

# CONFIDENTIALITY AGREEMENT

As used herein, "UNDP" refers to United Nations Development Programme. "Bidder" is identified below.

Pursuant to this mutual confidentiality agreement, UNDP intends to disclose certain information to the Bidder in connection with RFP/UNDP/REDD+/002/2014 which was published in [www.undp.or.id/procurement](http://www.undp.or.id/procurement) starting on 17 January 2014 for the purpose of discussing the feasibility of possible future contracting of the Bidder. In consideration of UNDP's disclosure of Confidential Information and for other good and valuable consideration, the receipt and sufficiency of which Bidder hereby acknowledges, Bidder agrees to receive the information disclosed by UNDP subject to the terms and conditions of this Agreement.

1. **DEFINITION OF "CONFIDENTIAL INFORMATION."** As used in this Agreement, the term "Confidential Information" means any technical and/or commercial information relating to the disclosing Party's or any of its Affiliates' businesses, facilities, products, services, techniques and processes in whatever form relating to or used in UNDP's RFQ/UNDP/REDD+/002/2014, including, but not limited to, oral disclosure, electronic communication, all data, reports, list of companies to be audited, information about third-parties involved, and any information supplied to UNDP by a third-party and marked "confidential" or "proprietary". In the case of failure to mark Information as confidential, said Information shall be deemed confidential Information hereunder unless it is of the type or nature that could not reasonably be expected to be treated as confidential. The foregoing notwithstanding, the term "Confidential Information" does not include and bidders shall have no obligation of confidentiality with respect to any information that

a) was publicly available at the time it was disclosed to Bidder or which, through no act or omission of Bidder, becomes publicly available before Bidder discloses it to a third-party;

b) Bidder already rightfully possessed before UNDP disclosed it to Bidder;

c) Bidder rightfully receives without obligation of confidentiality from any third-party; or

d) Bidder develops independently without using Confidential Information. "Affiliates" shall mean any company, association or other separate legal entity which is directly or indirectly controlling, controlled by or under common control with, a Party, but only so long as such control continues to exist. For the purpose of the foregoing definition, "control" shall mean the owning of fifty percent (50%) or more of the equity interest or any other type of ownership interest and/or of the rights entitling to vote for the election of directors and/or members of the supervisory board.

2. **OBLIGATION OF CONFIDENTIALITY.** The Bidder shall not disclose Confidential Information to any of its officers, directors, employees, contractors or agents or to any third-party without UNDP's written consent, except that the Bidder may disclose such information to its officers, directors, employees, contractors, and agents (i) whose duties justify their need to know such Confidential Information, and (ii) who have been clearly informed of their obligation to maintain the confidential status of such Confidential Information. The foregoing notwithstanding, the Bidder may disclose Confidential Information to the extent required by applicable national or local law, regulation, court order, or other legal process, provided the Bidder has given UNDP prior written notice of such required disclosure and, to the extent reasonably possible, has given UNDP an opportunity to contest such required disclosure.

3. **PROTECTION OF CONFIDENTIAL INFORMATION.** The Bidder shall use the same care to prevent disclosure of UNDP's Confidential Information as the Bidder uses with respect to its own Confidential Information of a similar nature, which shall not in any case be less than the care a reasonable business person would use under similar circumstances.

Without limiting the foregoing, Bidder shall take reasonable action by instruction, agreement or otherwise with respect to the Bidder's employees or other persons permitted access to Confidential Information to cause them to comply fully with the Bidder's obligations hereunder with respect to the use, copying, protection, and security of the Confidential Information.

4. **PERMITTED USE OF CONFIDENTIAL INFORMATION.** The Bidder shall only use Confidential Information for the purposes for which it was originally disclosed and only as expressly permitted by the terms and conditions of this Agreement.

5. **RETURN OF CONFIDENTIAL INFORMATION.** Upon the written request of UNDP, the Bidder shall cease using and promptly return to UNDP all copies of any Confidential Information then in the Bidder's possession or under the Bidder's control. Upon the written request of UNDP, the Bidder shall certify in writing that the Bidder has complied with the provisions of this Section 5.

6. **CONFIDENTIALITY PERIOD.** Confidential Information disclosed pursuant to this Agreement shall continue to be subject to the terms of this Agreement for so long as the information constitutes Confidential Information as defined herein.

7. **OWNERSHIP OF CONFIDENTIAL INFORMATION.** UNDP shall retain all right, title and interest in and to its Confidential Information. Neither this Agreement nor any disclosure of Confidential Information shall be deemed to grant the Bidder any license or other intellectual property right.

8. **INJUNCTIVE RELIEF.** The Bidder acknowledges that the disclosure by the Bidder of Confidential Information in a manner not authorized by this Agreement would be likely to cause immediate and irreparable damage that could not be fully remedied by monetary damages. The Bidder therefore agrees that UNDP may specifically enforce this Agreement and may seek such injunctive or other equitable relief as may be necessary or appropriate to prevent such unauthorized disclosure without the necessity of proving actual damage by reason of any such breach or threatened breach of this Agreement.

9. **TERMINATION.** Any provisions of this Agreement which by their nature extend beyond its termination, including without limitation, the provisions of Sections 2 and 6, shall survive and remain in effect with respect to disclosures made before the date of termination and shall apply to the Bidder's successors and assigns.

10. **GENERAL.** Neither this Agreement nor disclosure or receipt of Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party hereto or any commitment by either Party hereto with respect to the present or future marketing of any product or service or any promise or intention to enter into any other business arrangement.

No amendment to this Agreement shall be binding upon UNDP or the Bidder unless it is in writing and executed by both UNDP and the Bidder. The failure of UNDP at any time to require performance of any provision of this Agreement or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver of any breach of any provision of this Agreement or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement. This Agreement contains the entire understanding and agreement between the Bidder and UNDP with respect to the subject matter hereof and

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supersedes all previous communications, negotiations and agreements, whether oral or written, between the Bidder and UNDP with respect to such subject matter.

BIDDER:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INSTRUCTIONS: This document should be signed by a person who has power of attorney to sign on behalf of the company. It is advisable that the president or vice president of the Bidder's corporation sign two copies of this form before UNDP can disclose any confidential information to the bidder or give the bidder access to UNDP work areas. One copy is for the bidder's records. The other copy should be forwarded kept by the UNDP unit requesting the Confidentiality Agreement.

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