



## REQUEST FOR PROPOSAL (RFP)

NAME & ADDRESS OF FIRM	DATE: October 30, 2019
	REFERENCE: EU-UNDP joint project "Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolutions" - #00104336

Dear Sir / Madam:

We kindly request you to submit your Proposal for Training of Trainers in mediation

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

Proposals must be submitted on or before the deadline indicated by UNDP in the eTendering system. Bids must be submitted in the online eTendering system in the following link: <https://etendering.partneragencies.org> using your username and password. If you have not registered in the system before, you can register now by logging in using

**username: event.guest**

**password: why2change**

and follow the registration steps as specified in the system user guide.

Your Proposal must be expressed in English, and valid for a minimum period of 90 days.

You are kindly requested to indicate whether your company intends to submit a Proposal by clicking on "Accept Invitation".

In the course of preparing and submitting your Proposal, it shall remain your responsibility to ensure that it is submitted into the system by the deadline. The system will automatically block and not accept any bid after the deadline. **Kindly ensure that supporting documents required are signed and in the pdf format, and free from any virus or corrupted files. NOTE: File Name should contain only Latin characters.**

The Financial Proposal and the Technical Proposal files MUST BE COMPLETELY SEPARATE and uploaded separately in the system and clearly named as either "TECHNICAL PROPOSAL" or "FINANCIAL PROPOSAL", as appropriate. Each document shall include the Proposer's name and address. The file with the "FINANCIAL PROPOSAL" must be encrypted with a password so that it cannot be opened nor viewed until the Proposal has been found to pass the technical evaluation stage. Once a Proposal has been found to be responsive by passing the technical evaluation stage, UNDP shall request the Proposer to submit the password to open the Financial Proposal. The Proposer shall assume the responsibility for not encrypting the financial proposal.

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:

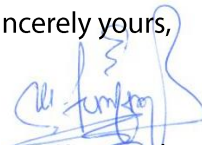
<http://www.undp.org/content/undp/en/home/operations/procurement/protestandsanctions/>

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 :  
[http://www.un.org/depts/ptd/pdf/conduct\\_english.pdf](http://www.un.org/depts/ptd/pdf/conduct_english.pdf)

Thank you and we look forward to receiving your Proposal.

Sincerely yours,



*Liana Kartsivadze*  
Project Manager  
10/30/2019

## Description of Requirements

Context of the Requirement	<p><i>Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolution</i> is a joint project of European Union and United Nations Development Programme.</p> <p>This project is funded by the European Union based on the Financing Agreement for support of economic and business development in Georgia signed between Georgia and the European Union in November 2018.</p> <p>The project is built upon progress achieved in the course of implementation of the EU-UNDP joint programme “Enhancing Access to Justice and Development of a Child-Friendly Justice System in Georgia” (01/01/2016 – 31/12/2018) (Joint Programme). The intended outcome of the project contributes to the social-economic development of Georgia by promoting fairer and faster commercial dispute resolution through effectively functioning alternative dispute resolution system.</p> <p>In particular, the project is expected to deliver the following outputs: 1) Enhanced use and quality of arbitration and mediation through strengthening relevant institutions; 2) Enhanced capacity and qualification of mediators, arbitrators, legal professionals and judiciary to promote consistent, efficient and fast resolution of commercial disputes.</p> <p>Detailed information on the project can be found in TOR – Annex 4.</p>
Implementing Partner of UNDP	N/A
Brief Description of the Required Services	Mediation Training and Consultancy Services for Efficient institutionalization of Mediation in Georgia
List and Description of Expected Outputs to be Delivered	<ol style="list-style-type: none"> <li>1. Detailed outline of the ToT</li> <li>2. Revision report of the Draft Code of Ethics (Conduct)</li> <li>3. Final training agenda and all relevant teaching materials, including the Guidebook for trainers in English</li> <li>4. Brief Report on mediators accreditation models</li> <li>5. Disciplinary model for Ethics Committee of the Mediators’ Association (including a mission to Georgia)</li> <li>6. 2 ToTs including supervised training by the trainees</li> <li>7. Recommendation for improving ADR services (including a mission to Georgia)</li> <li>8. Mediators Accreditation/Certification Model of the Mediators’ Association (including a mission to Georgia)</li> <li>9. Final report including comments to the Draft Code of Ethics (Conduct), disciplinary and accreditation/certification models for Mediators’ Association, recommendations to mediation centers for improving services and observations made during missions.</li> </ol>
Person to Supervise the Work/Performance of the Service Provider	Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolution, Project Manager
Frequency of Reporting	Upon Deliverables
Progress Reporting Requirements	Upon request
Location of work	<input checked="" type="checkbox"/> For Deliverables 1 - 4 and 9 - At Contractor’s Location <input checked="" type="checkbox"/> For Deliverable 5, 6, 7, 8 - Georgia Depending on deliverables
Expected duration of work	24 weeks
Target start date	1 December 2019
Latest completion date	30 May 2020

Travels Expected	<b>Destination/s</b>	<b>Estimated Duration</b>	<b>Brief Description of Purpose of the Travel</b>	<b>Target Date/s</b>
	Georgia	Up to 9 weeks	ToT, supervision of trainings conducted by ToT participants, elaboration of disciplinary models for Mediators' Association, Workshop for Ethics' Committee, Elaboration of accreditation/certification model of Mediators' Association, elaboration of recommendations to mediation centers regarding quality of services	Week 11-19
Special Security Requirements	N/A			
Facilities to be Provided by UNDP (i.e., must be excluded from Price Proposal)	<input checked="" type="checkbox"/> Land Transportation in Georgia <input checked="" type="checkbox"/> Others: - a) Translation fees of the teaching materials and Guidebook for trainers into Georgian; b) Training/workshop venue costs, including catering and simultaneous translation; c) Accommodation of experts in Georgia			
Implementation Schedule indicating breakdown and timing of activities/sub-activities	<input checked="" type="checkbox"/> Required (in line with proposed timing in TOR (annex 4))			
Names and curriculum vitae of individuals who will be involved in completing the services	<input checked="" type="checkbox"/> Required			
Currency of Proposal	<input checked="" type="checkbox"/> United States Dollars			
Value Added Tax on Price Proposal	<input checked="" type="checkbox"/> must be exclusive of VAT and other applicable indirect taxes			
Validity Period of Proposals ( <i>Counting for the last day of submission of quotes</i> )	<input checked="" type="checkbox"/> 90 days  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	Outputs	Percentage	Timing	Condition for Payment Release
	Submission of detailed outline of the TOT	15 % of contract price	Within 2 weeks from the commencement of the contract	Within fourteen (14) days from the date of meeting



	Submission of: a. Revision report of the Draft Code of Ethics (Conduct); b. Final training agenda and all relevant teaching materials, including the Guidebook for trainers in English; c. Brief Report on mediators' accreditation models.	30 % of the contract price	Within 10 weeks from the commencement of the contract	the following conditions: a) UNDP's written acceptance (i.e., not mere receipt) of the quality of the outputs; and
	Submission of: a. Disciplinary model for Ethics Committee of the Mediators' Association and workshop (including a mission to Georgia); b. 2 ToT's including supervised training by the trainers; c. Recommendations for improving quality of mediation services d. Mediators Accreditation/Certification Model of the Mediators' Association (including a mission to Georgia);	40 % of the contract price	Within 19 weeks from the commencement of the contract	b) Receipt of invoice from the Service Provider.
	Submission of final report including comments to the Draft Code of Ethics (Conduct), disciplinary and accreditation/certification models for Mediators' Association, recommendations for ADR institutions for improving quality of their services and observations made during missions.	15 % of the contract price	Within 23 weeks from the commencement of the contract	
Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment	Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolution, Project Manager; Democratic Governance Team Leader			
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><u>Technical Proposal (70%)</u></b> <input type="checkbox"/> Expertise of the bidder 20% <input type="checkbox"/> Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan 25% <input type="checkbox"/> Qualification of Key Personnel 25%  <b><u>Financial Proposal (30%)</u></b>			

	<p>To be computed as a ratio of the Proposal's offer to the lowest price among the proposals received by UNDP.</p> <p>For further details, please refer to Technical Proposal Evaluation Form (Annex 5).</p> <p>The technical proposal is evaluated on the basis of its responsiveness to the Terms of Reference (TOR) and scoring is allocated in accordance with the Annex 5.</p> <p>If the offeror does not meet any of the minimum technical qualification criteria/requirements given in Annex 5, it will be assessed by score zero and will be automatically disqualified. Disqualified offeror will not be evaluated further.</p>
UNDP will award the contract to:	<input checked="" type="checkbox"/> One and only one Service Provider
Annexes to this RFP	<input checked="" type="checkbox"/> Form for Submission of Proposal (Annex 2) <input checked="" type="checkbox"/> General Terms and Conditions / Special Conditions (Annex 3) <input checked="" type="checkbox"/> Detailed TOR (Annex 4) <input checked="" type="checkbox"/> Technical Proposal Evaluation Form (Annex 5)
Contact Person for Inquiries (Written inquiries only) <sup>1</sup>	<p>Ketevan Uridia, Expert on ADR  Ketevan.uridia@undp.org</p> <p>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.</p>
Pre-bid conference	<p>The Pre-Bid conference will be conducted on <b>6 November 2019 - 15:30</b> (GMT +4) in UN House, 9 Eristavi St. 0179, Tbilisi, Georgia.</p> <p>If interested proposers cannot physically attend the pre-bid conference, they may join via skype (skype id: liana.kartsivadze) In this case, they must provide their skype address by email to ketevan.uridia@undp.org (subject RFP for Mediation Services) <b>Before 6 PM on 4 November 2019.</b></p> <p>All Bidders are encouraged to attend. Nonattendance, however shall not result in disqualification of an Interested bidder. Minutes of Bidding conference will be disseminated on the procurement website and shared on the procurement platform. No verbal statement during the conference shall modify terms and conditions of the RFP, unless specifically in the minutes of the bidder's conference or issued/posted as an amendment of RFP.</p>
Other Information [pls. specify]	N/A

<sup>1</sup> This contact person and address is officially designated by UNDP. If inquiries are sent to other person/s or address/es, even if they are UNDP staff, UNDP shall have no obligation to respond nor can UNDP confirm that the query was received.

**FORM FOR SUBMITTING SERVICE PROVIDER'S PROPOSAL<sup>2</sup>****(This Form must be submitted only using the Service Provider's Official Letterhead/Stationery<sup>3</sup>)**Tbilisi  
[insert: Date]

To: Liana Kartsivadze, Project Manager, Enhanced Mediation and Arbitration for Fairer and Faster  
Commercial Dispute Resolution  
9 Eristavi Street (UN House)  
Tbilisi 0179

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) 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.
- f) A letter from Bank - Bank letter certifying financial turn over minimum USD 240,000 (per year) during the last 2 years
- g) Detailed Bank Requisites;

**The Service Provider must have:** Relevant experience of the offeror shall be demonstrated by:

- At least 8 years' experience in providing consultancy services/advisory works on mediation matters in international setting, i.e. outside of the country of offeror's domicile or offeror's usual operation (**minimum requirement**);
- At least 10 years' experience in carrying out mediation trainings (**minimum requirement**);
- Experience of conducting at least 5 trainings for trainers in mediation during past 5 years (**minimum requirement**);
- Experience in carrying out at least 4 training projects in an international setting (**minimum requirement**);
- Experience in consultancy related to accreditation/certification of mediators at least in 2 **projects (minimum requirement)**;

<sup>2</sup> This serves as a guide to the Service Provider in preparing the Proposal.

<sup>3</sup> Official Letterhead/Stationery must indicate contact details – addresses, email, phone and fax numbers – for verification purposes

- Experience in advising of the frameworks related to mediators’ ethics (conduct) will be an asset;
- Having at least 3 letters of recommendation from previous contract providers conforming successful implementation of the similar project (**minimum requirement**);
- Having a letter of recommendation from an international/donor organization will be an asset.

## 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.*

*Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present this section of the technical proposal based on the following:*

*a) Technical Approach and Methodology: the Proposer should explain their understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of details of such output. Proposer should highlight the problems being addressed and their importance, and explain the technical approach they would adopt to address them.*

*Proposer should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach. – Company shall fully answer to the ToR requirement (as per Annex 4)*

*b) Work Plan: In this chapter the Proposer should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the ToR and ability to translate them into a feasible working plan. A list of the final technical documents, including reports, drawings, and tables to be delivered as final output, should be included here.*

## C. Qualifications of Key Personnel

*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.*

**Structure with clearly defined roles must be provided.**

**At a minimum:**

**(1) Lead Trainer:**

- with minimum of 10 years’ experience in conducting mediation trainings (**minimum requirement**);
- with experience of conducting at least 5 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer’s domicile (**minimum requirement**);
- with minimum of 10 years’ experience of acting as a mediator (**minimum requirement**);

**(2) Trainer:**

- with minimum of 7 years’ experience in conducting mediation trainings (**minimum requirement**);
- with experience of conducting at least 3 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer’s domicile (**minimum requirement**);
- with minimum of 7 years’ experience of acting as a mediator (**minimum requirement**)

**(3) Consultant on Mediators Ethics:**

- with minimum of 7 years’ experience of acting as a mediator (**minimum requirement**);
- with experience of elaboration of at least 1 mediators’ code of conducts and demonstrated experience in the

field of mediators' ethics (**minimum requirement**);  
 - being a former or present member of Mediators Disciplinary (Ethics) Committee(s) will be considered as an asset;  
 - experience in conducting targeted trainings in mediators' ethic will be considered as an asset.

**(4) Consultant on Accreditation/Certification of Mediators:**

-with minimum of 10 years' experience of acting as a mediator (**minimum requirement**);  
 -with working experience of at least 7 years in elaboration of/advising on mediators' accreditation/certification programmes (**minimum requirement**); experience in elaboration of/advising on national (statutory/institutional) mediators' accreditation/certification programmes in at least 2 jurisdictions will be considered as an asset.

**(5) Consultant on Mediation Service Quality Assurance**

-with minimum of 5 years' working experience in projects related to ADR, with the focus on business/strategic development, quality assurance and/or customer satisfaction within mediation centres, other ADR institutions or judiciary (**minimum requirement**);  
 -with minimum experience of working on at least 2 projects aiming to improve overall efficiency of mediation centres, other ADR institutions or judiciary (**minimum requirement**);

The other professional team if deemed appropriate by the contractor to fulfil the requirements as spelled out in this RFP. (Note: It is **possible** to combine several expert functions within one individual, provided that the candidate fully meets all needed qualifications).

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

#	Deliverables	Percentage of Total Price (Weight for payment)	Price (Lump Sum, All Inclusive)
1.	<b>Deliverable 1:</b> Detailed outline of the TOT	15 %	
2.	<b>Deliverable 2:</b> Revision report of the Draft Code of Ethics (Conduct). <b>Deliverable 3:</b> Final training agenda and all relevant teaching materials, including the Guidebook for trainers in English. <b>Deliverable 4:</b> Brief Report on mediators' accreditation models.	30 %	
3.	<b>Deliverable 5:</b> Disciplinary model for Ethics Committee of the Mediators' Association and workshop (including a mission to Georgia). <b>Deliverable 6:</b> 2 ToT's including supervised training by the trainers. <b>Deliverable 7:</b> Mediators Accreditation/Certification Model of the Mediators' Association (including a mission to Georgia) <b>Deliverable 8:</b> Preliminary recommendations for improving quality of mediation services (including a mission to Georgia)	40 %	
4.	<b>Deliverable 9:</b> Final report including comments to the Draft Code of Ethics (Conduct), disciplinary and accreditation/certification models for Mediators' Association, recommendations for improving quality of ADR services and observations made during missions.	15 %	
Total		100%	

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

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

Description of Activity	Remuneration per working day	Total Period of Engagement	No. of Personnel	Total Rate
<b>I. Personnel Services</b>				
1. Lead Trainer				
2. Trainer				
3. Consultant on Mediators Ethics				
4. Consultant on Accreditation/Certification of Mediators				

5. Consultant on Mediation Service Quality Assurance				
6. Other team members if applicable				
<b>II. Other Costs<sup>4</sup></b>				
1. Travel Costs				
2. Others				
Total				

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

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<sup>4</sup> Accommodation and transportation of consultants in Georgia for the duration of the missions will be covered by UNDP and shall not be included in the cost breakdown.

## GENERAL TERMS AND CONDITIONS FOR CONTRACTS

This Contract is between the United Nations Development Programme, a subsidiary organ of the United Nations established by the General Assembly of the United Nations (hereinafter "UNDP"), on the one hand, and a company or organization indicated in the Face Sheet of this Contract (hereinafter the "Contractor"), on the other hand.

**1. LEGAL STATUS OF THE PARTIES:** UNDP and the Contractor shall be referred to as a "Party" or, collectively, "Parties" hereunder, and:

1.1 Pursuant, inter alia, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

1.2 The Contractor shall have the legal status of an independent contractor vis-à-vis UNDP, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

### **2. OBLIGATIONS OF THE CONTRACTOR:**

2.1 The Contractor shall deliver the goods described in the Technical Specifications for Goods (hereinafter the "Goods") and/or perform and complete the services described in the Terms of Reference and Schedule of Payments (hereinafter the "Services"), with due diligence and efficiency, and in accordance with this Contract. The Contractor shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory delivery of the Goods and/or performance of the Services.

2.2 To the extent that the Contract involves any purchase of the Goods, the Contractor shall provide UNDP with written evidence of the delivery of the Goods. Such evidence of delivery shall, at the minimum, consist of an invoice, a certification of conformity, and other supporting shipment documentation as may otherwise be specified in the Technical Specifications for Goods.

2.3 The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract, in accordance with the highest industry and professional standards.

2.4 All time limits contained in this Contract shall be deemed to be of the essence in respect of the performance of the delivery of the Goods and/or the provision of the Services.

**3. LONG TERM AGREEMENT:** If the Contractor is engaged by UNDP on the basis of a long-term agreement ("LTA") as indicated in the Face Sheet of this Contract, the following conditions shall apply:

3.1 UNDP does not warrant that any quantity of Goods and/or Services shall be ordered during the term of the LTA.

3.2 Any UNDP business unit, including, but not limited to, a Headquarters unit, a Country Office or a Regional Centre, as well as any United Nations entity, may benefit from the retainer and order Goods and/or Services from the Contractor hereunder.

3.3 The Contractor shall provide the Services and/or deliver the Goods, as and when requested by UNDP and reflected in a Purchase Order, which shall be subject to the terms and conditions stipulated in this Contract. For the avoidance of doubt, UNDP shall acquire no legal obligations towards the Contractor unless and until a Purchase Order is issued.

3.4 The Goods and/or Services shall be at the Discount Prices annexed hereto. The prices shall remain in effect for a period of three years from the Starting Date stated in the Face Sheet of this Contract.

3.5 In the event of any advantageous technical changes and/or downward pricing of the Goods and/or Services during the term of the retainer, the Contractor shall notify UNDP immediately. UNDP shall consider the impact of any such event and may request an amendment to the retainer.

3.6 The Contractor shall report semi-annually to UNDP on the Goods delivered and/or Services provided, unless otherwise specified in the Contract. Each report should be submitted to the UNDP Contact Person indicated in as indicated in the Face Sheet hereto, as well as to a UNDP business unit that has placed a Purchase Order for the Goods and/or Services during the reporting period.

3.7 The LTA shall remain in force for the maximum period of two years and may be extended by UNDP for one additional year by mutual agreement of the Parties.

#### **4. PRICE AND PAYMENT:**

**4.1 FIXED PRICE:** If Fixed Price is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services, UNDP shall pay the Contractor a fixed amount indicated in the Face Sheet of this Contract.

4.1.1 The amount stated in the Face Sheet of this Contract is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the Contract.

4.1.2 UNDP shall effect payments to the Contractor in the amounts and pursuant to the schedule of payments set forth in the Terms of Reference and Schedule of Payments, upon completion by the Contractor of the corresponding deliverable(s) and upon acceptance by UNDP of the original invoices submitted by the Contractor to the UNDP Contact Person indicated in the Face Sheet of this Contract, together with whatever supporting documentation that may be required by UNDP:

4.1.3 Invoices shall indicate a deliverable completed and the corresponding amount payable.

4.1.4 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or provision of the Services.

**4.2 COST REIMBURSEMENT:** If Cost Reimbursement is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services under this Contract, UNDP shall pay the Contractor an amount not exceeding the total amount stated in the Face Sheet of this Contract.

4.2.1 The said amount is the maximum total amount of reimbursable costs under this Contract. The breakdown of costs contained in the Financial Proposal, referred to in the Face Sheet to this Contract shall specify the maximum amount per each cost category that is reimbursable under this Contract. The Contractor shall specify in its invoices or financial reports (as required by UNDP) the amount of the actual reimbursable costs incurred in the delivery of the Goods and/or the provision of the Services.

4.2.2 The Contractor shall not provide the Services and/or deliver the Goods or equipment, materials and supplies that may result in any costs in excess of the amount stated in the Face Sheet of this Contract, or of the maximum amount per each cost category specified in the breakdown of costs contained in the Financial Proposal, without the prior written agreement of the UNDP Contact Person.

4.2.3 The Contractor shall submit original invoices or financial reports (as required by UNDP) for the Goods delivered in accordance with the Technical Specifications for Goods and/or the Services provided in accordance with the schedule set forth in the Terms of Reference and Schedule of Payments. Such invoices or financial reports shall indicate a deliverable or deliverables completed and the corresponding amount payable. They shall be submitted to the UNDP Contact Person, together with whatever supporting documentation of the actual costs incurred that is required in the Financial Proposal, or may be required by UNDP.

4.2.4 UNDP shall effect payments to the Contractor upon completion by the Contractor of the deliverable(s) indicated in the original invoices or financial reports (as required by UNDP) and upon acceptance of these invoices or financial reports by UNDP. Such payments shall be subject to any specific conditions for reimbursement specified in the breakdown of costs contained in the Financial Proposal.

4.2.5 Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or performance of the Services.

#### **5. ADVANCE PAYMENT:**

5.1 If an advance payment is due to the Contractor pursuant to the Face Sheet of this Contract, the Contractor shall submit an original invoice for the amount of that advance payment upon signature of this Contract by the Parties.

5.2 If an advance payment representing 20% or more of the total contract value, or amounting to US\$30,000 or more, is to be made by UNDP upon signature of the Contract by the Parties, such payment shall be contingent upon receipt and acceptance by UNDP of a bank guarantee or a certified cheque for the full amount of the advance payment, valid for the duration of the Contract, and in a form acceptable to UNDP.

#### **6. SUBMISSION OF INVOICES AND REPORTS:**

6.1 All original invoices, financial reports and any other reports and supporting documentation required under this Contract shall be submitted by mail by the Contractor to UNDP Contact Person. Upon request of the



Contractor, and subject to approval by UNDP, invoices and financial reports may be submitted to UNDP by fax or email.

6.2 All reports and invoices shall be submitted by the Contractor to the UNDP Contact Person specified in the Face Sheet of this Contract.

## **7. TIME AND MANNER OF PAYMENT:**

7.1 Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an original invoice or advise the Contractor of its non-acceptance within a reasonable time from receipt.

7.2 Where the Services are to be provided, in addition to an invoice, the Contractor shall submit to UNDP a report, describing in detail the Services provided under the Contract during the period of time covered in each report.

**8. RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of the Services to UNDP by the Contractor's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

8.1 The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property.

8.2 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

8.3 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

8.4 At the option of and in the sole discretion of UNDP:

8.4.1 the qualifications of personnel proposed by the Contractor (e.g., a curriculum vitae) may be reviewed by UNDP prior to such personnel's performing any obligations under the Contract;

8.4.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNDP prior to such personnel's performing any obligations under the Contract; and,

8.4.3 in cases in which, pursuant to Article 8.4.1 or 8.4.2, above, UNDP has reviewed the qualifications of such Contractor's personnel, UNDP may reasonably refuse to accept any such personnel.

8.5 Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

8.5.1 UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.

8.5.2 Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.

8.5.3 The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.

8.5.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

8.5.5 Any request by UNDP for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.

8.5.6 If a request for the withdrawal or replacement of the Contractor's personnel is not based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

8.6 Nothing in Articles 8.3, 8.4 and 8.5, above, shall be construed to create any obligations on the part of UNDP with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

8.7 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of UNDP shall:

8.7.1 undergo or comply with security screening requirements made known to the Contractor by UNDP, including but not limited to, a review of any criminal history;

8.7.2 when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to UNDP for cancellation.

8.8 Within one working day after learning that any of Contractor's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.

8.9 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP property without appropriate authorization from UNDP.

8.10 The Contractor shall (i) 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; and (ii) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

8.11 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 8.10 above.

## **9. ASSIGNMENT:**

9.1 Except as provided in Article 9.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of UNDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNDP.

9.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, provided that:

9.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; and,

9.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; and,

9.2.3 the Contractor promptly notifies UNDP about such assignment or transfer at the earliest opportunity; and,

9.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UNDP following the assignment or transfer.

**10. SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNDP. UNDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP reasonably considers is not qualified to perform obligations under the Contract. UNDP shall have the right to require any subcontractor's removal from UNDP premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its 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.

**11. PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of the Goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to such purchases under the Contract:

**11.1 DELIVERY OF GOODS:** The Contractor shall hand over or make available the Goods, and UNDP shall receive the Goods, at the place for the delivery of the Goods and within the time for delivery of the Goods specified in the Contract. The Contractor shall provide to UNDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or,

otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the Goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the Goods shall be borne exclusively by the Contractor until physical delivery of the Goods to UNDP in accordance with the terms of the Contract. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by UNDP.

**11.2 INSPECTION OF THE GOODS:** If the Contract provides that the Goods may be inspected prior to delivery, the Contractor shall notify UNDP when the Goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNDP or its designated inspection agents may also inspect the Goods upon delivery in order to confirm that the Goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNDP or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

**11.3 PACKAGING OF THE GOODS:** The Contractor shall package the Goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the Goods. The Goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the Goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by UNDP as well as such other information as is necessary for the correct handling and safe delivery of the Goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

**11.4 TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the Goods in accordance with the requirements of the Contract. The Contractor shall ensure that UNDP receives all necessary transport documents in a timely manner so as to enable UNDP to take delivery of the Goods in accordance with the requirements of the Contract.

**11.5 WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNDP stated in or arising under the Contract, the Contractor warrants and represents that:

11.5.1 The Goods, including all packaging and packing thereof, conform to the technical specifications, are fit for the purposes for which such Goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

11.5.2 If the Contractor is not the original manufacturer of the Goods, the Contractor shall provide UNDP with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

11.5.3 The Goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

11.5.4 The Goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

11.5.5 The Goods are new and unused;

11.5.6 All warranties will remain fully valid following any delivery of the Goods and for a period of not less than one (1) year following acceptance of the Goods by UNDP in accordance with the Contract;

11.5.7 During any period in which the Contractor's warranties are effective, upon notice by UNDP that the Goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective Goods with Goods of the same or better quality or, at its own cost, remove the defective Goods and fully reimburse UNDP for the purchase price paid for the defective Goods; and,

11.5.8 The Contractor shall remain responsive to the needs of UNDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

**11.6 ACCEPTANCE OF GOODS:** Under no circumstances shall UNDP be required to accept any Goods that do not conform to the specifications or requirements of the Contract. UNDP may condition its acceptance of the Goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNDP be obligated to accept any Goods unless and until UNDP has had a reasonable opportunity to inspect the Goods following delivery. If the Contract specifies that UNDP shall provide a written acceptance of the Goods, the Goods shall not be deemed accepted unless and until UNDP in fact provides such written acceptance. In no case shall payment by UNDP in and of itself constitute acceptance of the Goods.

**11.7 REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to UNDP under the Contract, in case any of the Goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNDP, at its sole option, may reject or refuse to accept the Goods, and within thirty (30) days following receipt of notice from UNDP of such rejection or refusal to accept the Goods, the Contractor shall, in sole option of UNDP:

11.7.1 provide a full refund upon return of the Goods, or a partial refund upon a return of a portion of the Goods, by UNDP; or,

11.7.2 repair the Goods in a manner that would enable the Goods to conform to the specifications or other requirements of the Contract; or,

11.7.3 replace the Goods with Goods of equal or better quality; and,

11.7.4 pay all costs relating to the repair or return of the defective Goods as well as the costs relating to the storage of any such defective Goods and for the delivery of any replacement Goods to UNDP.

11.8 In the event that UNDP elects to return any of the Goods for the reasons specified in Article 11.7, above, UNDP may procure the Goods from another source. In addition to any other rights or remedies available to UNDP under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, inter alia, the costs of engaging in such procurement, and UNDP shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the Goods for the Contractor's account.

**11.9 TITLE:** The Contractor warrants and represents that the Goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the Goods shall pass from the Contractor to UNDP upon delivery of the Goods and their acceptance by UNDP in accordance with the requirements of the Contract.

**11.10 EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the Goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNDP under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNDP, UNDP shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with UNDP to enable UNDP to take appropriate measures to resolve the matter.

## **12. INDEMNIFICATION:**

12.1 The 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 brought by any third party against UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

12.1.1 allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or,

12.1.2 any acts or omissions of the 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.

12.2 The indemnity set forth in Article 12.1.1, above, shall not apply to:

12.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNDP directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; or

12.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials, equipment, supplies or any components thereof furnished under the Contract if UNDP or another party acting under the direction of UNDP made such changes.

12.3 In addition to the indemnity obligations set forth in this Article 12, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 12, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

12.4 UNDP shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection

with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

12.5 In the event the use by UNDP of any Goods, property or Services provided or licensed to UNDP by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

12.5.1 procure for UNDP the unrestricted right to continue using such Goods or Services provided to UNDP;

12.5.2 replace or modify the Goods and/or or Services provided to UNDP, or part thereof, with the equivalent or better Goods and/or Services, or part thereof, that is non-infringing; or,

12.5.3 refund to UNDP the full price paid by UNDP for the right to have or use such Goods, property or Services, or part thereof.

### **13. INSURANCE AND LIABILITY:**

13.1 The Contractor shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

13.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

13.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

13.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

13.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,

13.2.4 such other insurance as may be agreed upon in writing between UNDP and the Contractor.

13.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

13.4 The Contractor acknowledges and agrees that UNDP accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

13.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNDP, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

13.5.1 name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

13.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP;

13.5.3 provide that UNDP shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,

13.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.

13.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

13.7 Except for any self-insurance program maintained by the Contractor and approved by UNDP for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNDP. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNDP with evidence, in the form of certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNDP reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the

Contractor under the Contract. Notwithstanding the provisions of Article 13.5.3, above, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.

13.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

**14. ENCUMBRANCES AND 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 UNDP against any monies due to the Contractor or that may 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 Contractor or UNDP.

**15. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the 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, and the Contractor shall be liable to compensate UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

**16. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

16.1 Except as is otherwise expressly provided in writing in the Contract, 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 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP.

16.2 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, UNDP does not and shall not claim any ownership interest thereto, and the 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.

16.3 At the request of 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 UNDP in compliance with the requirements of the applicable law and of the Contract.

16.4 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 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 work under the Contract.

**17. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:**

The 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 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 the United Nations in connection with its business or otherwise without the written permission of UNDP.

**18. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or 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:

18.1 The Recipient shall:

18.1.1 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,

18.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

18.2 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 18, the Recipient may disclose Information to:

18.2.1 any other party with the Discloser's prior written consent; and,

18.2.2 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:

18.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,

18.2.2.2 any entity over which the Party exercises effective managerial control; or,

18.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

18.3 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 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.

18.4 UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

18.5 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.

18.6 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.

## **19. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**

19.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of force majeure or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of force majeure. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting force majeure shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

19.2 If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 20, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

19.3 Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, 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 Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which 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.

## **20. TERMINATION:**

20.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 23 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

20.2 UNDP may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNDP may terminate the Contract without having to provide any justification therefor.

20.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by UNDP, the Contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing:

20.3.1 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;

20.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

20.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

20.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

20.3.5 transfer title and deliver to UNDP the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

20.3.6 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;

20.3.7 complete performance of the work not terminated; and,

20.3.8 take any other action that may be necessary, or that UNDP may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNDP has or may be reasonably expected to acquire an interest.

20.4 In the event of any termination of the Contract, UNDP shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNDP shall not be liable to pay the Contractor except for those Goods satisfactorily delivered and/or Services satisfactorily provided to UNDP in accordance with the requirements of the Contract, but only if such Goods or Services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNDP or prior to the Contractor's tendering of notice of termination to UNDP.

20.5 UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

20.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

20.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

20.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

20.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

20.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; or,

20.5.6 UNDP reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

20.6 Except as prohibited by law, the Contractor shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 20.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNDP of the occurrence of any of the events specified in Article 20.5, above, and shall provide UNDP with any information pertinent thereto.

20.7 The provisions of this Article 20 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

**21. NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.



**22. NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

**23. SETTLEMENT OF DISPUTES:**

**23.1 AMICABLE SETTLEMENT:** The Parties 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.

**23.2 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 23.1, 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. 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") and Article 34 ("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.

**24. 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.

**25. TAX EXEMPTION:**

25.1 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 UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

25.2 The Contractor authorizes UNDP to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and UNDP shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNDP and paid by the Contractor under written protest.

**26. MODIFICATIONS:**

26.1 No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing by the duly authorized representatives of the Parties.

26.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 26.1, above.

26.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any Goods or Services provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute an agreement by UNDP thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 26.1, above.

**27. AUDITS AND INVESTIGATIONS:**

27.1 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 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.

27.2 UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract 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.

27.3 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 relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. 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.

27.4 UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. The Contractor also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the procurement of Goods and/or Services which are the subject of this Contract, shall have direct recourse to the Contractor for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Contract.

## **28. LIMITATION ON ACTIONS:**

28.1 Except with respect to any indemnification obligations in Article 12, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 23.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

28.2 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.

**29. ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 30 to 36 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

**30. SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all reasonable assistance required by UNDP. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

**31. STANDARDS OF CONDUCT:** The Contractor warrants that it 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 Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In addition, in the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth 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" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following documents then in force at the time of signature of the Contract:

31.1 The UN Supplier Code of Conduct;

31.2 UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");

31.3 UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

31.4 UNDP Social and Environmental Standards (SES), including the related Accountability Mechanism;

31.5 UNDP Vendor Sanctions Policy; and

31.6 All security directives issued by UNDP.

The Contractor acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at [www.undp.org](http://www.undp.org) or at <http://www.undp.org/content/undp/en/home/operations/procurement/business/>. In making such acknowledgement, the Contractor represents and warrants that it is in compliance with the requirements of the foregoing, and will remain in compliance throughout the term of this Contract.

**32. OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNDP, as such obligations are set forth in UNDP vendor registration procedures.

**33. CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) 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.

**34. MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

**35. SEXUAL EXPLOITATION:**

35.1 In the performance of the Contract, the 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 Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

35.2 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled 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 reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

35.3 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.

**36. ANTI-TERRORISM:** The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under the Contract is used to provide support to individuals or entities associated with terrorism and that 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 [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list). This provision must be included in all sub-contracts or sub-agreements entered into under the Contract.

## TERMS OF REFERENCE

**Proposal Title: Mediation Training and Consultancy Services for Efficient institutionalization of Mediation in Georgia**

**Project: EU-UN Joint Project “Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolutions”.**

**Expected Starting Date: 25 November 2019**

**Duration of Contract: 24 weeks**

### 1. BACKGROUND

*Enhanced Mediation and Arbitration for Fairer and Faster Commercial Dispute Resolution* is a joint project of European Union and United Nations Development Programme.

This project is funded by the European Union based on the Financing Agreement for support of economic and business development in Georgia signed between Georgia and the European Union in November 2018.

The project is built upon progress achieved in the course of implementation of the EU-UNDP joint programme “Enhancing Access to Justice and Development of a Child-Friendly Justice System in Georgia” (01/01/2016 – 31/12/2018) (Joint Programme). The intended outcome of the project contributes to the social-economic development of Georgia by promoting fairer and faster commercial dispute resolution through effectively functioning alternative dispute resolution system.

In particular, the project is expected to deliver the following outputs:

1. Enhanced use and quality of arbitration and mediation through strengthening relevant institutions;
2. Enhanced capacity and qualification of mediators, arbitrators, legal professionals and judiciary to promote consistent, efficient and fast resolution of commercial disputes.

The Project’s main stakeholders are Ministry of Justice, Judiciary, Association of Mediators, Georgian Association of Arbitrators, Georgian International Arbitration Centre, High Education Institutions, including National Centre for ADR (NCADR) at the Tbilisi State University, Arbitration Initiative Georgia (AIG), out-of-court mediation centres, education institutions, and CSOs working on/with ADRs, High School of Justice, Hight Council of Justice, Georgian Bar Association as well as the CSOs working on promoting legal profession.

The Project’s main beneficiaries are mediators, arbitrators, judiciary; Association of Mediators, Georgian Association of Arbitrators, legal professionals including lawyers and law students, judges and court staff, SMEs, general public.

### 2. OBJECTIVES OF THE PROJECT

**Output 1 - Enhanced use and quality of arbitration and mediation through strengthening capacities of relevant institutions**

The Project aims to support increased use of ADRs in commercial cases in Georgia to facilitate the efficient dispute resolution and access to justice. This will be undertaken through support to the justice system in establishment of court mediation centres, raising awareness about mediation and arbitration and enhanced communication between SMEs, mediators, arbitrators, judges and lawyers.

The Law on Mediation (“Law”) has been adopted recently. Together with entire legislative package, it further regulates in-court mediation and introduces general rules for an out-of-court mediation, sets the statutory framework for application of code of ethics and minimum standards for mediators’ qualification. Accordingly, HCOJ shall be responsible to establish mediation centers in city courts and courts of Appeals throughout the country, elaborate the mediation programme for courts and determine the basis for remuneration of court mediators.

The Court Mediation Programme (Programme) shall be a basis for proper functioning and further development of mediation in Georgian courts. Through the Programme, HCOJ will further establish rules and procedures necessary for communication between courts and Association of Mediators as well as create the framework of case referral and handling by the court mediation centres.

Besides the requirement to establish mediation centers in all courts of Georgia, the Law expands the categories of disputes falling under mandatory court mediation. There are approximately 40 currently active mediators in Georgia. They all are predominantly based in Tbilisi and operating in Tbilisi and nearby towns (Gori, Rustavi). To meet the statutory requirements and in future increased demand for court mediation throughout the entire country, new mediators shall be trained in all regions. Having in mind that based on the Law and Mediation Programme mediation centres will be created in all courts of Georgia, the need of training of mediators has emerged. Existing pool of mediators' trainers is not enough to meet this need.

Another novelty of the Law is establishment of Mediators Association which shall be a membership-based organization (legal entity of public law) responsible for national mediators' roster, accreditation of mediators, setting the standards for the accreditation of mediators and/or mediators training providers, as well as ensuring the adherence to ethical standards by mediators and disciplinary proceedings in case of necessity. Future the Association will have to adopt code of ethics (conduct) of mediators, as well as set up accreditation system for mediators. This assignment will also contribute to facilitation of smooth establishment of the given Association.

Besides smooth implementation of Law, the project aims to contribute to increased use of mediation by assisting already existing mediation centres to improve their services. The number of cases solved through mediation in Georgia is relatively small, however there is a tendency of increase in recent years. In order to keep the tendency and meet the increased demand on mediation, private institutions offering mediation services as well as court-annexed mediation centres need to upgrade and adapt their services to existing best practices and customer needs. The project has commissioned customer satisfaction survey to study the attitudes of people who have used ADR services in Georgia. Study results may serve as baseline for service improvement together with the analyses of customer feedback obtained by mediation centers individually.

Having this in consideration, the Project team deems it appropriate to contribute to the enabling environment for effective and smooth implementation of the Law and further mediators training by creation of pool of trainers of mediators; facilitate the smooth establishment of the Mediators Association and contribute to successful functioning of mediation centres, by improving quality of their services.

### 3. AIM OF THE ASSIGNMENT

The aim of the assignment is to deliver the training of trainers in mediation to strengthen the capacity of local mediation practitioners for delivery of mediators' certification courses. Successful contractor shall design and deliver ToTs including supervised training by trainees.

Successful contractor shall facilitate smooth establishment of the Mediators' Association by assisting the Mediators' Association in elaborating the Code of Conduct and Mediators' Accreditation System.

In addition to above-mentioned, the assignment aims at improving the quality of mediation services based on implementation of quality assurance standards in line with best international practice and based on customer needs.

### 4. OBJECTIVES OF THE ASSIGNMENT

The overall objective of the assignment is to contribute to the enabling environment for effective and smooth implementation of the Law and further strengthen the capacity of local mediation practitioners to deliver mediators accreditation trainings in future; facilitate smooth establishment of the Mediators Association, as well as contribute to enhanced use and quality of mediation by improving the quality of services rendered by mediation centres.

### 5. SCOPE OF WORK AND EXPECTED OUTPUT

The selected organization is expected to work into three main directions: (1) Training of Trainers (ToT) for delivery of mediators' certification course, (2) assisting the Mediators Association in elaboration of internal guidelines on ethics and mediators' accreditation system and (3) elaborating recommendations for mediation centres to improve the quality of delivered services and customer satisfaction feedback collection methods.

(1) **Training of Trainers (ToT) for delivery of mediators' certification courses** – the contractor will have to design and conduct two ToTs for up to 10 participants each. It is expected that the contractor will facilitate

the selection process of participants of the training, elaborate the selection criteria and participate in the interviews in collaboration with the Project team (if such will be needed). The primary target of the ToT participants will be already trained mediators with teaching experience.

As two mediators' trainings are planned to be conducted in early 2020, the project expects that the trainers will be prepped for conducting first supervised training during that period of time. The dates of the supervised training can be coordinated with the contractor.

The Project Team will be responsible for making necessary logistical arrangements related to the organization of the training, particularly arranging land transportation in Georgia from Tbilisi to the training venue (if outside Tbilisi), renting a training venue, catering and simultaneous translation service, translation of the training module into Georgian and booking accommodation for experts in Georgia. The methodology shall have the detailed description of the suggested duration of the Training, as well as brief description of each training day learning outcomes. The justification shall be provided for its duration and a number of experts necessary for carrying out the training. Selected organization is also expected to conduct supervision of the participants while delivering first training through their real-time coaching. The exact scope of this supervision shall be elaborated in the methodology.

The contractor shall prepare the guidebook for the trainers with essential information for future trainers. The guidebook will be property of UNDP after the completion of the training.

**(2) Assistance to the Mediators Association in elaboration of internal guidelines on ethics and mediators' accreditation system** – the selected organization is expected to assess the Code of Ethics (Conduct) elaborated by the working group of Georgian experts, suggest the disciplinary models most suitable for given context and conduct workshop for ethics' commission. In this regard the contractor will work closely with the management of future Mediators' Association. Also, the selected organization will elaborate the model of accreditation of mediators' based on best international practice and with consideration of Georgian context.

**(3) Elaborating recommendations for mediation centres to improve the quality of delivered services** - the successful contractor shall elaborate recommendations for approximately 3 ADR institutions, including court-annexed mediation centers. Experts from selected organization are expected to hold face-to-face interviews and discussions with representatives of mediation centres to analyse existing mediation services in Georgia, with focus on quality assurance standards and customer feedback collection instruments.

Based on needs, resources and capacity of institutions experts shall identify and design quality assurance methodology and standards as well as methodology for collecting customer satisfaction data and reflect their recommendations in final report. A mission to Georgia is required for fulfilling this part of the assignment.

## 6. TIMING

It is expected that the contractor performs the services as per the timeline below.

The timeline for conduct of ToT:

ACTIVITY		Week (from the commencement of the contract)																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1.	Submission of the detailed outline of the training (home-based)																		
2.	The Project Team provides feedback on/approves the outline of the training																		
3.	Submission of the final training agenda, together with all teaching materials and the Guidebook for trainers in English (home-based)																		
4.	The Project Team provides feedback on/approves the training agenda and teaching materials including the Guidebook for trainers																		
5.	Translation of the teaching materials and Guidebook for trainers into Georgian* and agreement on the date of training																		
6.	Conduct of ToT (trainings for two groups - a mission** to Georgia)																		
7.	Supervised training by ToT participants (a mission** to Georgia)																		



**\* The Project team will be responsible for preparation of Georgian version of the training module. The costs associated with translation shall not be included in the assignment budget.**

**\*\* The Project team will be responsible for training/workshop venue costs, including catering and simultaneous translation; as well as for costs of accommodation of experts in Georgia These costs shall not be included in the assignment budget.**

The timeline for services of the assistance to the Mediators Association:

ACTIVITY		Week (from the commencement of the contract)																	
		7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1.	Revision of the Draft of Code of Ethics prepared by Georgian experts Working Group and elaboration of initial recommendation (home-based)																		
2.	The Project Team provides feedback on recommendations regarding Code of Ethics																		
3.	Elaboration of the disciplinary model for Mediators' Association (a mission** to Georgia)																		
4.	The Project Team provides feedback on disciplinary model																		
5.	Training for Ethics Committee of Mediators Association and relevant staff (a mission** to Georgia)																		
6.	Elaboration of a brief report overview of possible models of accreditation/certification (home-based)																		
7.	The Project Team provides feedback on models of accreditation/certification																		
8.	Elaboration of mediators' accreditation/certification system for Mediators Association (including a mission** to Georgia)																		
9.	Study and analyse mediation services in Georgia, including face-to-face interviews (a mission** to Georgia)																		
10.	Elaboration of recommendations for improving mediation services and customer feedback collection methodology (home-based)																		
11.	The project team provides feedback on recommendations regarding quality of services																		
12.	Submission of the final report including comments to the Draft Code of Ethics (Conduct), disciplinary model, accreditation/certification model, recommendations for improving mediation services and observations made during missions.																		
13.	The Project Team provides feedback on/approves the final report																		

**\*\* The Project team will be responsible for training/workshop venue costs, including catering and simultaneous translation; as well as for costs of accommodation of experts in Georgia These costs shall not be included in the assignment budget**

## 7. DELIVERABLES AND SUBMISSION TIMELINE

The organization is expected to produce the following deliverables:

DELIVERABLES	DUE DATE
<b>Deliverable 1</b> Detailed outline of the ToT	Within 2 weeks from the commencement of the contract
<b>Deliverable 2</b> Revision report of the Draft Code of Ethics (Conduct)	Within 8 weeks from the commencement of the contract

<b>Deliverable 3</b> Final training agenda and all relevant teaching materials, including the Guidebook for trainers in English	Within 9 weeks from the commencement of the contract
<b>Deliverable 4</b> Brief Report on mediators accreditation models	Within 10 weeks from the commencement of the contract
<b>Deliverable 5</b> Disciplinary model for Ethics Committee of the Mediators' Association and workshop for committee (including a mission to Georgia)	Within 14 weeks from the commencement of the contract
<b>Deliverable 6</b> 2 ToTs including supervised training by the trainees	Within 18 weeks from the commencement of the contract
<b>Deliverable 7</b> Preliminary recommendations for improving quality of mediation services (including a mission to Georgia)	Within 18 weeks from the commencement of the contract
<b>Deliverable 8</b> Mediators Accreditation/Certification Model of the Mediators' Association (including a mission to Georgia)	Within 19 weeks from the commencement of the contract
<b>Deliverable 9</b> Final report including comments to the Draft Code of Ethics (Conduct), disciplinary and accreditation/certification models for Mediators' Association, recommendations for ADR institutions for improving quality of their services and observations made during missions	Within 23 weeks from the commencement of the contract

## 8. ELIGIBILITY CRITERIA

- Relevant experience of the offeror shall be demonstrated by:
  - 8 years' experience in providing consultancy services/advisory works on mediation matters in an international setting, i.e. outside of the country of offeror's domicile or offeror's usual operation (**minimum requirement**);
  - At least 10 years' experience in carrying out mediation trainings (**minimum requirement**);
  - Experience of conducting at least 5 trainings for trainers in mediation during past 5 years (**minimum requirement**);
  - Experience in carrying out at least 4 training projects in an international setting (**minimum requirement**);
  - Experience in consultancy related to accreditation/certification of mediators in 2 projects (**minimum requirement**);
  - Having at least 3 letters of recommendation from previous contract providers in the similar projects (**minimum requirement**).

### Names and qualifications of the key personnel:

At a minimum:

- (1) **Lead Trainer:**
  - with minimum of 10 years' experience in conducting mediation trainings (**minimum requirement**);
  - with experience of conducting at least 5 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer's domicile (**minimum requirement**);
  - with minimum of 10 years' experience of acting as a mediator (**minimum requirement**);
- (2) **Trainer:**
  - with minimum of 7 years' experience in conducting mediation trainings (**minimum requirement**);
  - with experience of conducting at least 3 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer's domicile (**minimum requirement**);
  - with minimum of 7 years' experience of acting as a mediator (**minimum requirement**);
- (3) **Consultant on Mediators Ethics:**
  - with minimum of 7 years' experience of acting as a mediator (**minimum requirement**);
  - with experience of elaboration of / contribution to at least 1 mediators' code of conducts and demonstrated expertise in the field of mediators' ethics (**minimum requirement**);
- (4) **Consultant on Accreditation/Certification of Mediators**
  - with minimum of 10 years' experience of acting as a mediator (**minimum requirement**);
  - with working experience of at least 7 years in elaboration of/advising on mediators' accreditation/certification programmes (**minimum requirement**);
- (5) **Consultant on Mediation Service Quality Assurance**



- with minimum of 5 years' working experience in projects related to ADR, with the focus on business/strategic development, quality assurance and/or customer satisfaction within mediation centres, other ADR institutions or judiciary (**minimum requirement**);
- with minimum experience of working on at least 2 projects aiming to improve overall efficiency of mediation centres, other ADR institutions or judiciary (**minimum requirement**);

The other professional team if deemed appropriate by the offeror to fulfil the requirements as spelled out in this RFP. (Note: It is possible to combine several expert functions within one individual, provided that the candidate fully meets all needed qualification).

## 9. PAYMENT MODALITY

Successful company will be paid in four instalments upon satisfactory submission and approval of the deliverables in accordance with the following scheme:

DELIVERABLES	Amount to be paid
<b>Deliverable 1</b> Detailed outline of the ToT	15% of the contract amount
<b>Deliverable 2</b> Revision report of the Draft Code of Ethics (Conduct)	30% of the contract amount
<b>Deliverable 3</b> Final training agenda and all relevant teaching materials, including the Guidebook for trainers in English	
<b>Deliverable 4</b> Brief Report on mediators accreditation models	
<b>Deliverable 5</b> Disciplinary model for Ethics Committee of the Mediators' Association and workshop (including a mission to Georgia)	40% of the contract amount
<b>Deliverable 6</b> 2 ToTs including supervised training by the trainees	
<b>Deliverable 7</b> Recommendations for improving quality of mediation Services (including a mission to Georgia)	
<b>Deliverable 8</b> Mediators Accreditation/Certification Model of the Mediators' Association (including a mission to Georgia)	15% of the contract amount
<b>Deliverable 9</b> Final report including comments to the Draft Code of Ethics (Conduct), disciplinary and accreditation/certification models for Mediators' Association, recommendations on mediation service quality and observations made during missions.	

UNDP will release the payment upon approval of respective deliverable by the project manager based on a respective invoice.

## Technical Proposal Evaluation Form

Technical Proposal		%	Minimum Points Obtainable	Max Points Obtainable
<b>Expertise of the bidder</b>				
At least 8 years' experience in providing consultancy services/advisory works on mediation matters in an international setting, i.e. outside of the country of offeror's domicile or offeror's usual operation ( <b>minimum requirement</b> );		3%	30	30
- More than 8 years' experience in providing consultancy services/advisory on mediation matters in an international setting		1%		10
At least 10 years' experience in carrying out mediation trainings ( <b>minimum requirement</b> )		2%	20	20
- more than 10 years' experience of carrying out mediation trainings		1%		10
Experience of conducting at least 5 trainings for trainers in mediation during past 5 years ( <b>minimum requirement</b> );		3%	30	30
- more than 5 trainings for trainers in mediation during past 5 years		1%		10
Experience in carrying out at least 4 training projects in an international setting ( <b>minimum requirement</b> );		2%	20	20
Experience in carrying out at least 2 training projects financed by donor and/or international organizations;		1%		10
Experience in consultancy related to accreditation/certification of mediators at least in 2 projects ( <b>minimum requirement</b> );		2%	20	20
Experience in advising on the frameworks related to mediators' ethics (conduct)		1.5%		15
<b>Recommendation letters</b>				
at least 3 letters of recommendation from previous contract providers in the similar projects ( <b>minimum requirement</b> ).		2%	20	20
- Having a letter of recommendation from an international organization for conducting similar services would be an asset		0.5%		5
<b>Total for Expertise of the bidder:</b>		<b>20%</b>	<b>140</b>	<b>200</b>
<b>Methodology, Its Appropriateness to the Condition and Timeliness of the Implementation Plan</b>				
Does the bidder demonstrate full understanding of the assignment?		4%		
- Exceeds the requirement - 40				40
- Full understanding ( <b>minimum requirement</b> ) - 30			30	
Is the proposed approach and methodology responding to objectives/needs of the assignment?		10%		
- Exceeds the requirements (more detailed, comprehensive and systematic approach/methodology) - 100				100
- Fully responsive (appropriate approach/methodology) ( <b>minimum requirement</b> ) - 60			60	
Does the bidder demonstrate full technical and functional ability to fulfil the objectives of the assignment?		7%		
- Exceeds the requirement - 70				70
- Fully demonstrates ( <b>minimum requirement</b> ) - 60			60	
Timeliness of the implementation plan		4%		
- Exceeds the requirement - 40				40
- In full compliance with requirements of TOR – 30 ( <b>minimum requirement</b> )			30	
<b>Total for Methodology:</b>		<b>25%</b>	<b>180</b>	<b>250</b>
<b>Qualification of Key Personnel</b>				
<b>Lead Trainer</b>				
with minimum of 10 years' experience in conducting mediation trainings ( <b>minimum requirement</b> );		1%	10	10
- more than 10 years' experience;		0.5%		5
with experience of conducting at least 5 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer's domicile ( <b>minimum requirement</b> )		1.7%	17	17
- more than 5 trainings;		1%		10
with minimum of 10 years' experience of acting as a mediator ( <b>minimum requirement</b> )		1%	10	10
<b>Trainer</b>				
with minimum of 7 years' experience in conducting mediation trainings ( <b>minimum requirement</b> )		0.8%	8	8

- more than 7 years' experience;	0.5%	5	
with experience of conducting at least 3 trainings of trainers on mediation during past 5 years out of which at least 2 trainings shall be conducted in international setting i.e. for a target group outside of the country of trainer's domicile ( <b>minimum requirement</b> )	1.6%	16	16
- more than 3 trainings;	0.5%		5
with minimum of 7 years' experience of acting as a mediator ( <b>minimum requirement</b> );	0.8%	8	8
<b>Consultant on Mediators Ethics</b>			
with minimum of 7 years' experience of acting as a mediator ( <b>minimum requirement</b> )	1%	10	10
with experience of elaboration of at least 1 mediators' code of conducts and demonstrated expertise in the field of mediators' ethics ( <b>minimum requirement</b> ).	1.7%	17	17
- being a former or present member of Mediators Disciplinary (Ethics) Committee(s) will be an asset.	1%		10
- experience in conducting targeted trainings in mediators' ethics will be an asset.	1.5%		15
<b>Consultant on Accreditation/Certification of Mediators</b>			
with minimum of 10 years' experience of acting as a mediator ( <b>minimum requirement</b> );	1%	10	10
- more than 10 years' experience;	0.5%		5
with working experience of at least 7 years in elaboration of/advising on mediators' accreditation/certification programmes ( <b>minimum requirement</b> );	2.2%	22	22
- experience in elaboration of/advising on national (statutory/institutional) mediators' accreditation/certification programmes in at least 2 jurisdictions will be an asset.	1.5%		15
<b>Consultant on Mediation Service Quality Assurance</b>			
with minimum of 5 years' working experience in projects related to ADR, with the focus on business/strategic development, quality assurance and/or customer satisfaction within mediation centres, other ADR institutions or judiciary	2.2%	22	22
- more than 5 years	0.5%		5
with minimum experience of working on at least 2 projects aiming to improve overall efficiency of mediation centres, other ADR institutions or judiciary	2%	20	20
- more than 2 projects	0.5%		5
<b>Total for Key Personnel:</b>	<b>25%</b>	<b>170</b>	<b>250</b>
<b>Maximum Total Technical</b>	<b>70 %</b>		<b>700</b>
<b>Minimum Technical points needed</b>		<b>490</b>	
Financial Proposal	<b>30%</b>		<b>300</b>
Budget Proposals			
<b>To be computed as a ration of the Proposal's Offer to the lowest price among the proposals received by UNDP</b>	<b>30%</b>		<b>300</b>
<b>Total:</b>	<b>100%</b>		<b>1000</b>