



## REQUEST FOR QUOTATION (RFQ)

RFQ Reference: RFQ-044-PHL-2022	Date: 06 May 2022
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### SECTION 1: REQUEST FOR QUOTATION (RFQ)

UNDP kindly requests your quotation for the **Software Provider for Pintig Lab** as detailed in Annex 1 of this RFQ.

This Request for Quotation comprises the following documents:

Section 1: This request letter

Section 2: RFQ Instructions and Data

Annex 1: Terms of Reference

Annex 2: Quotation Submission Form

Annex 3: Technical and Financial Offer

Annex 4: Special Conditions for Software License

When preparing your quotation, please be guided by the RFQ Instructions and Data. Please note that quotations must be submitted using Annex 2: Quotation Submission Form and Annex 3 Technical and Financial Offer, by the method and by the date and time indicated in Section 2. It is your responsibility to ensure that your quotation is submitted on or before the deadline. Quotations received after the submission deadline, for whatever reason, will not be considered for evaluation.

Thank you and we look forward to receiving your quotations.

Issued by:

Name: EDWINE CARRIE  
Title: Deputy Resident Representative  
Date: 06 May 2022

## SECTION 2: RFQ INSTRUCTIONS AND DATA

<b>Introduction</b>	<p>Bidders shall adhere to all the requirements of this RFQ, including any amendments made in writing by UNDP. This RFQ is conducted in accordance with the <a href="#">UNDP Programme and Operations Policies and Procedures (POPP) on Contracts and Procurement</a></p> <p>Any Bid submitted will be regarded as an offer by the Bidder and does not constitute or imply the acceptance of the Bid by UNDP. UNDP is under no obligation to award a contract to any Bidder as a result of this RFQ.</p> <p>UNDP reserves the right to cancel the procurement process at any stage without any liability of any kind for UNDP, upon notice to the bidders or publication of cancellation notice on UNDP website.</p>
<b>Deadline for the Submission of Quotation</b>	<p><b>May 13, 2022; 5:00 PM, Manila Time</b></p> <p>If any doubt exists as to the time zone in which the quotation should be submitted, refer to <a href="http://www.timeanddate.com/worldclock/">http://www.timeanddate.com/worldclock/</a>.</p>
<b>Method of Submission</b>	<p>Quotations must be submitted as follows:</p> <p><input checked="" type="checkbox"/> <b>Dedicated Email Address</b></p> <p>Bid submission address: <a href="mailto:bids.ph@undp.org">bids.ph@undp.org</a></p> <ul style="list-style-type: none"> <li>▪ File Format: PDF Files</li> <li>▪ File names must be maximum 60 characters long and must not contain any letter or special character other than from Latin alphabet/keyboard.</li> <li>▪ All files must be free of viruses and not corrupted.</li> <li>▪ Max. File Size per transmission: 5MB</li> <li>▪ Mandatory subject of email: <b>RFQ-044-PHL-2022: Software Provider for Pintig Lab</b></li> <li>▪ Multiple emails must be clearly identified by indicating in the subject line “email no. X of Y”, and the final “email no. Y of Y.”</li> <li>▪ It is recommended that the entire Quotation be consolidated into as few attachments as possible.</li> </ul>
<b>Cost of preparation of quotation</b>	<p>UNDP shall not be responsible for any costs associated with a Supplier’s preparation and submission of a quotation, regardless of the outcome or the manner of conducting the selection process.</p>
<b>Supplier Code of Conduct, Fraud, Corruption,</b>	<p>All prospective suppliers must read the United Nations Supplier Code of Conduct and acknowledge that it provides the minimum standards expected of suppliers to the UN. The Code of Conduct, which includes <b>principles on labour, human rights, environment and ethical conduct</b> may be found at: <a href="https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct">https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct</a></p> <p>Moreover, UNDP strictly enforces a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical or unprofessional practices, and obstruction of UNDP vendors and requires all bidders/vendors to observe the highest standard of ethics during the procurement process and contract implementation. UNDP’s Anti-Fraud Policy can be found at <a href="http://www.undp.org/content/undp/en/home/operations/accountability/audit/office_of_audit_an_dinvestigation.html#anti">http://www.undp.org/content/undp/en/home/operations/accountability/audit/office_of_audit_an_dinvestigation.html#anti</a></p>
<b>Gifts and Hospitality</b>	<p>Bidders/vendors shall not offer gifts or hospitality of any kind to UNDP staff members including recreational trips to sporting or cultural events, theme parks or offers of holidays, transportation, or invitations to extravagant lunches, dinners or similar. In pursuance of this policy, UNDP: (a) Shall reject a bid if it determines that the selected bidder has engaged in any corrupt or fraudulent practices in competing for the contract in question; (b) Shall declare a vendor ineligible, either indefinitely or for a stated period, to be awarded a contract if at any time it determines that the vendor has engaged in any corrupt or fraudulent practices in competing for, or in executing a UNDP contract.</p>

<b>Conflict of Interest</b>	<p>UNDP requires every prospective Supplier to avoid and prevent 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, specifications, cost estimates, and other information used in this RFQ. Bidders shall strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. Bidders found to have a conflict of interest shall be disqualified.</p> <p>Bidders must disclose in their Bid their knowledge of the following: a) If the owners, part-owners, officers, directors, controlling shareholders, of the bidding entity or key personnel who are family members of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving goods and/or services under this RFQ.</p> <p>The eligibility of Bidders that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered, operated and managed as an independent business entity, the extent of Government ownership/share, receipt of subsidies, mandate and access to information in relation to this RFQ, among others. Conditions that may lead to undue advantage against other Bidders may result in the eventual rejection of the Bid.</p>
<b>General Conditions of Contract</b>	<p>Any Purchase Order or contract that will be issued as a result of this RFQ shall be subject to the following: <input checked="" type="checkbox"/> <a href="#">General Terms and Conditions for Contracts</a>. That can be found in this link <a href="#">PSU Considerations of Contracting UNDP GTCs for Contracts (Goods and-or Services) - Sept 2017.pdf</a></p> <p><b>AND</b></p> <p><input checked="" type="checkbox"/> Special Conditions for Software License (see Annex 4)</p> <p>Applicable Terms and Conditions and other provisions are available at <a href="#">UNDP/How-we-buy</a></p>
<b>Special Conditions of Contract</b>	<p><input checked="" type="checkbox"/> Cancellation of PO/Contract if the delivery/completion is delayed by 30 days after signing of Purchase Order</p>
<b>Eligibility</b>	<p>A vendor who will be engaged by UNDP may not be suspended, debarred, or otherwise identified as ineligible by any UN Organization or the World Bank Group or any other international Organization. Vendors are therefore required to disclose to UNDP whether they are subject to any sanction or temporary suspension imposed by these organizations. Failure to do so may result in termination of any contract or PO subsequently issued to the vendor by UNDP.</p> <p>It is the Bidder's responsibility to ensure that its employees, joint venture members, sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by UNDP.</p> <p>•At least 5 years of experience as software developer in the power market</p> <p>Please refer to the documents below to demonstrate eligibility.</p> <p><input checked="" type="checkbox"/> Annex 2: Quotation Submission Form duly completed and signed</p> <p><input checked="" type="checkbox"/> Annex 3: Technical and Financial Offer duly completed and signed and in accordance with the Schedule of Requirements in Annex 1</p> <p><input checked="" type="checkbox"/> Business Registration certificate</p> <p><input checked="" type="checkbox"/> Tax Payment Clearance/Certification</p>
<b>Currency of Quotation</b>	<p>Quotations shall be quoted in <b>Philippine Peso for local firms and United States Dollar for international firms</b></p>
<b>Joint Venture, Consortium or Association</b>	<p>If the Bidder is a group of legal entities that will form or have formed a Joint Venture (JV), Consortium or Association for the Bid, they shall confirm in their Bid that : (i) they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the JV, Consortium or Association jointly and severally, which shall be evidenced by a duly notarized Agreement among the legal entities, and submitted with the Bid; and (ii) if they are awarded the contract, the contract shall</p>

	be entered into, by and between UNDP and the designated lead entity, who shall be acting for and on behalf of all the member entities comprising the joint venture, Consortium or Association. Refer to Clauses 19 – 24 under <a href="#">Solicitation policy</a> for details on the applicable provisions on Joint Ventures, Consortium or Association.
<b>Only one Bid</b>	The Bidder (including the Lead Entity on behalf of the individual members of any Joint Venture, Consortium or Association) shall submit only one Bid, either in its own name or, if a joint venture, Consortium or Association, as the lead entity of such Joint Venture, Consortium or Association. Bids submitted by two (2) or more Bidders shall all be rejected if they are found to have any of the following: a) they have at least one controlling partner, director or shareholder in common; or b) any one of them receive or have received any direct or indirect subsidy from the other/s; or b) they have the same legal representative for purposes of this RFQ; or c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Bid of, another Bidder regarding this RFQ process; d) they are subcontractors to each other's Bid, or a subcontractor to one Bid also submits another Bid under its name as lead Bidder; or e) some key personnel proposed to be in the team of one Bidder participates in more than one Bid received for this RFQ process. This condition relating to the personnel, does not apply to subcontractors being included in more than one Bid.
<b>Duties and taxes</b>	Article II, Section 7, of the Convention on the Privileges and Immunities provides, inter alia, that the United Nations, including UNDP as a subsidiary organ of the General Assembly of the United Nations, 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. All quotations shall be submitted net of any direct taxes and any other taxes and duties, unless otherwise specified below: All prices must: <input checked="" type="checkbox"/> <a href="#">exclusive of VAT and other applicable direct taxes</a>
<b>Language of quotation</b>	English Including documentation, catalogues, instructions and operating manuals.
<b>Quotation validity period</b>	Quotations shall remain valid for <b>120 days</b> from the deadline for the Submission of Quotation.
<b>Price variation</b>	No price variation due to escalation, inflation, fluctuation in exchange rates, or any other market factors shall be accepted at any time during the validity of the quotation after the quotation has been received.
<b>Partial Quotes</b>	<input checked="" type="checkbox"/> <b>Not permitted</b>
<b>Alternative Quotes</b>	<input checked="" type="checkbox"/> <b>Not permitted</b>
<b>Payment Terms</b>	<input checked="" type="checkbox"/> <b>100% within 30 days after issuance of user's license and access to the software and submission of payment documentation.</b>
<b>Conditions for Release of Payment</b>	<input type="checkbox"/> Passing Inspection <input type="checkbox"/> Passing all Testing <input checked="" type="checkbox"/> <b>Written Acceptance of Goods, based on full compliance with RFQ requirements</b>
<b>Contact Person for correspondence, notifications and clarifications</b>	E-mail address: <b>procurement.ph@undp.org</b> Mandatory subject of email: <b>RFQ-044-PHL-2022: Software Provider for Pintig Lab</b> Attention: Quotations shall not be submitted to this address but to the address for quotation submission on page 3. Otherwise, offer shall be disqualified. 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.

<b>Clarifications</b>	Requests for clarification from bidders will not be accepted any later than <b>11 May 2022</b> . Responses to request for clarification will be sent by email ( <a href="mailto:procurement.ph@undp.org">procurement.ph@undp.org</a> ) by <b>12 May 2022</b> .
<b>Evaluation method</b>	<input checked="" type="checkbox"/> <b>The Purchase Order will be awarded to the lowest priced substantially compliant offer.</b>
<b>Evaluation criteria</b>	<input checked="" type="checkbox"/> <b>Full compliance with all requirements as specified in Annex 1</b> <input checked="" type="checkbox"/> <b>Full acceptance of the General Terms and Conditions for Contracts AND Special Conditions for Software License</b> <input checked="" type="checkbox"/> <b>Comprehensiveness of after-sales services and local service support requirements</b>
<b>Right not to accept any quotation</b>	UNDP is not bound to accept any quotation, nor award a contract or Purchase Order
<b>Right to vary requirement at time of award</b>	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.
<b>Type of Contract to be awarded</b>	<input checked="" type="checkbox"/> <b>Purchase Order</b>
<b>Expected date for contract award.</b>	<b>20 May 2022</b>
<b>Publication of Contract Award</b>	UNDP will publish the contract awards valued at USD 100,000 and more on the websites of the CO and the corporate UNDP Web site.
<b>Policies and procedures</b>	This RFQ is conducted in accordance with <a href="#">UNDP Programme and Operations Policies and Procedures</a>
<b>UNGM registration</b>	Any Contract resulting from this RFQ exercise will be subject to the supplier being registered at the appropriate level on the United Nations Global Marketplace (UNGM) website at <a href="http://www.ungm.org">www.ungm.org</a> . The Bidder may still submit a quotation even if not registered with the UNGM, however, if the Bidder is selected for Contract award, the Bidder must register on the UNGM prior to contract signature.

## ANNEX 1:

### User License Subscription Requirements

Package 1:	Description	Qty	Duration
UNDP Users (Pintig Lab and Alab)	Tableau Creator License-Online	6	1 year subscription upon signing of contract and issuance of PO
Package 2:			
Department of Health (DOH) Users	Tableau Viewer License-Online	10	
	Tableau Creator License-Online	17	

### Delivery Requirements

Delivery Requirements	
Delivery date and time	Subscription shall start within 5 days of PO/contract signing
Delivery Terms (INCOTERMS 2020)	Not Applicable
Customs clearance (must be linked to INCOTERM)	Not Applicable
Exact Address(es) of Delivery Location(s)	Not Applicable
Distribution of shipping documents (if using freight forwarder)	c/o Contractor, if applicable
Packing Requirements	n/a
Training on Operations and Maintenance	Please see Terms of Reference
Warranty Period	Not Applicable
After-sales service and local service support requirements	Not Applicable
Preferred Mode of Transport	Choose an item.

## ANNEX 2: QUOTATION SUBMISSION FORM

*Bidders are requested to complete this form, including the Company Profile and Bidder's Declaration, sign it and return it as part of their quotation along with Annex 3: Technical and Financial Offer. The Bidder shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.*

Name of Bidder:	Click or tap here to enter text.	
RFQ reference:	Click or tap here to enter text.	Date: Click or tap to enter a date.

### Company Profile

Item Description	Detail
Legal name of bidder or Lead entity for JVs	Click or tap here to enter text.
Legal Address, City, Country	Click or tap here to enter text.
Website	Click or tap here to enter text.
Year of Registration	Click or tap here to enter text.
Legal structure	Choose an item.
Are you a UNGM registered vendor?	<input type="checkbox"/> Yes <input type="checkbox"/> No      If yes, insert UNGM Vendor Number
Quality Assurance Certification (e.g. ISO 9000 or Equivalent) (If yes, provide a Copy of the valid Certificate):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does your Company hold any accreditation such as ISO 14001 or ISO 14064 or equivalent related to the environment? (If yes, provide a Copy of the valid Certificate):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does your Company have a written Statement of its Environmental Policy? (If yes, provide a Copy)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does your organization demonstrate significant commitment to sustainability through some other means, for example internal company policy documents on women empowerment, renewable energies or membership of trade institutions promoting such issues (If yes, provide a Copy)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Is your company a member of the UN Global Compact	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Bank Information	Bank Name: Click or tap here to enter text. Bank Address: Click or tap here to enter text. IBAN: Click or tap here to enter text. SWIFT/BIC: Click or tap here to enter text. Account Currency: Click or tap here to enter text. Bank Account Number: Click or tap here to enter text.			
Previous relevant experience: 3 contracts				
Name of previous contracts	Client & Reference Contact Details including e-mail	Contract Value	Period of activity	Types of activities undertaken

#### Bidder's Declaration

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Requirements and Terms and Conditions:</b> I/We have read and fully understand the RFQ, including the RFQ Information and Data, Schedule of Requirements, <b><u>the General Conditions of Contract, and any Special Conditions of Contract.</u></b> I/we confirm that the Bidder agrees to be bound by them.
<input type="checkbox"/>	<input type="checkbox"/>	I/We confirm that the Bidder has the necessary capacity, capability, and necessary licenses to fully meet or exceed the Requirements and will be available to deliver throughout the relevant Contract period.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Ethics:</b> In submitting this Quote I/we warrant that the bidder: has not entered into any improper, illegal, collusive or anti-competitive arrangements with any Competitor; has not directly or indirectly approached any representative of the Buyer (other than the Point of Contact) to lobby or solicit information in relation to the RFQ ;has not attempted to influence, or provide any form of personal inducement, reward or benefit to any representative of the Buyer.
<input type="checkbox"/>	<input type="checkbox"/>	I/We confirm to undertake not to engage in proscribed practices, , or any other unethical practice, with the UN or any other party, and to conduct business in a manner that averts any financial, operational, reputational or other undue risk to the UN and we have read the United Nations Supplier Code of Conduct : <a href="https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct">https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct</a> and acknowledge that it provides the minimum standards expected of suppliers to the UN.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Conflict of interest:</b> I/We warrant that the bidder has no actual, potential, or perceived Conflict of Interest in submitting this Quote or entering a Contract to deliver the Requirements. Where a Conflict of Interest arises during the RFQ process the bidder will report it immediately to the Procuring Organisation's Point of Contact.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Prohibitions, Sanctions:</b> I/We hereby declare that our firm, its affiliates or subsidiaries or employees, including any JV/Consortium members or subcontractors or suppliers for any part of the contract is not under procurement prohibition by the United Nations, including but not limited to prohibitions derived from the Compendium of United Nations Security Council Sanctions Lists and have not been suspended, debarred, sanctioned or otherwise identified as ineligible by any UN Organization or the World Bank Group or any other international Organization.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Bankruptcy:</b> I/We have not declared bankruptcy, are not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against them that could impair their operations in the foreseeable future.



Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b>Offer Validity Period:</b> I/We confirm that this Quote, including the price, remains open for acceptance for the Offer Validity.
<input type="checkbox"/>	<input type="checkbox"/>	I/We understand and recognize that you are not bound to accept any Quotation you receive, and we certify that the goods offered in our Quotation are new and unused.
<input type="checkbox"/>	<input type="checkbox"/>	By signing this declaration, the signatory below represents, warrants and agrees that he/she has been authorised by the Organization/s to make this declaration on its/their behalf.

Signature: \_\_\_\_\_

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: Click or tap to enter a date.

### ANNEX 3: TECHNICAL AND FINANCIAL OFFER - GOODS

Bidders are requested to complete this form, sign it and return it as part of their bid along with Annex 2: Quotation Submission Form. The Bidder shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted.

Name of Bidder:	Click or tap here to enter text.	
RFQ reference:	Click or tap here to enter text.	Date: Click or tap to enter a date.

### TECHNICAL OFFER and COMPLIANCE SHEET

Package 1:	Description	Qty	Duration	Compliant with TOR? (Yes/No)
UNDP Users (Pintig Lab and Alab)	Tableau Creator License- Online	6	1 year subscription upon signing of contract and issuance of PO	
Package 2:				
Department of Health (DOH) Users	Tableau Viewer License- Online	10		
	Tableau Creator License- Online	17		

### Compliance with Other Requirements

	Your Responses		
	Yes, we will comply	No, we cannot comply	If you cannot comply, pls. indicate counter - offer
Minimum Technical Specifications	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.
Delivery Term (INCOTERMS) and all Delivery Requirements	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.
After-sales service and local service support requirements	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.
Validity of Quotation	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.
Payment terms	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.
Link to access the software to be emailed to UNDP Procurement Unit at <a href="mailto:procurement.ph@undp.org">procurement.ph@undp.org</a>	<input type="checkbox"/>	<input type="checkbox"/>	
All Other requirements in Annex 1	<input type="checkbox"/>	<input type="checkbox"/>	Click or tap here to enter text.

**Other Information:**

Estimated weight/volume/dimension of the Consignment:	Click or tap here to enter text.
Country/ies of Origin: (if export licence required this must be submitted if awarded the contract)	Click or tap here to enter text.

**FINANCIAL OFFER**

(VAT-EXCLUSIVE)

Currency of the Quotation: Php					
Package	Description	UOM	Qty	Unit price	Total price
1	UNDP Users (Pintig Lab and Alab)				
	Tableau Creator License- Online	User	6		
2	Department of Health (DOH) Users				
	Tableau Viewer License- Online	User	10		
	Tableau Creator License- Online	User	17		
Subtotal					
Other charges (Delivery, etc)					
<b>Total Final and All-inclusive Price (VAT-EXCLUSIVE)</b>					

I, the undersigned, certify that I am duly authorized to sign this quotation and bind the company below in event that the quotation is accepted.

<b>Exact name and address of company</b> Company Name: Click or tap here to enter text. Address: Click or tap here to enter text. Click or tap here to enter text. Phone No.: Click or tap here to enter text. Email Address: Click or tap here to enter text.	<b>Authorized Signature:</b> Date: Click or tap here to enter text. Name: Click or tap here to enter text. Functional Title of Authorised Signatory: Click or tap here to enter text. Email Address: Click or tap here to enter text.
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## Annex 4: Special Conditions for Software License

### SPECIAL CONDITIONS FOR SOFTWARE LICENSE

#### 1. DEFINITIONS

- 1.1. **“Data”** means all information, whether in oral or written (including electronic) form, created by, collected, compiled or in any way originating with UNDP and/or the End-User (if the End-User is not UNDP), in the course of using and/or configuring the Software and the Services.
- 1.2. **“Documentation”** means all technical publications relating to the Software, such as reference, user, installation, systems administrator and technical guidelines, training materials, and all other information and documentation to be delivered by the Contractor to UNDP hereunder, as further specified in the Terms of Reference.
- 1.3. **“Effective Date”** means the date set forth in the Face Sheet.
- 1.4. **“End-User”** means UNDP and DOH .
- 1.5. **“Services”** means the license subscription and training to be provided by Contractor to or for the benefit of UNDP (and/or, as the case may be, the End-User if the End-User is not UNDP) hereunder as further specified in the Terms of Reference.<sup>1</sup>
- 1.6. **“Software”** means all or any portion of the computer software programs and related Source Code to such software procured under this Contract and any subsequent amendments that may be added in the future. The term Software also includes any Updates, modifications and enhancements to the foregoing.
- 1.7. **“Source Code”** shall mean the source code to the Software and its Updates and to any modifications and enhancements to the foregoing.
- 1.8. **“Territory”** means Philippines
- 1.9. **“UN Convention”** shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations in 1946.
- 1.10. **“Updates”** shall mean those subsequent releases and upgrades of current releases of the Software and Documentation which are generally made available to licensees of the Software which are similarly situated to UNDP.

#### 2. SOFTWARE SYSTEMS

- 2.1. The Software shall consist of a fully integrated set of computer software programs, which shall be the latest version of the Software that Contractor has made available to its customers as of the time of installation of the Software in accordance with this Contract.
- 2.2. The Software shall allow UNDP (and/or, as the case may be, the End-User, if the End-User is not UNDP) to achieve the purposes for which the Software is procured, as further specified in the Terms of Reference.

#### 3. LICENSE

- 3.1. The Contractor grants UNDP a nontransferable, license to use the Software and the Documentation for the purposes specified in the Terms of Reference, for use in the Philippines , and subject to the limitations contained in this Contract.

The right to use the Software granted under this Contract shall include, among others, the right to (i) provide authorized users access to the Software from various remote locations; (ii) modify or merge the Software with other software, and use such modified or merged software; (iii) make, modify and use an unlimited number of copies of the Documentation; and (iv) make a reasonable number of copies of the Software for testing, archival and backup purposes; and (v) Sub-license to Department of Energy and that such sub-license reproduces the terms and all the limitations and restrictions in the Software License and Services Agreement.

3.2. Within 3 days after the Effective Date of this Contract, the Contractor shall provide UNDP with the number of copies of the Software in a readable format as specified in the Terms of Reference, and shall provide UNDP with an equal number of copies of the Documentation.

#### **4. LICENSE LIMITATION**

4.1. UNDP shall not:

- (a) Access or use any portion of the Software not expressly licensed and paid hereunder;
- (b) Cause or permit decompilation or reverse assembly of all or any portion of the Software, except as permitted by applicable law or this Contract;
- (c) Delete, fail to reproduce or modify any copyright, trademark or other proprietary rights notices which appear on or in the Software or Documentation; nor
- (d) Sublicense, relicense, or lease the Software or any portion thereof, for third party use, except as expressly authorized in this Contract.

#### **5. ACCEPTANCE OF THE SOFTWARE<sup>2</sup>**

- 5.1. For a period of ninety (90) days after the installation of the Software (“**Acceptance Period**”), UNDP shall have the opportunity to load and run the Software in order to test that all Software licensed pursuant to this Contract operates substantially in accordance with the Contract Documents. UNDP shall provide to the Contractor a description of any deviation from the Contract Documents (“**Deviation List**”) prior to the expiration of the Acceptance Period in accordance with the notice requirements set forth in this Contract. Upon receipt of such notice, the Contractor shall have thirty (30) days to cure any such deviation listed on the Deviation List such that the Software operates in accordance with the Documentation (“**Cure Period**”).
- 5.2. Notwithstanding the foregoing, any deviation that occurs as a result of UNDP (and/or, as the case may be, the End-User, if the End-User is not UNDP) (i) not adhering to the guidelines and recommendations contained in the Licensor’s written guidelines provided hereunder; (ii) not having CPU capacity which is sufficient to run all of the Software loaded thereon, except where the Contractor has represented that CPU capacity would be sufficient to run the Software; (iii) modifying the Software or the database on which it was designed to run in a manner inconsistent with this Contract; or (iv) not using workstations that meet minimal standards set for the workstation configuration provided hereunder, will not be considered deviations for purposes of the non- acceptance of the Software.

- 5.3. In the event that: (i) UNDP provides notice to the Contractor that it has accepted the Software; or (ii) the Acceptance Period expires without UNDP providing the Contractor a Deviation List; or (iii) the Contractor is not able to reproduce any of the alleged deviations cited on the Deviation List; or (iv) the Contractor cures the deviations cited on the Deviation List within the applicable cure period, UNDP shall be deemed to have accepted the Software ("**Acceptance**"). If Acceptance has not occurred by the final day of the Cure Period ("**Final Date**"), UNDP, at its sole discretion, may postpone the final date for Acceptance. Otherwise, UNDP shall have the option of terminating the license for the Software pursuant to this Contract.
- 5.4. Software licensed pursuant to this Contract that fails to reach Acceptance may be terminated by UNDP by doing the following, on or before the Final Date: (i) providing notice of such decision to the Contractor; and (ii) uninstalling and returning all copies of the concerned Software and Documentation, at the cost of the Contractor. Immediately upon receipt of such Software by the Contractor, the Contractor shall return to UNDP any license fees paid for such Software.

## **6. WARRANTIES**

- 6.1. In addition to the warranties set forth in Article 11.5 (Warranties) of the General Conditions, the Contractor warrants the following:
- (a) The Software as delivered shall be free from defects, and, under normal use, the Software will perform in accordance with the Documentation; provided that UNDP uses the software in accordance with the guidance issued by the Contractor;
  - (b) The Documentation is accurate and conforms to the requirements of this Contract and corresponds to the functions of the Software;
  - (c) (i) The Contractor has full power and authority to grant the rights granted to UNDP under this Contract with respect to the Software, (ii) neither the performance of any Services or obligations by the Contractor in accordance with this Contract nor the license granted hereunder to use the Software and Documentation will in any way constitute an infringement or other violation of any rights of any third party, and that (iii) there is currently no actual or threatened violation of such right by Licensor.
  - (d) All Services to be provided by the Contractor hereunder shall (i) be performed in a timely and professional manner, (ii) by qualified professional personnel, (iii) shall conform to the standards generally observed in the industry for similar services, and (iv) be sufficient to enable the Software to perform in accordance with the specifications.
  - (e) The Software shall not contain any computer code (i) intentionally or unintentionally designed to disrupt, disable, harm, or otherwise impede in any manner the operation of the Software, or any associated software, firmware, hardware, computer system or network (sometimes referred to as viruses or worms), (ii) that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding the authorized number of copies, or advancement to a particular date, or (iii) that would permit the Contractor to access the Software to cause such disablement or impairment, or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such Software to cease functioning or to damage or corrupt data, storage media, software, equipment or communications, or otherwise interfere with operations.

- (f) The storage media on which the Software is furnished will be free from defects under normal use for a period of thirty (30) days, commencing on the delivery date of the Software.
- 6.2. In case of a breach of the warranties hereunder, the Contractor shall:
  - (a) For Services, at the option of UNDP: (i) re-perform the Services which were not as warranted at no additional charge to UNDP, or (ii) promptly refund the fees paid to the Contractor for the Services which were not as warranted; and
  - (b) For Software, at the sole discretion of UNDP: (i) repair or replace the nonconforming Software within a commercially reasonable time period of receiving notice from UNDP of such nonconformance, or (ii) refund the amounts paid by UNDP for the nonconforming Software or Software module immediately upon return of the Software, and promptly execute with UNDP an amendment to the Contract for the nonconforming Software pursuant to which the license is terminated for the Software or Software module for which UNDP is receiving a refund.
- 6.3. The Contractor will pass through to UNDP, to the fullest extent possible, the warranties from the Contractor's licensors as they relate to third party software, if any.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. The Contractor retains exclusive ownership of all intellectual property rights on the Software, including the Source Code and the Documentation. If UNDP creates an enhancement, modification or alteration to the Software or the Source Code that remains after the Software, Documentation and the physical media on which they are contained have been separated out from the enhancements, modifications or alterations ("UNDP Application"), UNDP shall have the intellectual property rights over the UNDP Application. UNDP does not acquire any rights, express or implied, in the Software and Documentation, except as specified herein.
- 7.2. The Contractor acknowledges and agrees that UNDP, an/or, as the case may be, the End-User if the End-User is not UNDP, retains full ownership and all intellectual property rights on the Data. The Contractor shall have no rights on the Data.

## **8. EXPORT CONTROL**

- 8.1. Without prejudice to Article 11.10 (Export License) of the General Conditions, the Parties acknowledge that the Software may be subject to export control laws and regulations. As used in this Article, the term "Controlled Material" means (a) the Software, any Updates, Documentation and (b) any related proprietary information of the Contractor. The term "Controlled Material" does not include UNDP Applications to the extent that UNDP Applications do not contain the Software.
- 8.2. Pursuant to Article II, Section 7(b) of the UN Convention, the United Nations, including its subsidiary organs such as UNDP, is exempt from customs duties and prohibitions and restrictions on exports in respect of articles imported or exported by the United Nations, including its subsidiary organs, for its official use. Accordingly, in light of the exemptions from export restrictions to which UNDP is entitled pursuant to the UN Convention, and without otherwise limiting or derogating from the privileges and immunities and exemptions of the United Nations, including its subsidiary organs, pursuant to the UN Convention, UNDP agrees and warrants that:

- 8.2.1 UNDP shall comply with all export control laws and regulations to the extent that such export control laws and regulations are applicable to UNDP;
- 8.2.2 UNDP shall not directly or indirectly export or transmit any Controlled Material to any country, at any time and in any manner, which would violate export control laws and regulations, to the extent that such export control laws and regulations are applicable to UNDP;
- 8.2.3 UNDP shall not export or re-export any Controlled Material other than for its official use; and
- 8.2.4 UNDP shall cooperate with the Contractor to determine a mutually acceptable solution should any Governmental authority fail to recognize the UNDP's exemption from export restrictions set forth in the UN Convention.

## **9. INFORMATION SECURITY STANDARDS**

- 9.1. While performing its obligations under the contract, the Contractor shall comply with UNDP policy on Information Security, System Acquisition, Development and maintenance Standards available at [Information Security in System Acquisition, Development, and Maintenance Standards](#).