

**Terms of Reference (TOR)**

<b>1. Consultancy Information</b>	
POSITION	INTERNATIONAL EXPERT
PROJECT TITLE:	SUPPORT TO ZANZIBAR LEGAL SECTOR REFORM PROGRAM
PROJECT AWARD	00061944
PROJECT ID	00079188
IMPLEMENTATION PARTNER	PRESIDENT’S OFFICE CONSTITUTIONAL LEGAL AFFAIRS, PUBLIC SERVICE AND GOOD GOVERNMENT
TYPE OF CONTRACT:	INDIVIDUAL CONTRACT
LOCATION	ZANZIBAR
<b>2. Project Description/Background</b>	
<p>The Support to Zanzibar Legal Sector Reform Program (ZLSRP) is informed by the Revolutionary Government of Zanzibar’s (RGoZ) commitment to comprehensively address the challenges facing the legal sector as outlined in the main strategic documents (Vision 2020, MKUZA II, Ministry of Justice and Constitutional Affairs Strategic Plan, the Legal Sector Reform Strategy and Child Justice Reform Strategy). The project contributes to the United Nations Development Assistance Plan (UNDAP) outcomes 1.2 ‘Select Public Sector Reforms in Zanzibar are developed and accelerated’ and Outcome 5 ensuring that the ‘justice system better protects the rights of women and children in contact/conflict with the law and is better able to respond to their needs’. In support of these strategic documents, the ZLSRP focuses on the strengthening of justice institutions and the enhancement of access to justice for all and in particular for the most vulnerable people. The project’s overarching goals are to strengthen the rule of law and to promote human rights and access to justice for the citizens of Zanzibar. The specific objective is to support the National Legal Sector and the Child Justice Reform Programs in Zanzibar. The project expects the following results:</p> <ul style="list-style-type: none"> <li>• Result 1 - Legal Sector Reform Strategy developed and implemented;</li> <li>• Result 2 - Enhanced institutional and operational capacity of the justice sector to deliver services efficiently and effectively;</li> <li>• Result 3 - Strengthened legal aid mechanisms for a justice accessible to the people especially the most vulnerable.</li> <li>• Result 4: The justice system is able to handle children's cases and respond to the needs of child victims, witnesses and offenders</li> </ul> <p>The ZLSRP is implemented jointly by UNDP, and UNICEF and seeks to improve the quality of the administration of justice and the efficiency, affordability, and timeliness of justice service delivery. The basic principle underlining the ZLSRP is that legal sector reform is a critical foundation for the promotion of good governance and the protection of human rights and therefore a major element in achieving national economic and social development and poverty alleviation. The direct beneficiaries of ZLSRP are all the key justice sector institutions in Zanzibar, including the President Office of Constitution; Legal Affairs, Public Service, and Good Governance as Implementing Partner; the Judiciary of Zanzibar; the Office of the Attorney General; Law Review Commission and the Department of Public Prosecution as well as the broader population of Zanzibar.</p>	
<b>3. Purpose of the Assignment</b>	

This project evaluation will be conducted in fulfilment of UNDP regulations and rules guiding project evaluations. The evaluation shall inquire into the relevance, efficiency, effectiveness, impact, and sustainability of the programme and further consolidate lessons learned and best practices derived from the implementation. The evaluation shall be carried out in accordance with UNDP programme evaluation principles, norms, and standards.

The National Consultants shall work under the leadership of an international in carrying out the assignment under the supervision of the Head of Programme - UNDP in Dar es Salaam. The evaluation shall serve as an important accountability function, providing national stakeholders and partners in Tanzania with an impartial assessment of the results including gender equality results of this project.

#### **4. Scope and Objectives of Evaluation**

Consistent with UNDP development framework, this terminal evaluation shall be guided by the principles of gender equality, the rights-based approach and human development as appropriate. This evaluation shall assess the extent to which the ZLSRP project has contributed to issues of social and gender inclusion, equality and empowerment in pursuit of the overall objective of enhancing access to justice for the people of Zanzibar.

This terminal evaluation will cover the period 2013 – 2017 and will be conducted from February 1<sup>st</sup> to March 14<sup>th</sup>, 2018, highlighting the key lessons learned in providing informed guidance and technical assistance Revolutionary Government of Zanzibar (RGoZ). The overall objective of the terminal evaluation is to review progress towards the project's objectives and outcomes; assess the efficiency and cost-effectiveness of how the project has moved towards its objectives and outcomes; identify strengths and weaknesses in project design and implementation, and; provide recommendations on design modifications and specific actions that might be taken into consideration in designing future projects of a related nature.

Specifically, the terminal evaluation will:

- Assess the extent to which the project achieved its overall objectives;
- Assess the degree to which the development objectives and outputs of the ZLSRP were achieved;
- Review the implementation of the project monitoring and evaluation framework, systems, and processes;
- Describe and assess efforts of stakeholders in support of the implementation of the project;
- Describe the management processes – how did project activities change in response to new conditions encountered during implementation, and were the changes appropriate?
- Review the clarity of roles and responsibilities of the various institutional arrangements for overall programme management and implementation and the level of coordination among relevant players;
- Examine and evaluate the extent to which project impacts have reached the intended beneficiaries
- Assess the likelihood of continuation and sustainability of project outcomes and benefits after completion of the project - analyze how far the system of exit policy in the project ensures the viability of the project benefits;
- Review the risk assessment and management of the project;
- Describe key factors that shall require attention in order to improve prospects for sustainability of project outcomes and the potential for replication of the approach;
- Describe the main lessons that have emerged regarding local ownership

#### **5. Evaluation Questions**

This evaluation shall seek to answer, but is not limited, to the following questions, focused around the criteria of relevance, effectiveness, efficiency and sustainability:

1. **Relevance** - the extent to which the activities designed and implemented were suited to priorities and realities

- Review the relevance of the project strategy and assess whether it provides the most effective route towards the intended results. Were lessons from other relevant projects properly incorporated into the projects design?
  - Review the problem addressed by the project and the underlying assumptions. Review the effect of any incorrect assumptions or changes to the context to achieving the project results as outlined in the project document.
  - Review how the project address countries priorities. Review country ownership. Was the project concept in line with the national sector development priorities and plans of the country?
  - Review the decision-making processes – were perspectives of those who could affect the outcomes, and those who could contribute information or other resources to the process, taken into account during the project design processes.
  - Review the extent to which relevant gender issues were raised in the project design.
  - If there are major areas of concern, recommend areas for improvement.
2. **Effectiveness** - the extent to which the programme has achieved its intended outputs and objectives
- Review overall effectiveness of project management structure as outlined in the Project Document. Are responsibilities and reporting lines well defined? Is decision-making transparent and undertaken in a timely manner? Give recommendation for improvement.
  - Review the quality of support provided by UNDP and recommend areas for improvement.
  - Critically analyze the Multi Year Results and Resources Framework included in the project document.
  - Has the project been appropriately responsive to political, legal, economic, institutional, etc., changes in the country?
  - Has the project approach produced demonstrated successes?
  - In which areas does the project have the greatest achievements? Why this and what is have been the supporting factors? How can the project build on or expand these achievements?
  - In which areas does the project have the least achievements? What have been the constraining factors and why? How can they be overcome?
  - What, if any, alternative strategies would have been more effective in achieving the project's objectives?
  - Has the project made strategic use of coordination and collaboration with other national institutions and with other donors in the country/region to increase its effectiveness and impact?
  - Are the projects objectives and outcomes clear, practical, and feasible within its frame?
  - How have stakeholders been involved in project implementation? How effective has the project been in establishing national ownership? Is project management and implementation participatory and is this participation contributing towards achievement of the project objectives? Has the project been appropriately responsive to the needs of the national constituents and changing partner priorities?
  - Review the quality of execution of the implementing partners and recommend areas for improvement.
  - Are the project partners using the outputs? Have the outputs been transformed by project partners into outcomes?
    - How do the outputs and outcomes contribute to the UNDP's mainstreamed strategies?
    - How do they contribute to gender equality?
    - How do they contribute to the strengthening of the social partners and social dialogue?
    - How do they contribute to strengthening the influence human rights standards?
    - How do they contribute towards the effective promotion and protection of human right, overall access to justice and justice for children, equitable, and sustainable development in Tanzania?
3. **Efficiency**
- Has UNDP's project implementation strategy and execution been efficient and cost effective?
  - Has there been an economical use of financial and human resources? Have resources (funds, human resources, time, expertise, etc.) been allocated strategically to achieve outcomes?

- Have resources been used efficiently? Have activities supporting the strategy been cost-effective? In general, do the results achieved justify the costs? Could the same results be attained with fewer resources?
- Have project funds and activities been delivered in a timely manner?
- How has the steering or advisory committee contributed to the success of the project?
- Does project governance facilitate good results and efficient delivery? Is there a clear understanding of the roles and responsibilities by all parties involved?
- Are the monitoring and evaluation systems that UNDP has in place helping to ensure effective and efficient project management?

#### **4. Sustainability**

- Are there any social or political risks that may jeopardize sustainability of project outcomes?
- What is the risk that the level of stakeholder's ownership will be sufficient to allow for the project benefits to be sustained?
- Are the current stakeholders in support of the long-term objectives of the project?
- Are lessons learned being documented by the Project Team on a continual basis and shared with appropriate parties who could learn from the project?
- Do the current legal frameworks, policies, governance structures and processes pose risks that may jeopardize the sustenance of the project benefits?
- Are there any environmental risks that may jeopardize the sustenance of the projects outcomes?
- Do the UNDP interventions have well designed and well-planned exit strategies?
- What could be done to strengthen exit strategies and sustainability?
- What changes if any should be made in the current partnership (s) in order to promote long term sustainability?

#### **5. Partnership strategy**

- Has UNDP's partnership strategy been appropriate and effective?
- Are there current or potential overlaps with existing partners' programmes'?
- How have partnerships affected the progress towards achieving the outputs?
- Has the project developed and leveraged the necessary and appropriate partnerships with direct and indirect stakeholders?
- Do local and national government stakeholders support the objectives of the project? Do they continue to have an active role in the project decision-making that supports efficient and effective project implementation?
- To what extent has stakeholder involvement and public awareness contributed to the progress towards achievement of project objectives?
- Review the internal project communication with stakeholders – is it regular and effective? Are there key stakeholders left out of communication? Are there feedback mechanisms in place? Does this communication with stakeholders contribute to their awareness of project results?
- Review the external project communication – are there proper means of communicating the impact of the project to the public?
- Summarize the project's progress towards results in terms of contribution to the SDGs.

The evaluation should also include an assessment of the extent to which programme design, implementation and monitoring have taken the following cross cutting issues into consideration:

#### **6. Human rights**

To what extent have poor, indigenous and physically challenged, women and other disadvantaged and marginalized groups benefitted from UNDP Tanzania's work in enhancing access to justice and justice for children?

#### **7. Gender Equality**

- To what extent has gender been addressed in the design, implementation and monitoring of the project? Is gender marker data assigned this project representative of reality?
- To what extent has UNDP Tanzania's access to justice and justice for children engagement and support promoted positive changes in gender equality? Were there any unintended effects? Information collected should be checked against data from the Results-oriented Annual Reports (ROAR) during the period under review.

Based on the above analysis, the evaluators are expected to provide overarching conclusions on the project results in this area of support, as well as recommendations on how the UNDP Tanzania Country Office could adjust its programming, partnership arrangements, resource mobilization strategies, and capacities to ensure that the intervention fully achieves planned outputs.

## 6. Methodology and Deliverables

The terminal evaluation will be carried out by two evaluators, a national and an international, and will engage a broad range of key stakeholders (see annex 1) in accessing and analysing existing information and examining local sources of knowledge. The evaluation exercise will be wide-ranging, consultative, and participatory, entailing a combination of comprehensive desk reviews, analysis and interviews. While interviews are a key instrument, all analysis must be based on observed facts to ensure that the evaluation is sound and objective.<sup>1</sup>

The evaluators are expected to come up with a suitable methodology for this evaluation based on the guidance given in the above-mentioned document. The terminal evaluation shall provide evidence based information that is credible, reliable and useful. The evaluator shall review all relevant sources of information including documents prepared during the preparation phase and products of the project including report, legislations and policies and strategies and guidelines. This evaluation is expected to take a "theory of change" (TOC) approach in determining the causal links between the interventions that UNDP Tanzania has supported, and identify progress at mainstreaming in national priorities. The evaluators will develop, in consultation with the programme team, a logic model of how UNDP Tanzania justice and human rights interventions are expected to lead to improved national and local strategies in mitigating and adapting to evolving governance context of Zanzibar. The model will be validated by the Programme Team Leader. During the project evaluation, the evaluators are expected to apply the following approaches for data collection and analysis:

1. **Desk review of relevant documents:** The evaluators will collect and review all relevant documentation and activity reports; iii) past evaluation/ self-assessment reports; iv) deliverables from the country programme activities, e.g. published reports and training materials; v) client surveys on support services provided to country offices if any; vi) country office reports; vii) UNDP's corporate strategies and reports; and viii) government, media, academic publications. See Annex 2 for the comprehensive list of documents.
2. **Interviews and focus group discussions:** The evaluator will conduct face-to-face and/or telephone interviews with relevant stakeholders, including: i) UNDP staff (managers and programme/project officers) ii) Officials of the POCLAPSGG, AGC, DPP, LRC and the Judiciary, iii) beneficiary groups and donors in the country. Focus groups may be organized as appropriate.
3. **Site visits:** The evaluation team will visit select countries and/or programme sites to observe first-hand progress and achievements made to date and to collect best practices/ lessons learned. A case study approach will be used to identify and highlight issues that can be further investigated across the programme

## 7. Deliverables

The following reports and deliverables are required for the evaluation:

<sup>1</sup> An overall guidance on evaluation methodology can be found in the *UNDP Handbook on Monitoring and Evaluating for Results* and the *UNDP Guidelines for Outcome Evaluators*.

1. Inception report
2. Draft Project Terminal Evaluation Report
3. Draft Lessons Learned Report
4. Presentation of Draft Project Terminal Evaluation Report at the validation workshop/meeting with key stakeholders, (partners and beneficiaries)
5. Final Project Terminal Evaluation report and Lessons Learned Report

Upon signing the contract, the evaluators will also sign a ‘Code of Conduct for Evaluators in the UN System’, which will be made available as an attachment to the evaluation report. One week after the signing of contract, the consultant will produce an inception report. The inception report should include an evaluation matrix (see annex 3) presenting the evaluation questions, data sources, data collection, analysis tools and methods to be used. The inception report should detail the specific timing for evaluation activities and deliverables, and propose specific site visits and stakeholders to be interviewed. Protocols for different stakeholders should be developed. The inception report will be discussed and agreed with the POCLSPSGG and UNDP country office before the evaluator proceed with site visits.

The draft evaluation report will be shared with stakeholders, and presented in a validation workshop or meeting that the POCLSPSGG and UNDP country office will organize. Key partners and stakeholders i.e. the MoF and NEMC, will participate in this meeting among others. Feedback received from these sessions should be taken into account when preparing the final report. The evaluator will produce an ‘audit trail’ indicating whether and how each comment received was addressed in revisions to the final report. A lessons-learned report will also be discussed during the validation workshop. Feedback received should be taken into consideration when preparing the final lessons learned report. This report should be annexed in the main evaluation report.

All deliverables will be elaborated in English and must be submitted in digital form together with all supporting documentation including tables, graphs and diagrams in its original format.

The suggested table of contents of the evaluation report is as follows:

- Title
- Table of contents
- Acronyms and abbreviations
- Executive Summary
- Introduction Background and context
- Evaluation scope and objectives
- Evaluation approach and methods
- Data analysis
- Findings and conclusions
- Lessons learned
- Recommendations
- Annexes

## **8. Evaluation Team Composition & required Competences**

The international consultant will be the lead evaluator.

### **Required Qualifications**

- Masters’ degree in Law, Development Studies, Public Administration, International Affairs or in any other relevant field of study;
- International consultant - A minimum of 10-15 years relevant professional experience;
- Knowledge of/experience with UNDP monitoring and evaluation policies and procedures;
- Previous experience with access to justice and justice for children engagements in Africa, specifically Tanzania and the Zanzibar context;

The international consultant will be the lead evaluator.

**Required Qualifications**

- Masters' degree in Law, Development Studies, Public Administration, International Affairs or in any other relevant field of study;
- International consultant - A minimum of 10-15 years relevant professional experience;
- Knowledge of/experience with UNDP monitoring and evaluation policies and procedures;
- Previous experience of access to justice and justice for children engagement in Africa, specifically Tanzania and the Zanzibar context;

- Proven experience in the access to justice and justice for children domain (inter alia policy analysis, dialogue, negotiation, research, monitoring and assessment) and in the implementation of access to justice and justice for children policies;
- Experience in evaluation of international donor driven development projects will be an advantage
- Recent experience with result-based management evaluation methodologies;
- Demonstrated understanding of issues related to gender and access to justice and justice for children; experience in gender sensitive evaluation and analysis;

**Corporate Competencies:**

- Demonstrates integrity by modelling the UN's values and ethical standards;
- Promotes the vision, mission, and strategic goals of UNDP;
- Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability;
- Treats all people fairly without favoritism.

**Technical Competencies:**

- Demonstrated ability to coordinate processes to collate information and facilitate discussion and analysis of material;
- Technical competencies in undertaking complex evaluations which involve multiple countries and variety of stakeholders;
- Demonstrated strong research and analytical skills.

**Professionalism:**

- Demonstrated ability to meet deadlines and work under pressure;
- Demonstrated excellent organizational skills.

**Language:**

- Fluency in English is essential, knowledge of Kiswahili is a bonus.

**9. Evaluation Ethics**

This evaluation will be conducted in accordance with the principles outlined in the UNEG 'Ethical Guidelines for Evaluation. The Consultant must safeguard the rights and confidentiality of information providers, interviewees and stakeholders through measures to ensure compliance with legal and other relevant codes governing collection of data and reporting on it data. The Consultant must also ensure security of collected information before and after the evaluation and protocols to ensure anonymity and confidentiality of sources of information where that is expected. The information knowledge and data gathered in the evaluation process must also be solely used for the evaluation and not for other uses with the express authorization of UNDP and partners.

**10. Implementation Arrangements**

The UNDP Tanzania Country Office will select the evaluator through an open process in consultation with the POCLAPSGG. UNDP will be responsible for the management of the Consultant and will, in this regard, designate focal persons for the evaluation and any additional staff to assist in facilitating the process (e.g., providing relevant documentation, arranging visits/interviews with key informants, etc.) UNDP will take responsibility for the approval of the final evaluation report in liaison with POCLAPSGG in Zanzibar.

The designated focal point will assist the Consultant in arranging introductory meetings with the relevant parties in the UNDP, RGoZ, civil society etc. The Consultant will take responsibility for setting up meetings and conducting the evaluation, subject to advanced approval of the methodology submitted in the inception report. The UNDP Country Office will develop a Management Response to the evaluation within six weeks of report finalization.

While UNDP and POCLAPSGG will provide some logistical support during the evaluation, for instance assisting in setting interviews with POCLAPSGG and other justice sector institutions, it will be the responsibility of the Consultant to logistically and financially arrange their travel to and from relevant project sites and to arrange most interviews. Planned travels and associated costs will be included in the Inception Report.

The Task Manager of the Project will convene an Advisory Panel comprising of technical experts from POCLAPSGG and other justice sector institutions in Zanzibar as well as UNDP to enhance the quality of the evaluation.

This Panel will review the inception report and the draft evaluation report to provide detail comments related to the quality of methodology, evidence collected, analysis and reporting. The Panel will also advise on the conformity of evaluation processes to the UNEG standards. The evaluator is required to address all comments of the Panel completely and comprehensively. The Evaluator will provide a detail rationale to the advisory panel for any comment that remain unaddressed.

#### **11. Time-Frame for The Evaluation Process**

The evaluation is expected to take 30 working days for the consultant, over a period of six weeks starting after the contract is signed. A tentative date for the stakeholder workshop will be set in the inception meeting and the final draft evaluation report is due after 30 working days from the commencement of the assignment. The following table provides an indicative breakout for activities and delivery:

#### **Proposed Evaluation Mission Schedule (30 working days from February - March 2018)**

<b>Activity</b>	<b>Responsible party</b>	<b>Timeframe/Deadline</b>
Desk review, Evaluation design and work plan (Inception report)	Evaluation team	5 days
Field visits, interviews with partners, and key stakeholders	Evaluation team	11 days
Drafting of the evaluation reports & lessons learned reports	Evaluation team	8 days
Debriefing with UNDP	Evaluation team	Half day
Debriefing with partners	Partners and the Evaluation team	Half day
Finalization and submission of the evaluation reports and lessons learned reports (incorporating comments received on first drafts)	Evaluation team	5 days
<b>Total No. of Working Days</b>		<b>30</b>

#### **12. COST**

Interested candidates should provide their requested fee rates when they submit their expressions of interest, in USD. Fee payments will be made upon acceptance and approval by the UNDP and VPO of planned deliverables, based on the following payment schedule:

Inception report	10%
Data collection and acceptance of report from the field work	20%
Draft evaluation report and lessons learnt report submission and acceptance by UNDP	20%
Validation of draft report by stakeholders and incorporation of comments	20%
Final Evaluation and lesson learned Reports and acceptance	30%

#### **13. How to apply**

Please submit the following documents:

I. Technical proposal comprising of the following:

1. Letter of Confirmation of Interest and Availability using the template provided by UNDP.
2. Personal CV or P11, indicating all past experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and three (3) professional references.
3. Brief description (max. ½ page) of why you consider yourself as the most suitable for the assignment, and a methodology (max. 1 page) for how you will approach and complete the assignment.

II. Financial Proposal: that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided below.

## Individual Consultants General Terms and Conditions

---

### 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 Individual 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 its 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 its obligations under the Individual Contract. Should any authority external to UNDP seek to impose any instructions on the Individual Contract regarding the Individual contractor’s performance under the Individual 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 its performance of the Individual Contract or otherwise related to its obligations under the Individual Contract that may adversely affect the interests of UNDP, and the Individual contractor shall perform its obligations under the Individual Contract with the fullest regard to the interests of UNDP. The Individual contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Individual 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 its obligations under the Individual Contract. In the performance of the Individual 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. Failure to comply with such security directives is grounds for termination of the Individual contractor for cause. Prohibition of Sexual Exploitation and Abuse: In the performance of the Individual 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 Individual Contract, and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for termination of the Individual Contract. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

### **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 Individual Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the Individual Contract or when no longer needed by the Individual contractor. Such equipment, 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 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 Individual 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 Individual 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 its obligations under the Individual Contract, or (b) that the Individual contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Individual Contract, UNDP does not and shall not claim any ownership interest thereto, and the Individual contractor grants to UNDP a perpetual licence 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 Individual 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 Individual 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 work under the Individual 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 Individual 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 employees, officials, representatives and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Individual 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 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 as 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 Individual Contract, including any extension thereof, and, unless otherwise provided in the Individual Contract, shall remain effective following any termination of the Individual 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 care when by air.

UNDP may require the Individual contractor to submit a Statement of Good Health from a recognized physician prior to commencement of work in any offices or premises of UNDP or before engaging in any travel required by UNDP or connected with the performance of the Individual Contract. The Individual contractor shall provide such a Statement of Good Health 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 the 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 Individual Contract while the Individual contractor is traveling at UNDP expense or is performing any services under the Individual Contract in any offices or premises of UNDP, the Individual contractor or the Individual contractor's dependants, 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 Individual Contract, of any part thereof, or of any of the rights, claims or obligations under the Individual 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, licences or other forms of Individual Contract concerning any goods or services to be provided under the Individual Contract shall not be valid and enforceable against UNDP nor in any way shall constitute an Individual Contract by UNDP thereto, unless any such undertakings, licences or other forms of Individual Contract are the subject of a valid written undertaking by UNDP. No modification or change in the Individual Contract shall be valid and enforceable against UNDP unless provided by means of a valid written amendment to the Individual Contract signed by the Individual contractor and an authorized official or appropriate contracting authority of UNDP.

#### **7. SUBCONTRACTORS**

In the event that the Individual contractor requires the services of subcontractors to perform any obligations under the Individual 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 its obligations under the Individual Contract. The Individual contractor shall be solely responsible for all services and obligations performed by its 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 Individual 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 its 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 Individual 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 Individual Contract, which give rise to legal liability to anyone not a party to the Individual 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 Individual Contract. The Individual contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of its obligations under the Individual 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 Individual Contract. The Individual contractor acknowledges and agrees that none of the insurance arrangements the Individual contractor may make shall, in any way, be construed to limit the Individual contractor's liability arising under or relating to the Individual 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 done or against any goods supplied or materials furnished under the Individual Contract, or by reason of any other claim or demand against the Individual contractor.

## **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 its obligations and meet its responsibilities under the Individual 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 its performance of the Individual 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 Individual Contract.

If the Individual contractor is rendered permanently unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Individual Contract, UNDP shall have the right to suspend or terminate the Individual Contract on the same terms and conditions as are provided for below, under "Termination", except that the period of notice shall be five (5) days instead of any other period of notice. In any case, UNDP shall be entitled to consider the Individual contractor permanently unable to perform its obligations under the Individual Contract in the case of the Individual contractor's suffering any period of suspension in excess of thirty (30) days.

*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 Individual 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 Individual Contract.

### **13. TERMINATION**

Either party may terminate the Individual 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 Individual 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 Individual Contract. UNDP may, without prejudice to any other right or remedy available to it, terminate the Individual Contract forthwith in the event that: (a) the Individual contractor is adjudged bankrupt, or is 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 Individual 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.

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; the Individual contractor makes an assignment for the benefit of one or more of its creditors; (c) a Receiver is appointed on account of the insolvency of the Individual contractor ; (d) the Individual contractor offers a settlement in lieu of bankruptcy or receivership; or (e) UNDP reasonably determines that the Individual contractor has become subject to a materially adverse change in its financial condition that threatens to endanger or otherwise substantially affect the ability of the Individual contractor to perform any of its obligations under the Individual Contract.

In the event of any termination of the Individual 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 Individual 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 Individual Contract as of and following the date of receipt of such notice; (c) deliver all completed or partially completed plans, drawings, information and other property that, if the Individual Contract had been completed, would be required to be furnished to UNDP thereunder; (d) complete performance of the work 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 Individual 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 Individual 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 Individual Contract. Additional costs

incurred by UNDP resulting from the termination of the Individual Contract by the Individual contractor may be withheld from any amount otherwise due to the Individual contractor from 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 Individual 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 Individual 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. AUDIT AND INVESTIGATION**

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 at any time during the term of the Individual Contract and for a period of two (2) years following the expiration or prior termination of the Individual Contract. UNDP shall be entitled to a refund from the Individual contractor for any amounts shown by such audits to have been paid by UNDP other than in accordance with the terms and conditions of the Individual Contract.

The Individual contractor acknowledges and agrees that, from time to time, UNDP may conduct investigations relating to any aspect of the Individual Contract or the award thereof, the obligations performed under the Individual Contract, and the operations of the Individual contractor generally relating to performance of the Individual Contract. The right of UNDP to conduct an investigation and the Individual contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Individual Contract. The Individual contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Individual contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNDP access to the Individual contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Individual contractor's personnel and relevant documentation. The Individual contractor shall require its agents, including, but not limited to, the Individual contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

#### **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 Individual 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 Individual 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 Individual Contract, order the termination of the Individual 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 Individual 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 Individual 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 7, above, or as are otherwise set forth in the Individual Contract, any arbitral proceedings in accordance with Article 17 above, arising out of the Individual Contract must be commenced within three 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 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 Individual Contract, the cause of action accrues when such time of future performance actually begins.

#### **19. PRIVILEGES AND IMMUNITIES**

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