personnel 50%		
	No.	Description	Score
	<b>1</b>	<b>Expertise of Organization</b>	<b>20</b>
	1.1	General organizational capability	10
	1.2	Working with UN agencies and International Organizations	10
	<b>2</b>	<b>Proposed Work plan and Approach</b>	<b>30</b>
	2.1	Understanding the task	10
	2.2	Appropriate conceptual framework and scope of tasks	10
	2.3	Work plan	10
	<b>3</b>	<b>Management Structure and qualifications of key personnel</b>	<b>50</b>
	3.1	Completeness of the team composition	10

	<table><tr><td></td><td>3.2</td><td>Professionals' qualifications and competence for the assignment</td><td>40</td></tr><tr><td></td><td></td><td>Total</td><td>100</td></tr></table>		3.2	Professionals' qualifications and competence for the assignment	40			Total	100
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		Total	100						
	<p><b><u>Financial Proposal (30%)</u></b></p> <p>To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.</p>								
UNDP will award the contract to:	<p><input checked="" type="checkbox"/> One and only one Service Provider</p> <p><input type="checkbox"/> One or more Service Providers, depending on the following factors:</p>								
Contract General Terms and Conditions	<p><input checked="" type="checkbox"/> General Terms and Conditions for contracts (goods and/or services)</p> <p><input checked="" type="checkbox"/> Applicable Terms and Conditions are available at: <a href="http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html">http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html</a></p>								
Annexes to this RFP	<p><input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2)</p> <p><input checked="" type="checkbox"/> Detailed TOR (Annex 3)</p> <p><input checked="" type="checkbox"/> GENERAL CONDITIONS OF CONTRACT FOR SERVICES (Annex 4)</p>								
Contact Person for Inquiries (Written inquiries only)	<p><i>Moung Kee Aung</i> <i>Procurement Analyst</i> <a href="mailto:moung.kee.aung@undp.org">moung.kee.aung@undp.org</a></p> <p>Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail to <a href="mailto:mmr.procurement@undp.org">mmr.procurement@undp.org</a>; [5] days before the deadline for submission of proposal.</p>								
Other Information [pls. specify]	N/A								

## FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>1</sup>

*(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery<sup>2</sup>)*

[insert: Location]

[insert: Date]

To: [insert: Name and Address of UNDP focal point]

Dear Sir/Madam:

We, the undersigned, hereby offer to render the following services to UNDP in conformity with the requirements defined in the RFP dated [specify date] , and all of its attachments, as well as the provisions of the UNDP General Contract Terms and Conditions :

### A. Qualifications of the Service Provider

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

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

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

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

### C. Qualifications of Key Personnel

<sup>1</sup> This serves as a guide to the Service Provider in preparing the Proposal.

<sup>2</sup> Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

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

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

**D. Cost Breakdown per Deliverable\***

	<b>Deliverables</b> <i>[list them as referred to in the RFP]</i>	<b>Percentage of Total Price</b> <i>(Weight for payment)</i>	<b>Price</b> <i>(Lump Sum, All Inclusive)</i>
1	Deliverable 1		
2	Deliverable 2		
3	....		
	<b>Total</b>	<b>100%</b>	

*\*This shall be the basis of the payment tranches*

**E. Cost Breakdown by Cost Component [This is only an Example]:**

<b>Description of Activity</b>	<b>Remuneration per Unit of Time</b>	<b>Total Period of Engagement</b>	<b>No. of Personnel</b>	<b>Total Rate</b>
<b>I. Personnel Services</b>				
1. Services from Home Office				
a. Expertise 1				
b. Expertise 2				
2. Services from Field Offices				
a. Expertise 1				
b. Expertise 2				
3. Services from Overseas				
a. Expertise 1				
b. Expertise 2				
<b>II. Out of Pocket Expenses</b>				
1. Travel Costs				
2. Daily Allowance				
3. Communications				
4. Reproduction				
5. Equipment Lease				
6. Others				
<b>III. Other Related Costs</b>				

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

**Annex-3**



## Terms of Reference (TOR)

### Sector-Wide Impact Assessment of the Rubber Industry in Myanmar

<b>Project Title:</b>	Partnership between the Government of Italy and the United Nations Development Programme to support REDD+ implementation in critical Forested Countries
<b>Type of Contract:</b>	Organization Contract
<b>Duration:</b>	September-December 2019
<b>Location:</b>	Home-based and with travel to rubber-producing areas in Myanmar

#### 1. BACKGROUND

With support from the Italian Ministry of Environment, Land and Sea (IMELS), UNDP is implementing activities to catalyze donor support for REDD+ implementation in Myanmar.

Activity 3 under the workplan is *"Conduct a sector wide impact assessment of the natural rubber sector"*. Through this activity, the aim is to gain an improved understanding of the linkages between rubber production systems in Myanmar and multiple sustainable development objectives in the development of national low-carbon development pathways, incorporating REDD+.

Rubber is traditionally produced by smallholders in the south, but the recent growth in rubber production in the north is mainly by large-scale investors and in large plantations. Rubber sector contributes in a significant manner to employment, rural development and, more recently, export earnings. Myanmar ranks ninth in the world among rubber production countries. However, the level of value addition of the sector in Myanmar remains extremely low. When compared with the planting area, the production levels of rubbers across the country are very low. The majority of the rubber production has been oriented towards export to China for further transformation in manufacturing.

A scoping study on rubber has previously been conducted by the Myanmar Centre for Responsible Business (MCRB), which included an overview of the rubber sector in Myanmar and the value chain development of rubber production, processing and marketing; identified linking of stakeholders; and the types of environmental, economic and social impacts, as well as human rights impact that could be assessed.

UNDP is now recruiting a Myanmar-based organization to develop the scoping study into a full "sector wide impact assessment" (SWIA).

SWIAs are intended for a wide audience, including government and parliamentarians, business, local communities, civil society, and workers and trade unions. They aim to shape policy, law and projects, looking at the national context, national frameworks, legal contracts (where available) and business practices, and identifies what actions will help shape or impede better human rights outcomes for the sector.

The findings inform the analysis and recommendations at the core of the SWIA for a range of audiences. The rationale behind the SWIA is to make the document a public good for the purpose of informing and thereby improving practices and outcome of business investment. For this purpose, an SWIA looks at 3 levels of analysis: sector, operational and cumulative levels.

## **2. SCOPE OF WORK**

Working under the direction of the UN-REDD CTA, the Contractor will build on the MCRB scoping study by:

- Analysing existing policy and legal frameworks, and through a sustainable and inclusive growth approach
- Reassessing human rights impacts specific to the rubber sector and support the assessment with data and examples.
- Validating foundational knowledge base with primary data collected through field research from targeted locations across Myanmar. Field research will include:
  - Communities involved in or potentially affected by rubber production, with a focus on impacts on ethnic minority groups land tenure arrangements, and including the location of plantations on forest land and VFV land;
  - Primary rubber producers, including small-holders and larger rubber production companies, with a focus on sources of inputs, number of employees, significance of rubber in overall income, and their position in the value chain
  - Employees and workers (both women and men) on small-holdings and in rubber processing facilities, including working conditions, health and safety of workers, and security of income;
  - Local governments, including revenue generation from rubber production and processing, and the management of such revenues;
  - Existing and potential purchasers, including traders and national and international companies that use rubber as an input to their production.
- Identify measures that will help avoid, minimise, and mitigate potential impacts of the sector by synthesising information on potential impacts at three levels: sector, cumulative and project in order to identify considerations for enterprises and Government to prevent or mitigate potential impacts and by drawing on good practices in the sector in other countries;  
Present SWIA findings and conclusions, as well as practical and implementable recommendations that are human rights focused to be validated through consultations with representatives of Myanmar Government, rubber producers, and representatives of civil society organisations, some of whom represent ethnic minorities, trade unions, private sector, international organisations, donor governments.

## **Expected Outputs/Deliverables**

The outputs and deliverables required are:

- A workplan for the assignment, including proposals for (a) location, purpose and duration of field trips, and (b) an effective consultation process.
- A draft SWIA report with a specific focus on human rights impacts assessments and recommendations for the rubber sector.
- A revised final SWIA report, based on feedback from consultations.

### **Institutional Arrangements**

The work will be conducted as a partnership and under the co-supervision of UNDP in close collaboration with the Ministry of Natural Resources and Environmental Conservation (Forest Department).

The UN-REDD Project Management Unit (PMU) will provide technical advice on the methodological approach throughout the study.

All data collected, results and outputs of the study will be transferred to UNDP by the Contractor.

### **Duration of the Assignment**

The work will be undertaken over a period of up to 4 months, starting in September 2019. In accordance with expected outputs and deliverables, the Contractor submits reports to UN-REDD Chief Technical Advisor for reviewing outputs, comments, and certifying approval/acceptance of works afterwards. In case of any delays to achieve the expected outputs, the Contractor should notify the UN-REDD Chief Technical Advisor in advance to take necessary steps.

### **Duty Station**

The duty station for this assignment is home-based with travel to rubber producing areas of Myanmar.

### **Competency Requirements**

The contracted NGO shall meet the following criteria:

- Demonstrated experience in SWIAs or similar analyses covering natural resources, agriculture, and/or human rights;
- Demonstrated good working experience with the GOM;
- Demonstrated experience working with local communities, including ethnic minorities;
- Expertise on REDD+ and/or climate change is desirable.

Excellence in English and Myanma languages is required; knowledge of ethnic minority languages is an asset.

### **Application Procedures**

The organizations are invited to submit technical and financial proposals. The technical proposals should contain the following information:

- 1) Short description of understanding of the TOR of this assignment;
- 2) Methodology and approach to accomplish the outputs of the project;
- 3) Scope of work including specific activities and outputs to be undertaken completing the sets of deliverables;
- 4) Expertise that will constitute the proposed team that will undertake the assignment, together with the team management structure, with clear specification of the roles of individual personnel;
- 5) Capacity statement of the individuals, team/organization, supported by documentation of research papers;
- 6) Curriculum vitae of key team members; and
- 7) Work plan including time allocations for major activities.

The financial proposal shall contain the information on budget management and detail budget allocation for those tasks that are needed for the assignment. Possible budget heading may include costs for the personnel, materials, travel, per diem, communications, logistics, administration, stationeries, equipment rental, administrative overheads, etc.

Organizations are requested to provide registration certificates/ documents and firms'/organizations' detailed bank information with the proposals.

**Note: Incomplete applications will not be considered. Please make sure you have provided all requested materials.**

### Evaluation of Applicants

Combined Scoring method – where the qualifications and technical proposal will be weighted 70% and combined with the price offer, which will be weighted 30%.

The technical proposals will be evaluated as per the following criteria:

- Expertise of organizations: 20%
- Proposed Work Plan and Approach: 30%
- Personnel: 50%

No.		Description	Score
<b>1</b>		<b>Expertise of Organization</b>	<b>20</b>
	1.1	General organizational capability	10
	1.2	Working with UN agencies and International Organizations	10
<b>2</b>		<b>Proposed Work plan and Approach</b>	<b>30</b>
	2.1	Understanding the task	10
	2.2	Appropriate conceptual framework and scope of tasks	10
	2.3	Work plan	10
<b>3</b>		<b>Management Structure and qualifications of key personnel</b>	<b>50</b>
	3.1	Completeness of the team composition	10
	3.2	Professionals' qualifications and competence for the assignment	40
		Total	100

Only candidate organizations obtaining a minimum 70 points would be considered for the financial evaluation.

### Technical criteria

The following criteria will be used to evaluate the individual contractors' technical proposals:

#### Education – 5 points

- A post-graduate degree in the field of social sciences, forest science, natural resources management, political science, or a related field.

#### Experience – 30 points

- At least 8 years' experience working for International Development Organizations in similar or related fields of work. '
- Demonstration of high-quality consultative skills, organizational skills, data analysis and report writing;

#### Language Requirements – 5 points

- Fluency in written and spoken Burmese and English;
- Knowledge of ethnic minority languages is an asset.

### Technical experts –

#### Education – 5 points

At least a Bachelors degree in relevant fields

#### Experience – 30 points

At least five years of experience on relevant aspects of the work.

#### Language Requirements – 5 points

- Fluency in written and spoken Burmese and English;
- Knowledge of ethnic minority languages is an asset.

### Payment Terms

Payments will be made against the following milestones:

Milestone	Payment
Finalization of workplan, including responses to review by UN-REDD CTA	30%
Submission of draft SWIA report	55%
Submission of final report following consultations	15%

Payments will be made only upon confirmation of UNDP on delivering on the contract obligations in a satisfactory manner.

A 20% of advanced payment will be made after signing the contract and it will be deducted from each delivery of payment terms.



## **Annex - 4**

### **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 SECURITY:**

**23.1** The Contractor shall:

- (a) Put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the services are being provided;
- (b) Assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

**23.2** UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 4.1 above.

#### **24.0 AUDITS AND INVESTIGATIONS:**

**24.1** Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or the authorized agents of the UNDP at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. The UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the UNDP other than in accordance with the terms and conditions of the Contract. Should the audit determine that any funds paid by UNDP have not been used as per contract clauses, the company shall reimburse such funds forthwith. Where the company fails to reimburse such funds, UNDP reserves the right to seek recovery and/or to take any other action as it deems necessary.

**24.2** The Contractor acknowledges and agrees that, at anytime, UNDP may conduct investigations relating to any aspect of the Contract, the obligations performed under the Contract, and the operations of the Contractor generally. The right of UNDP to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any documentation for such purposes and to grant to UNDP access to the Contractor's premises. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

#### **25.0 ANTI-TERRORISM:**

**25.1** The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.

#### **26.0 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.