Pro Bono Agreement

Between

The United Nations Development Programme

and

[INSERT NAME OF COMPANY]

For The

[Insert Brief Details]

1. **THIS AGREEMENT** ("Agreement") is entered by and between The United Nations Development Programme (hereinafter referred to as "UNDP"), a subsidiary organ of the United Nations, an international organization established by treaty, having its headquarters at 1 UN Plaza, New York, NY 10017, and **[insert name of Private Entity]** ("the Partner"). The UNDP and the Partner shall be referred to, collectively as the "Parties" and, individually as "Party".

2. **COMMENCEMENT DATE AND TERM OF THIS AGREEMENT:**

2.1 This Agreement commences on [insert either "the date on which this Agreement is signed by the Parties" or a specific date "dd/mm/yyyy"] and continues until [insert a specific date "dd/mm/yyyy"] unless terminated earlier in accordance with this Agreement.

3. **AGREEMENT DOCUMENTS:**

3.1 The following documents constitute the entire agreement between the Parties and supersedes all prior agreements, understandings, communications and representations concerning the subject matter:

a) this document;

b) Annex A: [*indicate the name of Annex A*]];

c) [Annex B: [*indicate the name of Annex B*]; and

d) [*list other Annexes and documents, as applicable*].

3.2 If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority:

a) this document;

b) [*insert document*]; and

c) [*insert document*].

4 **LEGAL STATUS OF THE PARTIES:**

4.1 Pursuant, *inter alia*, to the Charter of the UN and the Convention on the Privileges and Immunities of the UN, UNDP has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

4.2 Nothing contained in or relating to this Agreement shall be construed to create a partnership, a joint venture, employment or agency relationship between the Parties.

4.3 The officials, representatives, employees, or subcontractors of either Party shall not be considered in any respect as being the employees or agents of the other Party.

4.4 The cooperation between the Parties under this Agreement shall be on a non-exclusive basis.

5 RESPONSIBILITIES OF THE UNITED NATIONS DEVELOPMENT PROGRAMME

5.1 [Describe the UNDP's responsibilities]

6 PRO BONO NATURE OF THE CONTRIBUTION:

6.1 Each Party shall ensure that the contribution is offered and/or accepted in accordance with UNDP regulations and rules.

6.2 The Partner agrees to provide the contributions under this Agreement without any charge to the UNDP. Without limiting the generality of the foregoing, the UNDP shall not be responsible for any fees, costs or expenses related to or incurred by the Partner, or incur any liabilities, in connection with this Agreement or the provision of the contributions.

7 THE CONTRIBUTION:

7.1 The Partner shall provide, at no cost to the UNDP, the following [goods][services][goods and services] which are collectively referred to as the "Contributed [Goods][Services][Goods and Services]":

a) [insert contribution item and estimated value];

b) [insert contribution item and estimated value]; and

c) [insert contribution item and estimated value].

7.2 The Partner shall deliver the Contributed [Goods][Services][Goods and Services] in accordance with the timeline attached or by [insert dd/mm/yyyy].

8 DELIVERY, ACCEPTANCE AND REJECTION OF THE CONTRIBUTED GOODS[1]:

8.1 The Partner shall deliver the Contributed Goods to the following address:

[insert address]

8.2 Upon delivery, the UNDP shall inspect the Contributed Goods to confirm that they conform to the applicable specifications. Under no circumstances shall the UNDP be obliged to accept the Contributed Goods unless and until the UNDP has had a reasonable opportunity to inspect the Contributed Goods following delivery.

8.3 The UNDP shall provide a written acceptance of the Contributed Goods to the Partner. The contribution shall not be deemed accepted unless and until the UNDP provides such written acceptance.

8.4 Notwithstanding any other rights of, or remedies available to the UNDP under this Agreement, the UNDP at its sole option, may reject or refuse to accept the Contributed Goods if they are defective or otherwise do not conform to the specifications or other requirements of this Agreement.

8.5 Within thirty (30) days following receipt of notice from the UNDP of such rejection or refusal to accept the Contributed Goods, the Partner shall:

a) replace the Contributed Goods with goods of equal or better quality; and

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

8.6 The entire risk of loss, damage to, or destruction of the Contributed Goods shall be borne exclusively by the Partner until acceptance of the Contributed Goods by the UNDP in accordance with the terms of this Agreement. The title in the Contributed Goods shall pass from the Partner to the UNDP upon acceptance by the UNDP in accordance with the requirements of this Agreement.

9 WARRANTIES:

9.1 The Partner warrants and represents that the Contributed Goods are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in this Agreement, and shall be free from faults and defects in design, material, manufacturer and workmanship.

[1] Insert Articles 8 and 9 for the pro bono contribution of goods.

9.2 If the Partner is not the original manufacturer of the Contributed Goods, the Partner shall provide the UNDP with the benefit of all manufacturers' warranties.

9.3 The Partner warrants and represents that the Contributed Goods delivered under this Agreement are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests.

9.4 The Partner warrants and represents that the Contributed 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.

9.5 All warranties will remain fully valid following any delivery of the Contributed Goods and for a period of not less than one (1) year following acceptance of the Contributed Goods by the UNDP in accordance with this Agreement.

9.6 During any period in which the Partner's warranties are effective, upon notice by the UNDP that the Contributed Goods do not conform to the requirements of this Agreement, the Partner shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective Contributed Goods with goods of the same or better quality or, at its own cost, remove the defective Contributed Goods.

9.7 The Partner shall remain responsive to the needs of the UNDP for any services that may be required in connection with any of the Partner's warranties under this Agreement.

10 SOURCE OF INSTRUCTIONS:

10.1 The Partner shall neither seek nor accept instructions from any authority external to the UNDP in connection with the performance of its obligations under this Agreement. Should any authority external to the UNDP seek to impose any instructions concerning or restrictions on the Partner's performance under this Agreement, the Partner shall promptly notify the UNDP and provide all reasonable assistance required by the UNDP. The Partner shall not take any action in respect of the performance of its obligations under this Agreement that may adversely affect the interests of the UNDP, and the Partner shall perform its obligations under this Agreement with the fullest regard to the interests of the UNDP.

11 RESPONSIBILITY FOR EMPLOYEES:

11.1 The Partner shall be responsible for the professional and technical competence of the personnel it assigns to perform work under this Agreement and will select reliable and competent individuals who will be able to effectively perform the obligations under

this Agreement and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

11.2 The Partner's personnel shall be professionally qualified and, if required to work with officials or staff of the UNDP, shall be able to do so effectively.

11.3 The UNDP reserves the right to:

a) review the qualifications and/or interview any personnel proposed by the Partner (*e.g.*, a curriculum vitae) prior to such personnel's performing any obligations under this Agreement; and

b) reasonably refuse to accept any such personnel.

11.4 The UNDP and the Partner may, at any time, provide a written notice to withdraw or replace any of the Partner's personnel assigned to perform obligations under this Agreement, subject to the following:

a) the Partner's personnel shall not be withdrawn or replaced without the prior consultation with the UNDP;

b) the withdrawal or replacement of the Partner's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under this Agreement;

c) all expenses related to the withdrawal or replacement of the Partner's personnel shall be borne by the Partner; and

d) any request by the UNDP for the withdrawal or replacement of the Partner's personnel shall not be considered to be a termination, in whole or in part, of this Agreement, and the UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.

11.5 The Partner's personnel assigned to perform work under this Agreement shall remain the sole responsibility of the Partner.

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

a) display such identification as may be approved and furnished by the UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of this Agreement, such personnel shall immediately return any such identification to the UNDP for cancellation; and

b) operate within areas authorized or approved by the UNDP. The Partner'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 the UNDP.

12 ACKNOWLEDGEMENT AND PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNDP:

12.1 The UNDP shall provide appropriate acknowledgement concerning the Parties' collaboration under this Agreement.

12.2 The Partner shall not, in any manner whatsoever, use the name, emblem or official seal of the UNDP, or any abbreviation of the name of the UNDP in connection with its business or otherwise without the prior written permission of the UNDP. Under no circumstances shall authorization be provided to use the name, emblem or official seal of the UNDP, or any abbreviation of the name of the UNDP, for commercial purposes.

12.3 Neither Party shall make any announcement or issue press releases in connection with the existence or subject matter of this Agreement without the prior written approval of the other Party.

13 INTELLECTUAL PROPERTY

13.1 For the purposes of this Agreement:

a) "Agreement Material" means any material created by the Partner on or following the commencement date, for the purposes of or as a result of performing its obligations under this Agreement;

b) "Existing Intellectual Property Rights" means Intellectual Property Rights which are in existence before the commencement date, or are subsequently developed, or acquired by, or licensed to the UNDP, other than as a result of the performance of the obligations under this Agreement;

c) "Intellectual Property Rights" includes but is not limited to patents, copyrights, designs and trademarks; and

d) "Third Party Material" means material in which a third party holds Intellectual Property Rights.

13.2 This Article 13[2] does not affect the ownership of Intellectual Property Rights in any Existing Intellectual Property but the Partner grants to the UNDP, or will secure the grant to the UNDP from the owner of any Existing Intellectual Property, a permanent, irrevocable, royalty free, non-exclusive license (including a right of sublicense) to use, reproduce, adapt, publish, communicate and exploit any such Existing Intellectual Property for the purposes of this Agreement.

13.3 The Partner must obtain all necessary Intellectual Property Right permissions before making any Third Party Material available as Agreement Material for the purposes of this Agreement.

13.4 All Intellectual Property Rights in the Agreement Material vests in the UNDP.

13.5 To the extent that the Partner needs to use any of the Agreement Material, the UNDP grants to the Partner, a permanent, irrevocable, royalty free, non-exclusive and non-transferable license to use, reproduce, adapt, modify and communicate the Agreement Material for the purposes of this Agreement.

13.6 The license granted to the Partner under Article 13.5[3] does not include a right to exploit the Agreement Material for the Partner's commercial purposes.

14 INDEMNIFICATION:

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14.1 The Partner shall cover all costs and liabilities of the UNDP resulting from the performance of this Agreement. The UNDP shall not assume any responsibilities or liabilities resulting from the acceptance of the Contributed [Goods][Services][Goods and Services].

14.2 The Partner, at its own expense, shall indemnify, defend, and hold and save harmless, the 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 the 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:

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

b) any acts or omissions of the Partner, or of any subcontractor or anyone directly or indirectly employed by them in the performance of this Agreement, which give rise to legal liability to anyone not a party to this Agreement, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

15 INSURANCE AND LIABILITY:

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

15.2 The Partner shall take out and maintain for the entire term of this Agreement, valid and enforceable insurance policies, including but not limited to worker's compensation insurance, liability insurance and such other insurance as may be agreed in writing between the UNDP and the Partner.

15.3 The Partner acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in this Agreement nor the amount of any such

insurance shall in any way be construed as limiting the Partner's liability arising under or relating to this Agreement.

16 SETTLEMENT OF DISPUTES:

16.1 The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of this Agreement. 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 UN Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

16.2 Any dispute, controversy, or claim between the Parties arising out of this Agreement, unless settled amicably under Article 16.1[4], 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 this Agreement, order the termination of this Agreement, 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 this Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Agreement, 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.

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17 PRIVILEGES AND IMMUNITIES:

17.1 Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the UN, including its subsidiary organs.

18 SURVIVAL

18.1 The following Articles survive the expiration or termination of this Agreement:

a) Article 13[5] (Intellectual Property);

b) Article 14[6] (Indemnity);

c) Article 15[7] (Insurance and Liability);

d) Article 16[8] (Settlement of Disputes); and

e) Article 17[9] (Privileges and Immunities).

19 AMENDMENTS AND TERMINATION:

19.1 This Agreement may be amended only by written agreement signed by authorized representatives of the Parties.

19.2 Either Party may terminate this Agreement upon thirty (30) day's written notice to the other Party.

19.3 In the event of any termination, the Parties shall:

a) take immediate steps to bring the performance of any obligation under the Agreement to an orderly conclusion;

b) cease use of the name and emblem of the other Party; and

c) return to the UNDP (or at the UNDP's request, destroy) all copies of the UNDP Materials in its control or possession, if any, in addition to all other property belonging to and/or provided by the UNDP.

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20 LIMITATION ON ACTIONS:

20.1 Except with respect to any indemnification obligations in Article 14[10], above, or as are otherwise set forth in this Agreement, any arbitral proceedings in accordance with Article 16.2[11], above, arising out of this Agreement must be commenced within three years after the cause of action has accrued.

20.2 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 this Agreement, the cause of action accrues when such time of future performance actually begins.

21 ASSIGNMENT:

21.1 The Partner shall not assign, transfer, pledge or make any other disposition of this Agreement, or any part of this Agreement, or any of the rights, claims or obligations under this Agreement except with the prior written authorization of the UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the UNDP.

22 SUBCONTRACTING:

22.1 In the event that the Partner requires the services of subcontractors to perform any obligations under this Agreement, the Partner shall obtain the prior written approval of the UNDP. The approval of the UNDP of a subcontractor shall not relieve the Partner of any of its obligations under this Agreement. 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 this Agreement. All costs for engaging such subcontractors shall be borne by the Partner.

23 OFFICIALS NOT TO BENEFIT:

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23.1 The Partner warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of this Agreement or the award thereof to any representative, official, employee, or other agent of the UNDP. The Partner acknowledges and agrees that any breach of this provision is a breach of an essential term of this Agreement.

24 NON-EXCLUSIVITY:

24.1 Pursuant to Article 4.4[12] hereof, the UNDP shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in this Agreement, from any other source at any time.

25 NON-STANDARDIZATION:

25.1 The Parties agree that the acceptance of the contribution shall not result in:

a) the standardization of the Contributed [Goods][Services][Goods and Services] within the UNDP;

b) the expectation for further goods and services from the Partner; or

c) any involvement by the Partner in the internal decision making process of the UNDP.

25.2 The Partner shall not be given any undue competitive advantage in any procurement exercise for the supply of any further goods or services. However, the Partner shall not be excluded from participating in such procurement exercises.

26 CONFLICT OF INTEREST:

26.1 The Partner warrants that at the time of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

26.2 If a conflict of interest arises or appears likely to arise during the duration of this Agreement, the Partner shall:

a) immediately notify the UNDP;

b) make full disclosure of all relevant information relating to the conflict; and

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c) take such steps as the UNDP reasonably requires to resolve or otherwise deal with the conflict.

27 **TAX:**

27.1 The Partner shall be responsible for the payment of any taxes and customs duties arising out of this Agreement.

28 **OBSERVANCE OF THE LAW:**

28.1 The Partner shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under this Agreement.

29 **NOTICES:**

29.1 Notices and other communications required or permitted under this Agreement shall be in writing and signed by authorized representatives of the Parties.

29.2 A notice can be hand delivered, sent by prepaid post or by facsimile transmission to the following address:

UNDP Address	**Partner's Address**
[insert address]	[insert address]

29.3 A notice takes effect when:

a) if hand delivered, on delivery;

b) if sent by prepaid post, on the seventh business day after the date of posting; and

c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice.

30 **MISCELLANEOUS:**

30.1 The Partner represents and warrants that it is not an entity engaged in:

a) any practice inconsistent with the rights in the Convention on the Rights of the Child, including Article 32 which 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;

b) the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines; and

c) sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Partner to perform any services under this Agreement.

IN WITNESS THEREOF, the authorized Representatives of the Parties have signed this Agreement on the dates written below.

FOR THE UNITED NATIONS DEVELOPMENT PROGRAMME:	FOR [insert name of Private Entity]:
SIGNED:_____	SIGNED: _____
DATE: _____	DATE: _____

United Nations Development Programme

Rev Aug 2009