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Annex I Terms of Reference (TOR)

"Providing National Consultancy Services for Terminal Evaluation of MENARID Project"

I. Background

The MENARID - Institutional Strengthening and Coherence for Integrated Natural Resources Management in Iran is a full-size UNDP/GEF project that officially commenced in September 2010 and is scheduled to conclude at the end of 2017. This project follows the guidance of GEF 4 and is implemented by Forest, Rangeland and Watershed Management Organization (FRWO) of the Ministry of Jihad Agriculture (MoJA), Government of Islamic Republic of Iran. The project is implementing in four pilot sites in five provinces, including Behabad Region in Yazd province, Razin Watershed in Kermanshah province, Hamoun Watershed in Sistan & Baluchistan province and Hableh-Roud watershed in Semnan and Tehran provinces.

MENARID Iran is one of the MENARID (Middle East North Africa Regional Integrated Development) Regional GEF-supported projects. The objectives are twofold: to promote INRM in the landscapes of the MENA region, and to improve the economic and social well-being of the targeted communities through restoration and maintenance of ecosystem functions and productivity.

The project's goal is to promote climate-resilient and gender sensitive integrated management of renewable natural resources, providing global environment benefits for the four GEF focal areas (Land Development, Climate Change, International Waters and Biodiversity Conservation), while maintaining the capacity of ecosystems to deliver the goods and services needed to support local livelihoods.

The project's objective is to remove barriers to Integrated Natural Resources Management (INRM) by developing and strengthening institutional knowledge, capacity and coordination, and by demonstrating and up-scaling successful sustainable land and water management practices. The MENARID project in Iran entails a unique integrated planning approach to natural resources management focused on institutional strengthening for environmental, economic and social development objectives. The project deals with a need for inter-sectoral collaboration in management of land/water resources and a dynamic development and risky context across all pilot sites and activities.

The project implementation approach is contingent on healthy stakeholder participation. A multi-sectoral participatory approach is essential for addressing the barriers and bottlenecks to scaling up INRM practices within the country and enabling institutional, policy and legislative environment at the national and local government levels. The project (based on Pro Doc) is expected to prioritize engagement and mobilization of the concerned stakeholders (including local communities). The project implementation does include a broad list of stakeholders observed to be active at three levels of implementation, including government agencies for INRM service delivery and planning; provincial-level groups for technical and monitoring committees and a cross-sector and partner-based project board for policy and decision-making (Pro Doc). As per the project document formulation, key stakeholders are found to be women's communities, NGOs and community-based organizations (CBOs) as INRM user groups.



Project Expected Results:

Outcomes and Outputs: The project's results are summarized in three major outcomes and several key activities (Pro Doc):

Outcome 1: Enhanced, engendered knowledge and understanding of the drivers of land-use change, causing land, ecosystem and water degradation with consequent impacts on ecosystem services and local livelihoods;

Outcome 2: An enabling environment for the INRM and the use of the enhanced knowledge from Component 1;

Outcome 3: Community-driven, climate-resilient approaches and techniques for sustainable land and water management demonstrated through INRM practices.

In accordance with UNDP and GEF M&E policies and procedures, all full and medium-sized UNDP support GEF financed projects are required to undergo a terminal evaluation upon completion of implementation. These terms of reference (TOR) sets out the expectations for a Terminal Evaluation (TE) of the MENARID- Institutional Strengthening and Coherence for Integrated Natural Resources Management. The TE will be conducted according to the guidance, rules and procedures established by UNDP and GEF as reflected in the UNDP Evaluation Guidance for GEF Financed Projects. The objectives of the evaluation are to assess the achievement of project results, and to draw lessons that can both improve the sustainability of benefits from this project, and aid in the overall enhancement of UNDP programming.

The National Evaluator in 2017 will provide the services under supervision of International Evaluator and Project Management Team. The evaluation team will be composed of 1 international and 1 national evaluators, and International Evaluator is team leader.

II. Statement of Services

The TE will be conducted according to the guidance, rules and procedures established by UNDP and GEF as reflected in the UNDP Evaluation Guidance for GEF Financed Projects. An overall approach and method for conducting project terminal evaluations of UNDP supported GEF financed projects have developed over time.

The evaluator is expected to follow a participatory and consultative approach ensuring close engagement with government counterparts, in particular the GEF operational focal point, UNDP Country Office, project team, UNDP GEF Technical Adviser based in the region and key stakeholders. The evaluator is expected to conduct a field mission to Kermanshah, Yazd, Sistan & Baluchistan, North Khorasan (the province which the project intervention is replicated), Tehran and Semnan provinces including the following project basins: Razin, Behabad, Hamoun, Shirin Dareh and Hableh-roud. Interviews will be held with the following organizations and individuals at a minimum: FRWO, DOE, MOI, Governors offices, MPO, Local communities, NGOs (national and provincial).



Main task of National Evaluator:

1. Close collaboration with International Evaluator (as a team leader) and assist him/her in all Terminal Evaluation process including preparation/mission/reporting phases.
2. Assess the achievement of project results, and to draw lessons that can both improve the sustainability of benefits from this project, and aid in the overall enhancement of UNDP programming.
3. Assessment of project performance will be carried out, based against expectations set out in the Project Logical Framework/Results Framework.
4. Frame the evaluation effort using the criteria of relevance, effectiveness, efficiency, sustainability, and impact, as defined and explained in the UNDP Guidance for Conducting Terminal Evaluations of UNDP-supported, GEF-financed Projects.
5. Provide evidence-based information that is credible, reliable and useful.
6. Review all relevant sources of information which includes any materials that the evaluator considers useful for this evidence-based assessment, and draft synthesis report (in English) to be shared with International Evaluator, and exchange ideas and issues.
7. Assess the key financial aspects of the project which will be included in the terminal evaluation report, and will consider the extent of co-financing planned and realized, and variances between planned and actual expenditures.
8. Assess the extent to which the project was successfully mainstreamed with other UNDP priorities, including poverty alleviation, improved governance, the prevention and recovery from natural disasters, and gender.
9. Assess the extent to which the project is achieving impacts or progressing towards the achievement of impacts.
10. Assist International Evaluator to draft and finalize TE report, and then National Evaluator should draft the managerial and synthetic TE report (in both Farsi and English).

III. Deliverables and Verifiable Indicators

1. Draft Review Information Synthesis Report (in English).
2. Draft the Managerial and Synthetic TE Report (in both Farsi and English).

IV. Schedule and Timeframe

The above inputs will be delivered as specified in the MENARID Project 2017 Annual Work plan based on the below schedule.

Activity	Timing	Completion Date
Preparation	4 days	20 August 2017
Draft Review Information Synthesis Report	4 days	20 August 2017
Evaluation Mission (5 project sites) and National Meetings (Tehran)	20 days (13 days to 5 project sites, 7 days in Tehran for national meetings)	30 September 2017
Draft Evaluation Report	6 days	15 October 2017
Draft the Managerial and Synthetic TE Report	6 days	20 November 2017

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V. Supervision, Review and Acceptance

The National Evaluator will work closely with the International Evaluator and Project Management Team and will report to the National Project Manager (NPM), who will review and accept all services and deliverables.

VI. Qualifications, Experience and Skills

The National Evaluator must present the following qualifications:

- A minimum of 8 years relevant working experience is required.
- Academic and professional background in community based natural resource and/or protected area management, with extensive experience in INRM.
- Knowledge of UNDP and GEF
- Previous experience with results-based monitoring and evaluation methodologies
- Technical knowledge in the targeted focal area(s)
- Academic and/or professional background in institutional/governance aspects of integrated natural resource management and Watershed Management.
- Experience in the review of technical assistance projects, preferably with UNDP or GEF or other United Nations development agencies and major donors. If possible, experience in the review of INRM and/or IWM projects.
- Experience in project design, project cycle management, and project monitoring and evaluation.
- Have a broad-based knowledge and experience related to capacity building, community development and natural resource management.
- Excellent English and Farsi writing and communication skills. Demonstrated ability to assess complex situations in order to succinctly and clearly distil critical issues and draw practical conclusions
- An ability to assess institutional capacity and incentives.
- Understanding of political, economic, institutional issues associated with protected areas management and good environmental governance within the Iranian context.
- Skills in community based natural resource management, rural livelihood development
- Knowledge and experience of social mobilization in the field of INRM
- Excellent interpersonal, coordination and planning skills and ability to work in a team.
- Knowledge of NIM guidelines.
- Knowledge of national laws

VII. Payment modalities and specifications

As full consideration for the services performed by the consultant under the terms of this agreement the United Nation Development Program shall pay the contractor the total amount of [REDACTED] in instalments set below, upon certification that the services have been satisfactorily performed.

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%	Milestone
10 % of total consultancy fee equivalent to [REDACTED]	Preparation and upon submission of completed inception report and initial project review and submission of invoice
40% of total consultancy fee equivalent to [REDACTED]	After Evaluation Mission and following submission and approval (by UNDP-CO, Project and UNDP RTA) of the 1 st draft terminal evaluation report and submission of invoice
40% of total consultancy fee equivalent to [REDACTED]	Following submission and approval (by UNDP-CO, Project and UNDP RTA) of the final terminal evaluation report
10% of total consultancy fee equivalent to [REDACTED]	TE Management Response Following submitting feedbacks to the project office for TE management Response and upon approval of project NPM
Travel Costs equivalent to [REDACTED]	The travel cost will be paid at the end of the mission upon submission of the UNDP Travel Claim Form (F10) up to the ceiling offered and accepted in the financial proposal

Notes

- In full consideration for the complete and satisfactory performance of the Services under this contract, UNDP shall pay the Contractor the total amount of the contract based on the above payment schedule.
- Confirmation of the Forests, Rangelands and Watershed Management Organization on delivery by the consultant, and acceptance by UNDP of all deliverables is a prerequisite to each payment.
- All envisaged travel costs (except the Air ticket) is included in the offeror's financial proposal and this contract.
- The project will provide air ticket for each local travel to visit the project sites - therefore the cost is excluded from this contract. As for living allowances of the project sites, the cost is included in and covered by this contract. The reimbursement of local travel costs will be made upon receipt of travel claim form and based on the actual travel dates.
- Each payment will be made in Iranian Rial upon satisfactory completion of the tasks and respective deliverables as per submission of deliverables/claims by the consultant and the project/UNDP approvals.
- Each payment will be transferred by UNDP in IRR to the account number of the contractor introduced through an official letter indicating full banking information.
- Payments will be made according to UNDP regulations as explained in the contract documents.
- The National Consultant shall not do any work, provide any equipment, materials and supplies or perform any other services which may result in any cost in excess of the above-mentioned amount.



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VIII. Travel

If travel is required under the contract, the individual consultant shall:

1. Obtain the security clearance from UNDP office (the details of travel including date of departure and arrival, accommodation and purpose of travel shall be submitted to UNDP office 2 working days before date of travel).
2. Undertake the training courses on Basic Security in the Field and Advanced Security in the Field (only applicable for certain destination; to be checked with UNDP) and provide UNDP with both certificates; the related CD ROMs are available at UNDP office.
3. Undertake a full medical examination including x-rays and obtain medical clearance from an UN-approved physician. This is only applicable for the contractors on the age of 62 years or more.
4. All envisaged travel costs is included in the Offeror's financial proposal and this contract. This includes all duty travels, travels to join duty station and repatriation. The anticipated mission travel has been included in the TOR; however, in the event of unforeseeable travel, UNDP and the Individual Contractor will agree upon the manner in which travel costs including tickets, lodging and terminal expenses are to be reimbursed to the traveler.



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Annex II GENERAL CONDITIONS OF CONTRACTS FOR THE SERVICE OF INDIVIDUAL CONTRACTORS

1. LEGAL STATUS: The Individual contractor shall have the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP), and shall not be regarded, for any purposes, as being either a “staff member” of UNDP, under the UN Staff Regulations and Rules, or an “official” of UNDP, for purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between UNDP and the Individual contractor. The officials, representatives, employees or subcontractors of UNDP and of the Individual contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and UNDP and the Individual contractor shall be solely responsible for all claims arising out of or relating to their engagement of such persons or entities.

2. STANDARDS OF CONDUCT: In General: The Individual contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of his or her obligations under the Contract. Should any authority external to UNDP seek to impose any instructions regarding the Individual contractor’s performance under the Contract, the Individual contractor shall promptly notify UNDP and shall provide all reasonable assistance required by UNDP. The Individual contractor shall not take any action in respect of his or her performance of the Contract or otherwise related to his or her obligations under the Contract that may adversely affect the interests of UNDP. The Individual contractor shall perform his or her obligations under the Contract with the fullest regard to the interests of UNDP. The Individual contractor warrants that she or he has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee or other agent of UNDP. The Individual contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of his or her obligations under the Contract. In the performance of the Contract the Individual contractor shall comply with the standards of conduct set in the Secretary General’s Bulletin ST/SGB/2002/9 of 18 June 2002, entitled “Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission”. The Individual contractor must comply with all security directives issued by UNDP.

Prohibition of Sexual Exploitation and Abuse: In the performance of the Contract, the Individual contractor shall comply with the standards of conduct set forth in the Secretary-General’s bulletin ST/SGB/2003/13 of 9 October 2003, concerning “Special measures for protection from sexual exploitation and sexual abuse”. In particular, the Individual contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

The Individual contractor acknowledges and agrees that any breach of any of the provisions hereof shall constitute a breach of an essential term of the Contract, and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for suspension or termination of the Contract. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the foregoing standards of conduct or any other terms of the Contract to the relevant national authorities for appropriate legal action.

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3. TITLE RIGHTS, COPYRIGHTS, PATENTS AND OTHER PROPRIETARY RIGHTS:

Title to any equipment and supplies that may be furnished by UNDP to the Individual contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment and supplies shall be returned to UNDP at the conclusion of the Contract or when no longer needed by the Individual contractor. Such equipment and supplies, when returned to UNDP, shall be in the same condition as when delivered to the Individual contractor, subject to normal wear and tear, and the Individual contractor shall be liable to compensate UNDP for any damage or degradation of the equipment and supplies that is beyond normal wear and tear.

UNDP shall be entitled to all intellectual property and other proprietary rights, including, but not limited to, patents, copyrights and trademarks, with regard to products, processes, inventions, ideas, know-how or documents and other materials which the Individual contractor has developed for UNDP under the Contract and which bear a direct relation to, or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Individual contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Individual contractor: (a) that pre-existed the performance by the Individual contractor of his or her obligations under the Contract, or (b) that the Individual contractor may develop or acquire, or may have developed or acquired, independently of the performance of his or her obligations under the Contract, UNDP does not and shall not claim any ownership interest thereto, and the Individual contractor grants to UNDP a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract. At the request of UNDP, the Individual contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNDP in compliance with the requirements of the applicable law and of the Contract. Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents and all other data compiled by or received by the Individual contractor under the Contract shall be the property of UNDP, shall be made available for use or inspection by UNDP at reasonable times and in reasonable places, shall be treated as confidential and shall be delivered only to UNDP authorized officials on completion of services under the Contract.

4. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION: Information and data that are considered proprietary by either UNDP or the Individual contractor or that are delivered or disclosed by one of them ("Discloser") to the other ("Recipient") during the course of performance of the Contract, and that are designated as confidential ("Information"), shall be held in confidence and shall be handled as follows. The Recipient of such Information shall 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 the Recipient may otherwise use the Discloser's Information solely for the purpose for which it was disclosed. The Recipient may disclose confidential Information to any other party with the Discloser's prior written consent, as well as to the Recipient's officials, representatives, employees, subcontractors and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Contract. Subject to and without any waiver of the privileges and immunities of UNDP, the Individual contractor may disclose Information to the extent required by law, *provided that* the Individual contractor will give UNDP sufficient prior notice of a request for the disclosure of



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Information in order to allow UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. UNDP may disclose Information to the extent required pursuant to the Charter of the United Nations, resolutions or regulations of the General Assembly or its other governing bodies, or rules promulgated by the Secretary-General. The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder. These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract. Notwithstanding the foregoing, the Individual contractor acknowledges that UNDP may, in its sole discretion, disclose the purpose, type, scope, duration and value of the Contract, the name of the Individual contractor, and any relevant information related to the award of the Contract.

5. TRAVEL, MEDICAL CLEARANCE AND SERVICE INCURRED DEATH, INJURY OR ILLNESS: If the Individual contractor is required by UNDP to travel beyond commuting distance from the Individual contractor's usual place of residence, and upon prior written agreement, such travel shall be at the expense of UNDP. Such travel shall be at economy fare when by air.

UNDP may require the Individual contractor to submit a "statement of good health" from a recognized physician prior to commencement of services in any offices or premises of UNDP, or before engaging in any travel required by UNDP, or connected with the performance of the Contract. The Individual contractor shall provide such a statement as soon as practicable following such request, and prior to engaging in any such travel, and the Individual contractor warrants the accuracy of any such statement, including, but not limited to, confirmation that the Individual contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

In the event of death, injury or illness of the Individual contractor which is attributable to the performance of services on behalf of UNDP under the terms of the Contract while the Individual contractor is traveling at UNDP expense or is performing any services under the Contract in any offices or premises of UNDP, the Individual contractor or the Individual contractor's dependents, as appropriate, shall be entitled to compensation equivalent to that provided under the UNDP insurance policy, available upon request.

6. PROHIBITION ON ASSIGNMENT; MODIFICATIONS: The Individual contractor may not assign, delegate, transfer, pledge or make any other disposition of the Contract, of any part thereof, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNDP, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licenses or other forms of Contract concerning any goods or services to be provided under the Contract shall not be valid and enforceable against UNDP nor in any way shall constitute a contract by UNDP thereto, unless any such undertakings, licenses or other forms of contract are the subject of a valid written undertaking by UNDP. No modification or change in the Contract shall be valid and enforceable against UNDP unless provided by means of a valid written amendment to the Contract signed by the Individual contractor and an authorized official or appropriate contracting authority of UNDP.



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7. SUBCONTRACTORS: In the event that the Individual contractor requires the services of subcontractors to perform any obligations under the Contract, the Individual contractor shall obtain the prior written approval of UNDP for any such subcontractors. UNDP may, in its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefore, and such rejection shall not entitle the Individual contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of his or her obligations under the Contract. The Individual contractor shall be solely responsible for all services and obligations performed by his or her subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

8. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS: The Individual contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNDP, nor shall the Individual contractor, in any manner whatsoever, use the name, emblem or official seal of UNDP, or any abbreviation of the name of UNDP, in connection with his or her business or otherwise without the written permission of UNDP.

9. INDEMNIFICATION: The Individual contractor shall indemnify, defend, and hold and save harmless UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to: (a) allegations or claims that the use by UNDP of any patented device, any copyrighted material or any other goods or services provided to UNDP for its use under the terms of the Contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or (b) any acts or omissions of the Individual contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

10. INSURANCE: The Individual contractor shall pay UNDP promptly for all loss, destruction or damage to the property of UNDP caused by the Individual contractor, or of any subcontractor, or anyone directly or indirectly employed by them in the performance of the Contract. The Individual contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his or her obligations under the Contract, as well as for arranging, at the Individual contractor's sole expense, such life, health and other forms of insurance as the Individual contractor may consider to be appropriate to cover the period during which the Individual contractor provides services under the Contract. The Individual contractor acknowledges and agrees that none of the insurance arrangements the Individual contractor shall, in any way, be construed to limit the Individual contractor's liability arising under or relating to the Contract.

11. ENCUMBRANCES AND LIENS: The Individual contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNDP against any monies due to the Individual contractor or to become due for any work donor or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Individual contractor.



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12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS: In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Individual contractor shall give notice and full particulars in writing to UNDP of such occurrence or cause if the Individual contractor is thereby rendered unable, wholly or in part, to perform his or her obligations and meet his or her responsibilities under the Contract. The Individual contractor shall also notify UNDP of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with the performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in conditions or occurrence, the Individual contractor shall also submit a statement to UNDP of estimated expenditures that will likely be incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, UNDP shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Individual contractor of a reasonable extension of time in which to perform any obligations under the Contract or suspension thereof.

Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Individual contractor. The Individual contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Individual contractor must perform in or for any areas in which UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delay or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute *force majeure* under the Contract.

13. TERMINATION: Either party may terminate the Contract, in whole or in part, upon giving written notice to the other party. The period of notice shall be five (5) days in the case of contracts for a total period of less than two (2) months and fourteen (14) days in the case of contracts for a longer period. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract. UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that: (a) the Individual contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, applies for moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent; (b) the Individual contractor is granted a moratorium or a stay or is declared insolvent; (c) the Individual contractor makes an assignment for the benefit of one or more of his or her creditors; (d) a Receiver is appointed on account of the insolvency of the Individual contractor; (e) the Individual contractor offers a settlement in lieu of bankruptcy or receivership; or (f) UNDP reasonably determines that the Individual contractor has become subject to a materially adverse change in financial condition that threatens to endanger or otherwise substantially affect the ability of the Individual contractor to perform any of the obligations under the Contract.

In the event of any termination of the Contract, upon receipt of notice of termination by UNDP, the Individual contractor shall, except as may be directed by UNDP in the notice of termination or otherwise in writing: (a) take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum; (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice; (c) deliver all completed or partially completed plans,



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drawings, information and other property that, if the Contract had been completed, would be required to be furnished to UNDP thereunder; (d) complete performance of the services not terminated; and (e) take any other action that may be necessary, or that UNDP may direct in writing, for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Individual contractor and in which UNDP has or may be reasonably expected to acquire an interest.

In the event of any termination of the Contract, UNDP shall only be liable to pay the Individual contractor compensation on a pro rata basis for no more than the actual amount of work performed to the satisfaction of UNDP in accordance with the requirements of the Contract. Additional costs incurred by UNDP as a result of termination of the Contract by the Individual contractor may be withheld from any amount otherwise due to the Individual contractor by UNDP.

14. NON-EXCLUSIVITY: UNDP shall have no obligation respecting, and no limitations on, its right to obtain goods of the same kind, quality and quantity, or to obtain any services of the kind described in the Contract, from any other source at any time.

15. TAXATION: Article II, section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of the United Nations from such taxes, restrictions, duties or charges, the Individual contractor shall immediately consult with UNDP to determine a mutually acceptable procedure. UNDP shall have no liability for taxes, duties or other similar charges payable by the Individual contractor in respect of any amounts paid to the Individual contractor under this Contract, and the Individual contractor acknowledges that UNDP will not issue any statements of earnings to the Individual contractor in respect of any such payments.

16. AUDITS AND INVESTIGATIONS: Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP. The Individual contractor acknowledges and agrees that UNDP may conduct investigations relating to any aspect of the Contract or the award thereof, and the obligations performed thereunder.

The Individual contractor shall provide full and timely cooperation with any post-payment audits or investigations hereunder. Such cooperation shall include, but shall not be limited to, the Individual contractor's obligation to make available any relevant documentation and information for the purposes of a post-payment audit or an investigation at reasonable times and on reasonable conditions. The Individual contractor shall require his or her employees, subcontractors and agents, if any, including, but not limited to, the Individual contractor's attorneys, accountants or other advisers, to reasonably cooperate with any post-payment audits or investigations carried out by UNDP hereunder. If the findings or circumstances of a post-payment audit or investigation so warrant, UNDP may, in its sole discretion, take any measures that may be appropriate or necessary, including, but not limited to, suspension of the Contract, with no liability whatsoever to UNDP.

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The Individual contractor shall refund to UNDP any amounts shown by a post-payment audit or investigation to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. Such amount may be deducted by UNDP from any payment due to the Individual contractor under the Contract.

The right of UNDP to conduct a post-payment audit or an investigation and the Individual contractor's obligation to comply with such shall not lapse upon expiration or prior termination of the Contract.

17. SETTLEMENT OF DISPUTES:

AMICABLE SETTLEMENT: UNDP and the Individual contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the parties in writing.

ARBITRATION: Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties 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. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

18. **LIMITATION ON ACTIONS:** Except with respect to any indemnification obligations in Article 9, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 17, above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.

The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of

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the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

19. PRIVILEGES AND IMMUNITIES: Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

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