**United Nations Development Programme**

**INSTRUCTIONS FOR AGREEMENT FOR THE PROVISION OF DEVELOPMENT SERVICES**

This instruction section, as well as all footnotes and any other instructions in this template, are only for the Business Unit’s guidance and should be deleted before the agreement is sent to the Recipient for review and signature.

How to use this Agreement:

1. To be used when providing Development Services to non-UN and non-IFI IGOs, Private Sector Entities, and CSOs/NGOs.
2. NOT TO BE USED for provision of Development Services related to civil works.
3. Any Special Conditions will need to be submitted to OFM and LO for review and clearance.

**AGREEMENT FOR THE PROVISION OF DEVELOPMENT SERVICES**

**BETWEEN**

**UNITED NATIONS DEVELOPMENT PROGRAMME**

**AND**

**[insert Recipient’s name]**

This Agreement for the Provision of Development Services (the “Agreement”) is made between the United Nations Development Programme, a subsidiary organ of the United Nations, having its headquarters at 1 UN Plaza, New York, NY 10017 (hereinafter “UNDP”), and \_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the Recipient”), an entity organized and existing under the laws of [xxxxx], with its headquarters at \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS, the Recipient has requested UNDP to provide certain development services as described herein, that will assist the Recipient in connection with its [*insert reference to Recipient’s overall development programme/project that these services contribute to*], hereto “Recipient’s Programme or Project”;

**[*Insert one of the recitals below if the service will be done in a programme country]***

WHEREAS the Government of [*insert name of Programme Government*] (the “Government”) has approved the provision of these development services by UNDP to the Recipient, through an agreement or arrangement between the UNDP and the Government,

**Or**

WHEREAS UNDP and the Government have concluded an agreement (hereinafter called the “Development Services Project Document”, attached as Annex 1) approving UNDP’s provision of these development services to the Recipient;]

***[Insert the following recital if the Development Services are in the context of a regional or global project]***

WHEREAS the UNDP Strategic Plan for the period [2018-2021] approved by the Executive Board provides for UNDP to work at the global, regional and country level to contribute to SDG achievement with all types of partners contributing to development results including governments, civil society, international organizations and the private sector, in areas where UNDP holds a collaborative advantage;

WHEREAS in response to the Recipient’s request, UNDP, through its office located in xxxxxx, submitted a Proposal to the Recipient dated [*enter date*], which was accepted by the Recipient;

NOW, THEREFORE, UNDP and the Recipient (hereinafter jointly the “Parties) hereby agree as follows:

# 1. SCOPE OF WORK

**1.1** UNDP shall provide the development services and deliverables, (the “Development Services”), as set forth in the Development Service Project Document attached hereto as Annex 1, in accordance with and subject to the terms and conditions of this Agreement.

**1.2** The Development Services shall be provided by UNDP through its Office located in [xxxxxx].

**1.3** In the event the Recipient requests additional development services related to the Recipient’s Programme, and UNDP agrees to provide such additional services, which shall be added to the scope of the Development Services as an amendment and the provision of such additional services, which shall be referred to as “Additional Development Services", shall be governed by the terms hereof.

# 2. TERM

Following the Effective Date, as such term is defined in Article 8:

**2.1** **Commencement:** UNDP shall commence providing the Development Services on or about [xx xxxxxxx 20xx] (the “Commencement Date”), PROVIDED that:

**2.1.1** this Agreement is signed by the Recipient and returned to UNDP, which shall acknowledge receipt thereof, by or before Offer Lapse Date, as defined in Article 8 below; and

**2.1.2** the Recipient has fulfilled all of the duties and responsibilities assigned to it, including those specified under Article 4 and Article 7 of the General Conditions (Annex 3).

**2.2** **Completion:** It is expected that the Development Services will be completed approximately [xxxx months] after the Commencement Date (the “Completion Date”).

**2.3** **Failure to Reach Commencement:** If the Development Services do not commence by the Commencement Date, this Agreement shall be declared null and void with no liability, financial or otherwise, of either Party to the other.

# 3. COMPENSATION

**3.1** The maximum amount payable by the Recipient to UNDP for the Development Services, excluding any eventual Additional Development Services as described below or any other amendments hereto, shall be USD xxxxxxxx.

**3.2** The Recipient shall compensate UNDP for the provision of the Development Services in accordance with the Schedule of Payments set forth in Annex 2. In addition, the Recipient will reimburse UNDP for expenses incurred, which expenses will include external costs such as travel and courier, and other costs such as administrative support, report reproduction and computer support as provided in Annex 2.

**3.3** Compensation for any Additional Development Services that may be provided by UNDP relating to the Recipient’s Programme further to Article 1, shall be as agreed by the Parties and shall be contained in an amendment hereto.

**3.4** The Schedule of Payments for the Development Services under this Agreement shall remain in effect for a period of **[*three years*]** from the Effective Date of the Agreement. After this period lapse, the fees will be adjusted to UNDP’s then-current rates and the fees for such services and will be reflected in an amendment to this Agreement.

**3.5** Unless otherwise agreed, UNDP shall submit payment notices at the intervals specified in Annex 2. UNDP’s Fees for the Development Services provided by UNDP must be paid by the Recipient before UNDP initiates or continues the provision of Development Services. Each payment notice will reflect the estimated fee for the following period, [*insert for hourly billing of fees:* any adjustments required due to variances between estimated and actual fees for prior periods,] and the actual out-of-pocket expenses that are due for reimbursement from prior periods. The Recipient shall review each payment notice promptly and subject to the settlement of any queries or disputes, shall process settlement within thirty (30) calendar days of the date of the payment notice.

**3.6** All payments should be made by the Recipient to the following Bank account of UNDP:

|  |  |
| --- | --- |
| **Account Name** | UNDP |
| **Account Number** | XXX-XXXXXX |
| **Bank Name** |  |
| **Bank Address** |  |
| **SWIFT code** |  |

# 4. CONTACT PERSONS

**4.1** Any notifications required hereunder, and communications in connection with Development Services shall be clearly marked, addressed and delivered as follows:

For UNDP:

For Recipient:

# 5. UNDP's REPORTING

**5.1** UNDP will report to the Recipient on the Development Services provided to the Recipient as provided for in **Annex 1**.

# 6. GENERAL TERMS AND CONDITIONS

**6.1** The standard UNDP General Conditions for Provision of Development Services, attached as **Annex 3**, shall apply to this Agreement, and any subsequent agreements/amendments to this Agreement concluded in accordance with Article 1 above.

# 7. SPECIAL TERMS AND CONDITIONS

**7.1** The following sections of the UNDP General Conditions for the Provision of Development Services are hereby modified as follows:

[Insert any modifications – if applicable][[1]](#footnote-1)

# 8. ACCEPTANCE

**8.1** This Agreement including its Annexes, which form an integral part of the Agreement, supersedes all prior oral or written agreements, if any, between the Parties and constitutes the entire agreement between the Parties with respect to the provision of the Development Services.

**8.2** The contents of this Agreement are valid until xx xxxx xxxx (the “Offer Lapse Date”). If the Recipient does not sign and return the signed Agreement to UNDP by or before the Offer Lapse Date, UNDP may at its discretion not countersign this Agreement in which case the offer presented through this Agreement shall lapse and the terms be deemed null and void. If the Recipient signs and returns this Agreement, which must be received by UNDP by the Offer Lapse Date, this Agreement shall enter into force upon UNDP’s counter signature hereto (“Effective Date”) and shall remain in force until the Completion Date.

**8.3** This Development Services Agreement may be extended by agreement of the Parties in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the PARTIES have signed this Agreement.

For and on behalf of:

|  |  |
| --- | --- |
| United Nations Development Programme | [Insert Name of the Entity] |
| Signature:  [Name of the signatory]  [Position of the signatory] | Signature:  [Name of the signatory]  [Position of the signatory] |
| Date : | Date : |

**Development Services Title**:

**Project Number:**

**Start Date:** **End Date:**

|  |  |
| --- | --- |
| **Recipient** |  |
| **Address** |  |
| **Phone / Fax** |  |
| **Email** |  |

Summary of the development services to be provided:

|  |  |  |
| --- | --- | --- |
| **Total value:** |  | USD |

Agreed by (signatures)**[[2]](#footnote-2)**:

|  |  |
| --- | --- |
| Government | UNDP |
| Print Name: | Print Name: |
| Date: | Date: |

# Objectives and Scope of Work

In this section, describe the Recipient background, development objectives and scope of work. Also describe the methodology of delivering the development service, if required.

# Risks/Mitigation Measures, including any due diligence as may be required

State any key risks and mitigation measures that will be employed

# Monitoring and Reporting Arrangements

Describe the reporting requirements and frequency in this section, along with any monitoring arrangements, as required.

# UNDP’s Core Service Team and Responsible Parties

Optional section, if required

# Deliverables and Indicators

| **Deliverable(s)** | **INDICATORS** | **Expected Date of Achievement** |
| --- | --- | --- |
| **Deliverable 1**  *Specify each deliverable that UNDP will deliver to the Recipient under the Development Services Agreement* | ***1.1*** *State each indicator that will measure if the deliverable has been achieved as agreed.* | DD/MM/YYYY |
| ***1.2*** |  |
| **Deliverable 2** | ***2.1*** |  |

# Multi-Year Work Plan/Budget [[3]](#footnote-3)

*All anticipated programmatic and operational costs to support the development service, need to be identified, estimated and fully costed in the budget.*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **EXPECTED DELIVERABLES** | **PLANNED ACTIVITIES** | **Timing[[4]](#footnote-4)** | | | | **PLANNED BUDGET[[5]](#footnote-5)** | |
| T1 | T2 | T3 | T4 | Budget Description | Amount |
| **Deliverable 1:** | * 1. Activity |  |  |  |  |  |  |
|  |  |
| 1.2 Activity |  |  |  |  |  |  |
|  |  |
|  |  |
| **Sub-Total for Deliverable 1** | | | | | |  |
| **Deliverable 2:** | 2.1 Activity |  |  |  |  |  |  |
| **Sub-Total for Deliverable 2** | | | | | |  |
| **Total** | | | | | | |  |

**United Nations Development Programme**

**ANNEX 2**

**SCHEDULE OF PAYMENT**

*[In this section provide detailed breakdown of the fee or cost (if relevant) for delivering the service]*

1. This schedule of payment must indicate the amount and timing of payment. Fees for the Development Services provided by UNDP must be paid by the Recipient before UNDP initiates the provision of Development Services.
2. Payments may be based on a cost-plus basis or a market-based fee basis. In all cases, all costs incurred by the office and by headquarters (direct and indirect, including UNDP staff costs, consultants/responsible parties, equipment, exchange rate fluctuations and operational costs for travel, communication, reporting, audit, General Management Fees, etc.) to provide the development service must be recovered from the funds received under the development service agreement.
3. This schedule must state whether the price is a fixed deliverable/output-based price or if it is based on time and materials (i.e. based on a daily/weekly/monthly rate adjustable in accordance to any extension or reduction in the duration of engagement).
4. Specify the UNDP fee and expense components included in the price. For example, whether the price stated is inclusive of both fees and expenses, or if it is inclusive of only the fee, with out-of-pocket expenses such as travel, living allowances, taxes, etc. reimbursable separately (e.g., based on actuals). Also specify the expenses borne by the Recipient directly – whether paid by the Recipient to third parties or provided in kind by the Recipient (e.g., conduct of workshop will borne by the client, vehicles will be made available to UNDP for land travels, office space/equipment or an administrative staff will be provided within the project premises, etc.)
5. Specify the key deliverables/outputs or milestone activities for which payments will be made, the corresponding percentage of the fee that will be paid per milestone/deliverable/output, including the conditions/documentations required prior to the release of any tranches of payment.
6. Provide separate figures for each functional grouping or category.

The formats shown on the following pages are suggested for use as a guide in preparing the Schedule of Payments. The formats below include specific expenditures, which may or may not be required or applicable but are indicated to serve as **examples**.

1. **Fee and Expenses Breakdown per Deliverable\***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Deliverables | Percentage of Total Fee + Expenses  (Weight for payment) | Fee + Expenses  (Lump Sum, All Inclusive) | Payment Timing (Date) |
| 1 | Deliverable 1 | [UNDP to give percentage (weight) of each deliverable over the total price for payment purposes) |  |  |
| 2 | Deliverable 2 |  |  |  |
| 3 | …. |  |  |  |
|  | Total | 100% | USD …… |  |

*\*Basis for payment tranches*

1. **Fee Breakdown per Deliverable (excluding Out of Pocket Expenses, which are to be reimbursed based on actuals)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Deliverables | Percentage of Total Fee | Fee\* | Payment Timing (Date) |
| 1 | Deliverable 1 | [UNDP to give percentage (weight) of each deliverable over the total price for payment purposes) |  |  |
| 2 | Deliverable 2 |  |  |  |
| 3 | …. |  |  |  |
|  | Total | 100% | USD …… |  |

*\*In addition, UNDP will bill the Recipient for its reasonable out-of-pocket expenses, including any internal charges for booking travel, administrative support, etc. This is currently estimated at x% of the fees based on several assumptions. Actual out-of-pocket expenses that are due for reimbursement will be included within each invoice.*

1. **Fee Breakdown by Component:**

UNDP may provide the breakdown for the above given fee for each deliverable based on the following format (example).

1. **Fee by Billable Staff Time\***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Description of Activity | Remuneration rate or Billing Rate | No. of Billable Units of Time | Total Fee | Payment Timing (Date) |
| **Deliverable 1** |  |  |  |  |
| Team Member 1 |  |  |  |  |
| Team Member 2 |  |  |  |  |
| Team Member 3 |  |  |  |  |
|  |  |  |  |  |
| **Deliverable 2** |  |  |  |  |
| Team Member 1 |  |  |  |  |
| Team Member 2 |  |  |  |  |
| Team Member 3 |  |  |  |  |
| Team Member 1 |  |  |  |  |
| ………… |  |  |  |  |
| **Total** |  |  |  |  |

*\*UNDP’s fees estimate is based on the time required by our professionals to complete the engagement. Individual hourly billing rates vary according to the experience and skill required. For each deliverable, variances between the estimated fee paid and the actual fee due (based on actual billable units of time and billing rates) will be calculated and included in the subsequent invoice.*

1. **Out of Pocket Costs\***

|  |  |
| --- | --- |
| Description of Activity | Total Expenses |
| **I. Out of Pocket Expenses** |  |
| 1. Travel Costs |  |
| 2. Daily Allowance |  |
| 3. Communications |  |
| 4. Reproduction |  |
| 5. Equipment Lease |  |
| 6. Others |  |
| **II. Other Related Costs** |  |
| **…………..** |  |
| **Total** |  |

*\*UNDP will bill the Recipient for its reasonable out-of-pocket expenses, including any internal charges for booking travel, administrative support, etc. The range of estimates provided above is based on several key assumptions. Actual out-of-pocket expenses that are due for reimbursement will be included within each invoice.*

**United Nations Development Programme**

**ANNEX 3**

**UNDP GENERAL CONDITIONS**

**FOR PROVISION OF DEVELOPMENT SERVICES**

**1. BASIS OF ARRANGEMENT AND LEGAL STATUS OF THE PARTIES**:

The United Nations Development Programme (“UNDP”) and the Recipient shall each be referred to as a “Party” hereunder, and:

* 1. Pursuant, inter alia, to the [Charter of the United Nations](http://www.un.org/en/charter-united-nations/) and the [Convention on the Privileges and Immunities of the United Nations](https://treaties.un.org/doc/Treaties/1946/12/19461214%2010-17%20PM/Ch_III_1p.pdf), 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.
  2. Nothing contained in or relating to the Agreement to which these General Conditions apply and to which such General Conditions form an integral part thereof, (each, an “Agreement”), 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 responsible parties (in the case of UNDP) or subcontractors (in the case of Recipient) 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.
  3. The Development Services are being provided by UNDP as assistance to the Recipient, further to the Agreement of the Government, towards the Recipient’s contribution to international development goals. The Development Services are performed by UNDP further to and consistent with its mandate. The Parties agree that nothing herein shall be construed as the Parties engaging in a commercial relationship.
  4. UNDP will undertake the Development Services in accordance with its regulations, rules, policies and procedures, and without prejudice to its privileges and immunities.

**2. SOURCE OF INSTRUCTIONS**:

**2.1** UNDP staff and personnel performing the Development Services may not receive instruction from anyone other than UNDP.

**3. UNDP'S RESPONSIBILITY FOR ITS PERSONNEL:**

**3.1** UNDP shall be responsible for the professional and technical competence of its personnel.

**4. RECIPIENT'S DUTIES AND RESPONSIBILITIES:**

**4.1** The Recipient will make available in a timely manner for UNDP's use, at no charge to UNDP, all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and its personnel that may be required by UNDP to perform the Development Services. Recipient will be responsible for, and assumes the risk of any issues or problems resulting from the content, accuracy, completeness, competence, or consistency of all Recipient computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and personnel supplied by Recipient. Recipient will provide, at no charge to UNDP, reasonable office space and equipment at Recipient's facilities (e.g., telecommunications requirements, copiers, etc.) as UNDP requires in performing the Development Services. The Recipient’s personnel provided to UNDP further to the foregoing, shall in no way be considered staff or personnel of UNDP, and among other things, shall not be covered by UNDP’s privileges and immunities and shall not be included in UNDP’s security arrangements. Recipient shall make all necessary arrangements for its personnel with respect to safety and security.

**5. ASSIGNMENT:**

**5.1** Neither Party may assign, transfer, pledge or make other disposition of this Agreement or any part thereof, or any of their respective rights, claims or obligations under this Agreement except with the prior written consent of the other Party.

**6. USE OF DEVELOPMENT SERVICES OF OTHER ENTITIES:**

**6.1** UNDP may require the Development Services of other entities (“Responsible Parties”) to assist it in certain aspects of the provision of Development Services. UNDP’s use of a Responsible Party shall not relieve the UNDP of any of its obligations under this Agreement.

**7. COMPENSATION AND PAYMENT**

**7.1** The compensation of UNDP for the provision of Development Services will be further to the Agreement. UNDP shall not be required to commence the provision or continuation of Development Services until the payments referred to in **Annex 2** have been received in accordance with the terms set forth therein.

**7.2** Compensation for any additional Development Services provided by UNDP relating to the Service shall be as agreed by the Parties, as set forth in the Agreement.

**7.3** Recipient shall make all payments under this Agreement in United States dollars (**USD)** within thirty (30) calendar days after the date of UNDP's payment notice. The value of the payment received, if made in a currency other than **USD**, shall be determined by applying the United Nations operational rate of exchange in effect on the date of payment. If, in such a case, the value of the payment received is less than the invoiced amount due (in **USD**), UNDP shall inform the Recipient with a view to determining whether any further financing could be provided by the Recipient. Should such further financing not be available, the assistance to be provided further to this Agreement may be reduced, suspended or terminated by UNDP.

**7.4** In addition to any other remedy available to UNDP for late payments as may be specified anywhere in this Agreement, Recipient will be obligated to pay UNDP interest on the overdue amount at the rate of one and one-half percent (1.5%) per month for each month, or partial month, calculated from the date such payment was due until the date paid. Recipient will reimburse UNDP for all costs incurred by UNDP in connection with any collection efforts related to or arising out of this Agreement.

**7.5** In no event shall UNDP’s obligation and liability to the Recipient hereunder exceed the undertaking of the Development Services. If the Development Services are not performed in accordance with Annex 1, UNDP shall re-perform such Development Services to bring them into compliance with the foregoing and such correction shall be the Recipient’s sole remedy under this Agreement with respect to the provision of the Development Services.

**8. ADMINISTRATION AND REPORTING**

**8.1** UNDP’s management of resources received and expenditures incurred under/further to the Agreement, shall be in accordance with UNDP’s regulations, rules, policies and procedures. UNDP shall provide to the Recipient, reports and documents prepared in accordance with UNDP accounting and reporting procedures, in the form, numbers and within the time periods set forth in the said **Annex 1**.

**9. INDEMNIFICATION; LIABILITY**

**9.1.1** The Recipient agrees to indemnify and hold UNDP harmless from and against all claims, liabilities, losses, damages, and expenses (including the costs of UNDP’s professional time) as incurred (collectively “Losses”) relating to the Development Services, including any Losses asserted by the Recipient, its agents or representatives, or third parties and any Losses, costs, etc. sustained by UNDP when participating in any legal, regulatory, or administrative proceeding relating to the Development Services, except to the extent those Losses are determined by a final, non-appealable order or arbitral award to have resulted from UNDP’s gross negligence or willful misconduct in the performance of the Development Services.

**9.1.2** Notwithstanding the foregoing, the Recipient shall not be liable for any lost profits or other indirect, consequential, incidental, punitive or special damages.

**9.2** In no event shall the UNDP, its members, officials, staff, other personnel and advisors have any liability, financial or otherwise, under any paragraph of this Agreement, except as provided in Article 8 of the General Conditions, above.

**10. RECIPIENT ACKNOWLEDGEMENT**

**10.1** It is the long-standing practice of UNDP to serve and work with multiple stakeholders within and across countries, including those with opposing economic interests. These include, but are not limited to, governments and affiliated organizations, inter-governmental organizations, non-governmental organizations, civil society organizations, as well as other private sector entities. UNDP is committed to maintaining the confidentiality of each Recipient's information (generally as described in this Agreement) in all such situations. Accordingly, the Recipient acknowledges the possibility and agrees that UNDP may have served, may currently be serving or may in the future serve other organizations and entities whose interests are adverse to those of the Recipient, including parties with whom the Recipient (i) competes; (ii) has a commercial relationship or potential commercial relationship (e.g., suppliers, distributors); (iii) enters into competitive bidding situations; and (iv) enters into or considers entering into merger, acquisition, divestiture, alliance or joint venture transactions.

**11. INSURANCE AND LIABILITIES TO THIRD PARTIES**

**11.1** The Parties note that the UNDP is self-insured. Without prejudice to the foregoing, throughout the execution of this Agreement, UNDP shall:

**11.1.1** maintain appropriate insurance coverage with respect to third-party motor vehicle liability insurance;

**11.1.2** maintain appropriate cargo insurance against loss of or damage to supplies and equipment, if any, purchased in whole or in part with funds provided under this Agreement until transferred to the Recipient;

**11.1.3** with regard to its Staff, Consultants and other personnel, maintain appropriate health insurance; provide for compensation in respect of injury, sickness or death while performing official duties of UNDP; and maintain malicious acts insurance.

**12. TITLE TO EQUIPMENT**

**12.1** Title to any equipment and supplies that may be furnished by the Recipient shall rest with the Recipient and any such equipment shall be returned to the Recipient at the conclusion of this Agreement or when no longer needed by the UNDP. Such equipment, when returned to the Recipient, shall be in the same condition as when delivered to UNDP, subject to normal wear and tear. UNDP shall be liable to compensate the Recipient for equipment determined to be damaged or degraded beyond normal wear and tear.

**13. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS**

**13.1** Except as is otherwise expressly provided in writing in the Agreement, the Recipient 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 UNDP has developed for the Recipient under the Agreement 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 Agreement. Nonetheless, the Recipient shall grant UNDP a perpetual, royalty-free license to (reproduce, adapt, modify, distribute, sub-license) make use of such intellectual property or other proprietary rights for non-commercial purposes, including the ability to further license to other non-private sector Recipients and its programme governments in accordance with the requirements of the agreement between UNDP and the Recipient(s) concerned and its basic cooperation agreement with programme governments, respectively.

**13.2** To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of UNDP: (i) that pre-existed the performance by UNDP of its obligations under the Agreement, or (ii) that UNDP may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Agreement, the Recipient does not and shall not claim any ownership interest thereto, and UNDP grants to the Recipient 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 Agreement.

**13.3** Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by UNDP from the Recipient under the Agreement shall be the property of the Recipient, shall be made available for use or inspection by the Recipient at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to the Recipient authorized officials on completion of work under the Agreement.

**14. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS**

**14.1** Recipient shall not advertise or use the name, emblem or trademarks of UNDP, or any of its programmes, projects or affiliates (including the UN, UNCDF and UNV), or any abbreviation thereof, without the express prior written approval of UNDP in each case. In no event will authorization to use the UNDP name or emblem, or any abbreviation thereof, be granted for commercial purposes, or for use in any manner that suggests an endorsement by UNDP of the Recipient and/or its business or Development Services. In making such request, the Recipient must submit an outline and draft of the proposed use of the name or emblem to UNDP.

**15. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION**

Information and data that is considered proprietary by either Party, and that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Disclosee”) during the course of performance of the Agreement, and that is designated as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:

**15.1** The recipient (“Disclosee”) of such information shall:

**15.1.1** 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,

**15.1.2** use the Discloser’s Information solely for the purpose for which it was disclosed.

**15.2** Provided that the Disclosee has a written agreement with the following persons or entities requiring them to treat the Information as confidential in accordance with the Agreement and this Article 13, the Disclosee may disclose Information to: **15.2.1** any other party with the Discloser’s prior written consent; and,

**15.2.2** the Disclosee’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Agreement, 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 Agreement, provided that, for these purposes a controlled legal entity means:

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

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

**15.2.2.3** for the UNDP, an affiliated Fund such as UNCDF and UNV.

**15.3** The Disclosee 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 Disclosee will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

**15.4** The UNDP may disclose Information to the extent as required pursuant to the Charter of the UN, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General, and consistent with its Information Disclosure Policy.

**15.5** The Disclosee shall not be precluded from disclosing Information that is obtained by the Disclosee 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 Disclosee, or at any time is developed by the Disclosee completely independently of any disclosures hereunder.

**15.6** These obligations and restrictions of confidentiality shall be effective during the term of the Agreement, including any extension thereof, and, unless otherwise provided in the Agreement, shall remain effective following any termination of the Agreement.

**16. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

**16.1** In the event of and as soon as possible after the occurrence of any cause constituting force majeure, UNDP shall give notice and full particulars in writing to the Recipient, of such occurrence or change if UNDP is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. UNDP shall also notify the Recipient of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Agreement. On receipt of the notice required under this Article, the Recipient shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to UNDP of a reasonable extension of time in which to perform its obligations under this Agreement.

**16.2** If UNDP is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Agreement, the Recipient shall have the right to suspend or terminate this Agreement on the same terms and conditions as are provided for in Article 17, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

**16.3** Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force; failure of carrier or utilities, equipment or transmission failure or damage that is reasonably beyond the non-performing party’s control, or any other cause that is reasonably beyond the control of the non-performing party; governmental acts, order or restrictions, failure of government or suppliers to act or any other reason when the failure to perform is beyond the reasonable control and not caused by negligence or international conduct or misconduct of the non-performing party and such party has exerted all reasonable efforts to avoid or remedy such force majeure provided however that the non-performing party shall not be obligated to remedy or settle any labour dispute or disturbance.

**17. TERM AND TERMINATION**

**17.1** The term of this Agreement will commence on the Effective Date and will continue in effect until the Completion Date unless earlier terminated pursuant to the terms of this Agreement.

**17.2** Either party may terminate this Agreement for cause, in whole or in part, upon thirty (30) days’ notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 18.3 (“Arbitration”), below, shall not be deemed a termination of this Agreement.

**17.3** The Recipient reserves the right to terminate without cause this Agreement at any time upon 15 days prior written notice to UNDP, in which case the Recipient shall reimburse UNDP for all costs incurred by UNDP prior to receipt of the notice of termination.

**17.4** In the event of any termination by UNDP under this Article, no payment shall be due from the Recipient to the UNDP except for work and Development Services performed in conformity with the express terms of this Agreement.

**17.5** Upon any expiration or termination of this Agreement, each party will return promptly or, at the other Party's request, destroy all documents and other tangible objects containing or representing Confidential Information of the other Party except to the extent that such documents must be retained to satisfy auditing or regulatory requirements.

**17.6** Notwithstanding any other provision to the contrary in this Agreement, UNDP shall have the right to terminate this Agreement with immediate effect if it becomes aware of any event that, in the sole opinion of UNDP, may cause reputational risk or injury to UNDP or may be contrary to UNDP’s status, neutrality, ideals or objectives.

**18. SETTLEMENT OF DISPUTES**

**18.1** This Agreement shall be governed by the terms provided herein, to the exclusion of application of any national and/or subnational law.

**18.2** **Amicable Settlement**: The Parties shall use their best efforts to amicably settle any dispute, controversy or claim arising out of this Agreement or the breach, termination or invalidity thereof.

**18.3** **Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Agreement or the breach, termination, or invalidity thereof, unless settled amicably under Article 18.2, 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 Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, Development Services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, 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 Agreement, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) (or should LIBOR be no longer available, then the arbitral tribunal shall have no authority to award interest in excess of the Federal Reserve Bank of New York’s Secured Overnight Financing Rate) 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.

**19. PRIVILEGES AND IMMUNITIES**

**19.1** Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNDP.

**20. TAX EXEMPTION**

**20.1** The Compensation paid to UNDP hereunder shall be net of taxes. Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, inter-alia that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, UNDP shall immediately consult with the Recipient to determine a mutually acceptable procedure, which may include the Recipient paying the taxes in relation to the Development Services directly to the competent Governmental authority(ies). In such case, if UNDP is able to recover the taxes paid, it shall reimburse them to the Recipient.

**21. INTEGRITY CLAUSE**

**21.1** The Recipient and UNDP undertake to institute any such measures as are required to avoid corruption, ensuring in particular that no such payments or other considerations are offered or accepted. Both Parties acknowledge that a violation of the integrity clause shall, as a rule, result in revocation and early termination of the Agreement.

**21.2** The parties will inform each other in case of any well-founded suspicions of corruption.

1. **AUDIT AND INVESTIGATION**

**22.1** All payments received by UNDP under this Agreement shall be subject exclusively to internal and external audit in accordance with the United Nations audit principles and procedures and UNDP’s Financial Regulations and Rules. Information related to the implementation of this Agreement may be provided in so far as it shall be deemed compatible with UNDP’s Financial Regulations and Rules, policies and procedures, and its juridical status as an International Organization of the UN System.

1. **AUTHORITY TO MODIFY**

**23.1** Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Agreement, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Recipient. Accordingly, no modification or change in this Agreement shall be valid and enforceable against UNDP unless provided by an amendment to this Agreement signed by the Recipient and jointly by the UNDP Authorized Official.

1. Any Special Conditions will need to be submitted to OFM and LO for review and clearance [↑](#footnote-ref-1)
2. **These signature boxes are only needed if Government must sign the development services project document**. If government agreement is acknowledged another way, such as through the joint results group work plan, an exchange of letters or meeting minutes, then these boxes can be deleted [↑](#footnote-ref-2)
3. Cost definitions and classifications for programme and development effectiveness costs to be charged to the project are defined in the Executive Board decision DP/2010/32 [↑](#footnote-ref-3)
4. Specify units of timing depending on the needs of the development service. May be monthly, quarterly or annually. [↑](#footnote-ref-4)
5. The budget portion is optional, for when UNDP provides development services on a cost-plus basis [↑](#footnote-ref-5)