

**IN-KIND CONTRIBUTIONS AGREEMENT BETWEEN  
THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)  
AND NIKKEN CO., LTD (THE DONOR)**

WHEREAS the Donor has informed UNDP of its willingness to contribute in-kind support (hereinafter referred to as “the contribution”) to UNDP towards implementation of the project,<sup>1</sup>

WHEREAS UNDP is prepared to receive and administer the contribution for the implementation of the project,

WHEREAS the Government of Kenya has been duly informed of the contribution of the Donor to the project,

WHEREAS UNDP shall designate an Implementing Partner<sup>2</sup> for the implementation of the project (the Implementing Partner),

NOW, THEREFORE, UNDP and the Donor hereby agree as follows:

**Article I. The Contribution**

1. The Donor shall, in accordance with the schedule set out below (“Schedule”), contribute to UNDP free of charge, the following:

<u>Type of contribution</u>	<u>Schedule</u>
Clinca 205 (POU water purification product)	By the end of August 2013
<u>Approximate value of contribution</u>	
US \$4,000	

Detailed specifications of the contribution, including shipping, assembly and installation, training on use and maintenance etc., are set out in Annex 1 hereof.

2. The above Schedule takes into account the requirement that the contribution shall be made in advance of the implementation of planned activities. It may be amended to be consistent with the progress of project delivery.

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<sup>1</sup> The project is described in the project document “concept note for IMD pilot project to improve access to safe water and agricultural productivity, and to develop sales business models of safe water and cash crops by utilizing Japanese water purification technologies in Kenya” The project document is formally annexed to this Agreement. For UNDP programme activities carried out under the harmonized operational modalities, the project document is comprised of the CPAP and A WPs.

<sup>2</sup> “Implementing Partner” for UNDP programme activities carried out under the harmonized operational modalities and “Executing Entity” for UNDP programme activities not carried out under the harmonized operational modalities.

3. UNDP shall receive and administer the contribution in accordance with the regulations, rules and directives of UNDP.

#### **Article II. Utilization of the Contribution**

1. The implementation of the responsibilities of UNDP and of the Implementing Partner pursuant to this Agreement and the project document shall be dependent on receipt by UNDP of the contribution in accordance with the Schedule as set out in Article I, paragraph 1, above.
2. If unforeseen additional needs of the project are expected or realized that are of the same type or nature as this in-kind contribution, UNDP shall submit to the Donor on a timely basis a supplementary estimate showing the further in-kind contribution that will be necessary. The Donor shall use its best endeavours to provide such required support.
3. If the contribution referred to in Article I, paragraph 1 and detailed in Annex 1, is not received in accordance with the Schedule, or if additional and related contributions required are not forthcoming from the Donor or other sources, the assistance to be provided to the project under this Agreement may be reduced, suspended or terminated by UNDP.

#### **Article III. Warranties and Representations**

The Donor represents and warrants that:

- a) it has all rights necessary to perform this agreement without restriction;
- b) grant of any products to UNDP, and the use thereof by UNDP, as envisaged under this agreement do not violate or infringe any third party's intellectual property or other rights;
- c) The contribution is merchantable and fit for the particular purpose for which it is to be used (see the project document or programme support document). Simultaneous with the transfer of the contribution, the Donor shall pass on any warranty offered by the manufacturer or supplier to UNDP. In the event of any material malfunction of the contribution [during the first year], the Donor will repair or will cause to have repaired such malfunction within a reasonable time upon request of UNDP, at the Donor's cost and expense.

#### **Article IV. Officials not to Benefit**

The Donor warrants that no official of the UNDP has received or will be offered by Donor any direct or indirect benefit arising from the contribution under this agreement.

#### **Article V. Indemnification**

The Donor shall indemnify, hold and save harmless, and defend, at its own expense, the UNDP, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Donor, or the Donor's employees, officers, agents or sub-contractors, in connection with the



contribution provided under this agreement. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Donor, its employees, officers, agents, servants or sub-contractors. The obligations under this provision do not lapse up the termination of the cooperation between the parties under this agreement.

#### **Article VI. Encumbrances / Liens**

The Donor 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 the UNDP against any monies due or to become due for any work done or materials furnished under the contribution under this agreement, or by reason of any other claim or demand against the Donor.

#### **Article VII. Copyrights, Patents and other Property Rights**

Unless otherwise agreed, the 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, or documents and other materials which are contributed by the Donor under this Agreement or bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of the terms of the contribution under this agreement. At the UNDP's request, the Donor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to the UNDP in compliance with the requirements of the applicable law.

#### **Article VIII. Confidential Nature of Documents and Information**

The Donor may not communicate at any time to any other person, Government or authority external to the UNDP, any information known to it by reason of its association with the UNDP which has not been made public except with the authorization of the UNDP; nor shall the Donor at any time use such information to private advantage. These obligations do not lapse upon termination of the cooperation procedures reflected in this Agreement.

#### **Article IX. Administration and reporting**

1. Project management and expenditures shall be governed by the regulations, rules and directives of UNDP and, where applicable, the regulations, rules and directives of the Executing Entity.
2. UNDP headquarters and country office shall provide to the Donor all or parts of the following reports prepared in accordance with UNDP reporting procedures.
  - (a) From the country office within six months after the date of completion or termination of the Agreement, a final report summarizing project activities and impact of activities, including usage of or outputs achieved with help of contribution;

3. If special circumstances so warrant, UNDP may provide more frequent reporting at the expense of the Donor. The specific nature and frequency of this reporting shall be specified in an annex of the Agreement.

#### **Article X. Ownership of Equipment**

Ownership of equipment, supplies and other properties donated by the Donor, shall vest in UNDP. Matters relating to the transfer of ownership by UNDP shall be determined in accordance with the relevant policies and procedures of UNDP.

#### **Article XI. Audit**

The contribution shall be subject exclusively to the internal and external auditing procedures provided for in the regulations, rules and directives of UNDP. Should a biennial Audit Report of the Board of Auditors of UNDP to its governing body contain observations relevant to the contribution, such information may be made available to the Donor.

#### **Article XII. Advertisement of the contribution**

1. The Donor shall not use the UNDP name or emblem, or any abbreviation thereof, in connection with its business or otherwise without the express prior written approval of UNDP in each case. In no event will authorization be granted for commercial purposes, or for use in any manner that suggests an endorsement by UNDP, its products or services.
2. The Donor acknowledges that it is familiar with UNDP's ideals and objectives and recognizes that its name and emblem may not be associated with any political or sectarian cause or otherwise used in a manner inconsistent with the status, reputation and neutrality of UNDP.
3. The Donor may make representations to its shareholders and internal budget officials as required about the fact of the contribution to UNDP. Any other use of the UNDP name or emblem, and any other form of recognition or acknowledgement of the contribution of the Donor are subject to consultations between the Parties, and the prior written agreement of UNDP.
4. UNDP will report on the contribution to its Executive Board in accordance with its regular procedures regarding contributions from private donors. Other forms of recognition and acknowledgement of the contribution are subject to consultations between the Parties, but the manner of such recognition and acknowledgement shall be determined at the sole discretion of UNDP.

#### **Article XIII. Completion and Termination of the Agreement**

1. UNDP shall notify the Donor when all activities relating to the project have been completed.
2. After consultations have taken place between the Donor, UNDP and the programme country Government, and provided that the contributions already received are, together with other



resources available to the project, sufficient to meet all commitments and liabilities incurred in the execution/implementation of the project, this Agreement may be terminated by UNDP or by the Donor. The Agreement shall cease to be in force thirty (30) days after either of the Parties has given notice in writing to the other Party of its decision to terminate the Agreement. If nothing else is stated, this Agreement will be terminated upon the submission of a final project report by UNDP to the Donor.

#### **Article XIV. Amendment of the Agreement**

The Agreement may be amended through an exchange of letters between the Donor and UNDP. The letters exchanged to this effect shall become an integral part of the Agreement.

#### **Article XV. Settlement of Disputes**

1. The parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this agreement 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 UNCITRAL Conciliation Rules then obtaining, or according to such procedure as may be agreed between the parties.
2. Any dispute, controversy or claim between the Parties arising out of this agreement or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

#### **Article XVI- Privileges and Immunities**

Nothing in this agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNDP.

#### **Article XVII. Observance of Law**

The Donor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of the cooperation provided under the contribution as reflected in this agreement.

#### **Article XVIII. Entry Into Force**

This Agreement shall enter into force upon signature by the concerned parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement in the English language in two copies.

S.K.



### Detailed Specifications of the Contribution

Nikken Co., Ltd shall contribute to UNDP free of charge the following:

Item	Description	Manufacturer	Quantity	Approximate value	Schedule of shipment
Clinca	POU (Point-Of-Use) water purification product	Nikken Co., Ltd	Bulk – 40kg 40x125 packages 120x25g packages	US \$1,500	To be arrived at Nairobi by the end of August 2013
Other materials	Delivery bottles and packages	---	---	US \$ 700	To be arrived at Nairobi by the end of August 2013
Shipping, importation & transportation	---	---	--	US \$1,800	---

\* Approximate value is calculated as US\$1=JPY93