

**AGREEMENT**

**Between**

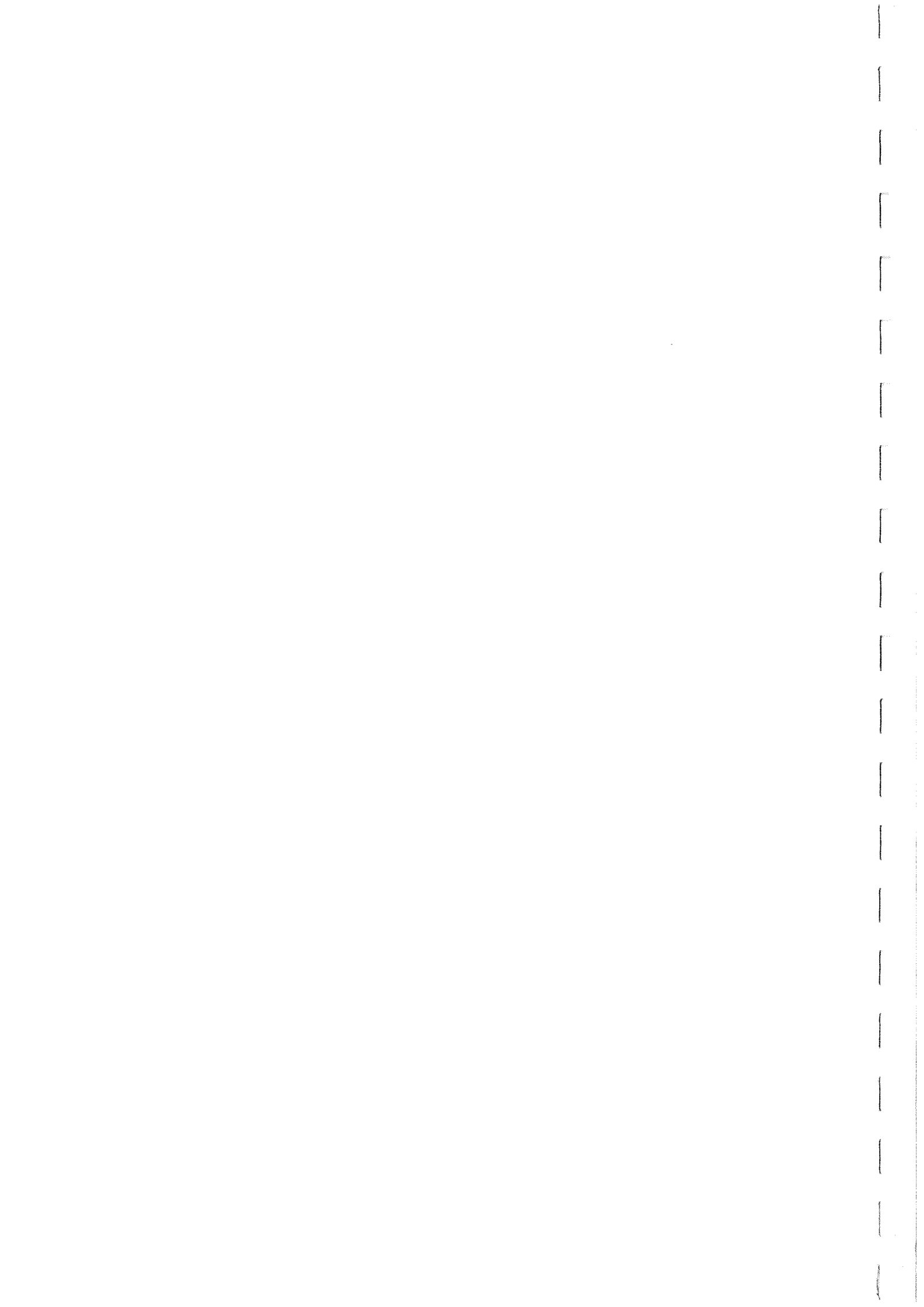
**Climate Change and Development Authority, Government of Papua New Guinea  
(CCDA)**

**AND**

**United Nations Development Programme  
(UNDP)**

**For the provision of community facilitation services in the implementation of ADB-  
supported Building Resilience to Climate Change in Papua New Guinea Project**

**DATED: 19 March 2020**



## AGREEMENT

This Agreement including five appendices attached hereto (hereinafter called the Agreement) is made on 19<sup>th</sup> day of March 2020 between the Climate Change and Development Authority (hereinafter called CCDA) of the one part, and the United Nations Development Programme of the other part (hereinafter called UNDP) with its headquarters situated at New York, United States of America.

WHEREAS the CCDA has requested UNDP to carry out such work on the terms and conditions hereinafter set forth which UNDP has agreed to do with respect to Building Resilience to Climate Change (BRCC) in Papua New Guinea Project (Grant No. 0447-PNG, 0598-PNG, 0600-PNG)

NOW THEREFORE the parties hereto agree as follows:

### ARTICLE I The Services

Section 1.01 **Description of Services.** The work to be performed by UNDP under the Agreement (such work being hereinafter called the Services) is more particularly described in the Terms of Reference (Appendix A) and associated proposal set forth in Appendix B.

Section 1.02 **Commencement Date.** UNDP shall commence the Services as soon as possible but not later than thirty (30) calendar days after CCDA has given to UNDP notice to proceed with the Services and upon receipt of the funds. It is presently anticipated that the services will commence not later than 09 March 2020 and to be completed by 31 October 2021.

Section 1.03 **Date of Entry on Duty.** UNDP shall promptly inform the CCDA of the date of entry on duty of its personnel.

### ARTICLE II Personnel

Section 2.01 **Personnel.** (a) The Services shall be carried out by personnel as specified in Appendix C (hereinafter called the Personnel) for the respective periods of time indicated therein provided that UNDP may make adjustments in such periods as may be appropriate to ensure the efficient performance of the Services and provided further that such adjustments will not cause payments made under the Agreement to exceed the maximum amount payable as specified in Section 3.02. Any persons debarred or temporarily suspended by ADB in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines shall be ineligible to participate in activities related to this Agreement.

(b) Should it be necessary for UNDP to replace any of its experts, UNDP shall forthwith provide a replacement with comparable or better qualifications. In the event that the person replaced is, at the time of replacement, in the field, the UNDP shall bear the travel and other related costs arising out of or incidental to the replacement. The rate of remuneration and out-



of-pocket expenses applicable to such replacement shall be governed by applicable UN policies and procedures. UNDP shall ensure that the replacement of staff does not compromise its ability to implement the project within the agreed resources.

(c) In the event that any personnel is found to be incompetent or incapable of discharging his/her assigned responsibilities, UNDP shall provide a replacement with suitable qualifications and experience.

Section 2.02 **Team Leader**. UNDP shall designate a Team Leader acceptable to the CCDA to supervise and coordinate the operations of UNDP Personnel in the field and to be responsible for liaison between UNDP, the CCDA and ADB.

### **ARTICLE III Payments to UNDP, Exemptions and Facilities**

Section 3.01 **Payments to UNDP**. (a) In recognition of the fact that UNDP has no discretionary funds to expend but can only commit against funds already received, the CCDA shall pay to UNDP advance payments as specified in Appendix D of this Agreement; provided that the total payment shall not exceed the ceiling amount specified in Section 3.02 hereof.

(b) All financial transactions shall be recorded by UNDP in a separate account established for the purpose of this Agreement under the Financial Regulations and Rules of the United Nations. UNDP shall manage the funding under the Agreement in accordance with UNDP Financial Regulations and Rules. UNDP shall not pre-finance any activity under the Project. UNDP shall charge a General Management Services support ("GMS") fee in accordance with UNDP's cost recovery policy (GMS fee is included in the amount specified in Section 3.02). All financial accounts and statements shall be expressed in United States dollars and shall be subject exclusively to the internal and external auditing procedures laid down in the Financial Regulations, Rules and directives of the UNDP.

(c) All payments to UNDP shall be made in the United States dollar and paid into the following bank account:

Account Name: UNDP Contributions Account

Bank Name: CITIBANK, N.A.

Bank Address: 111 Wall Street, New York, NY 10043, USA

Account No.: 36349562

Swift Code: CITIUS22

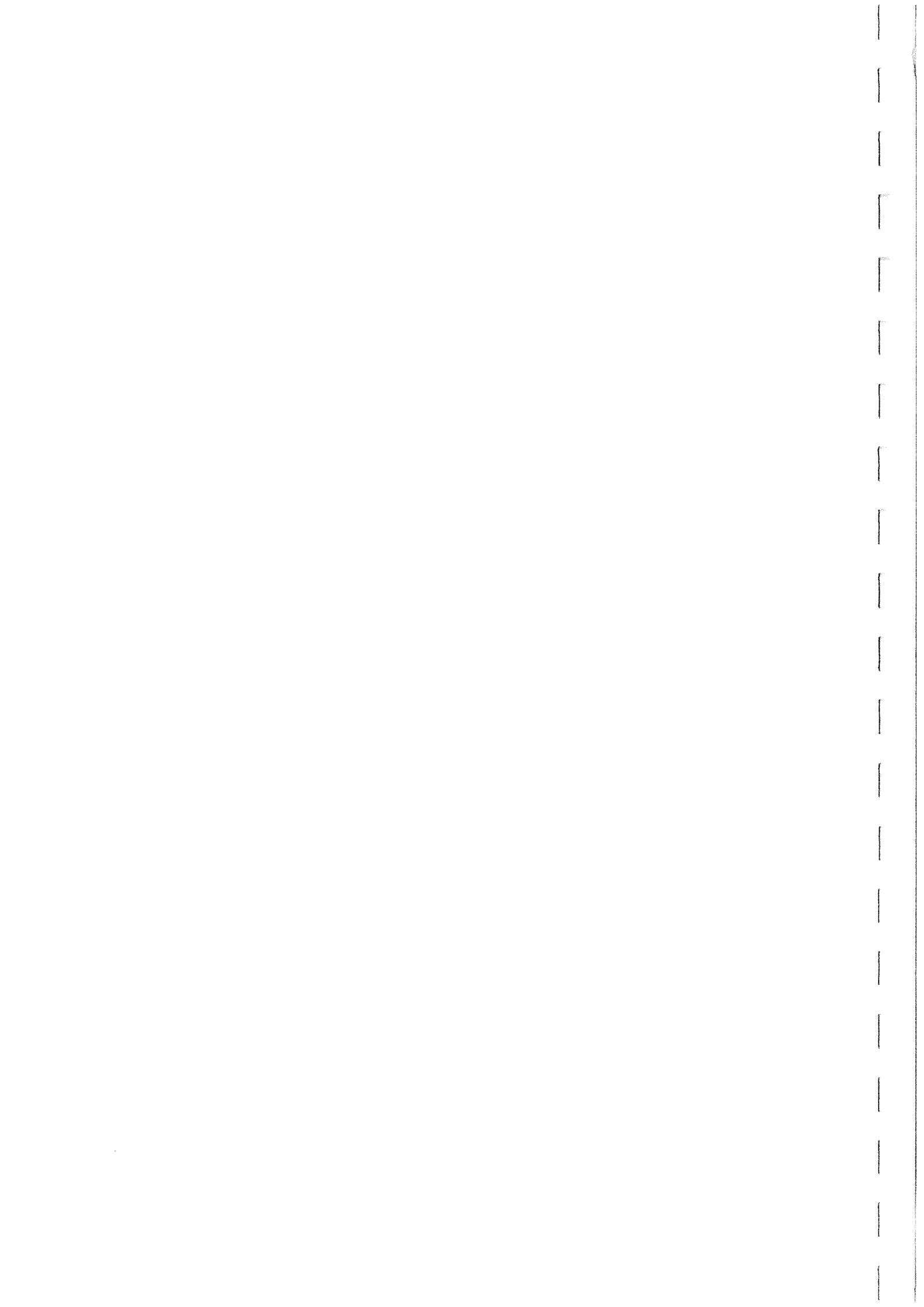
IBAN No.: ABA#021000089

Reference: Project No. 00103471, Building Resilience to Climate Change in PNG

Indicating that the funds should be credited to Grant No. 00103471.

(d) UNDP shall not be required to commence or continue the provisions of the services until the respective payments referred to above and in Appendix D have been received and UNDP shall not assume any liability in excess of the funds paid into the account referred to above.

Section 3.02 **Maximum Payment**. Except as otherwise agreed by the CCDA in accordance with Section 7.03 hereof, but notwithstanding anything elsewhere in the



Agreement provided, total payments under this Agreement shall not exceed a sum equivalent to **US Dollars Three Million**.

Section 3.03. **Coordination and Facilities**.

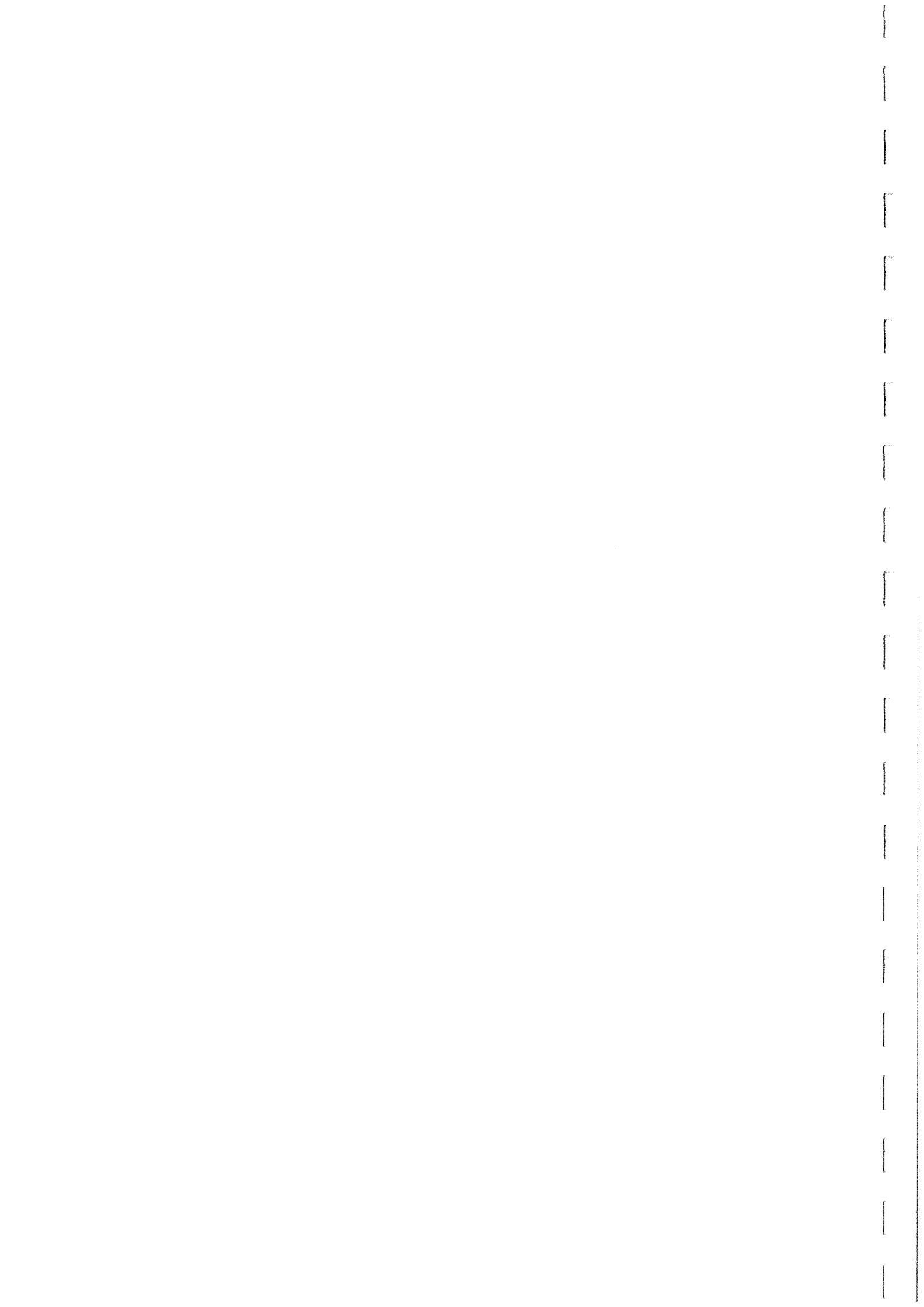
(a) CCDA shall certify the completion of milestones by UNDP under the Services through the BRCC Project Management Unit (supported by the Project Implementation Support Consultant).

(b) CCDA shall provide UNDP with necessary assistance and documentation in relation to the Services that UNDP may reasonably require during the provision of Services. The Parties will liaison with each other and conduct meetings, as appropriate, for the purposes of information sharing in connection with the Services and Project.

**ARTICLE IV**  
**Reports**

Section 4.01 **Reports**. UNDP shall submit to the CCDA and ADB in the English language the following reports:

- (i) An Inception Report {3 copies of printed report and electronic version (word and pdf format)} to the BRCC PMU within six weeks after the commencement of the Services. One copy shall be distributed to the PMU, CCDA and ADB.
- (ii) Reports to the CCDA to be submitted every month after the commencement of the Services. The reports should clearly indicate the status of implementation in accordance with the Detailed Work Plan (DWP) to be provided as part of the inception report. In the event of failing to comply with the time frame in line with the Schedule of Events, the causes must be expressively identified accompanied by suggestions for remedial measures.
- (iii) Milestone Completion Reports for deliverables as set out in Appendix D and format for which shall be agreed in the Inception Report. {3 sets of printed report and electronic version (word and pdf format) to the BRCC PMU for distribution to the PMU, CCDA and ADB}. The three milestone reports shall be submitted as soon as the corresponding deliverables set out in Appendix D are completed. The completion of the milestones and the acceptance of the milestone completion reports by BRCC and ADB shall form the basis for the release of following advance payment.
- (iv) Draft Final/Completion Report of the project as set out in Appendix D and format for which shall be agreed in the Inception Report – 3 sets of printed report and electronic version (word and pdf format) to the BRCC PMU for distribution to the PMU, CCDA and ADB. The report to be submitted after the corresponding deliverables set out in Appendix D are completed. This will be discussed at a Project Steering Committee (PSC) meeting.
- (v) A Final/Completion Report of the project – 3 sets of printed report and electronic version (word and pdf format) to the BRCC PMU for distribution to the PMU, CCDA and ADB. –to be submitted within one month after the said PSC Meeting. No payment will be made for submission and acceptance of the Final/Completion Report.
- (vi) The Final Report shall take into consideration the comments of the CCDA and ADB.





## ARTICLE V General Provisions

Section 5.01 **Performance of the Services.** UNDP shall carry out the Services with due diligence and efficiency and shall furnish to the CCDA and ADB (subject to UNDP Information Disclosure Policy) such information related to the Services as CCDA, or ADB may from time to time request.

Section 5.02 **Accounts and Records.** (a) UNDP shall keep accurate and systematic accounts and records in respect to the Services in such form and detail as are customary in its profession and are sufficient to establish accurately that the costs and expenditures referred to in Article III have been duly incurred.

(b) Auditing in connection with the Services shall be regulated in accordance with the United Nations Single Audit Principle. UNDP shall provide to ADB an annual financial statement, as of 31 December each year, certified by the UNDP Comptroller and on use of the funds under this Agreement, during the previous year not later than 30 June the following year. After completion and financial closing of the Project, UNDP shall provide not later than 30 June of the year following the financial closing, a final financial statement, certified by the UNDP Comptroller, on the use of the funds.

Section 5.03 **Sub-Contracts.** UNDP may subcontract work related to the Services to individuals or entities. However, UNDP shall retain full responsibility for the Services and for the content of all Reports required hereunder, which shall be submitted and signed by UNDP.

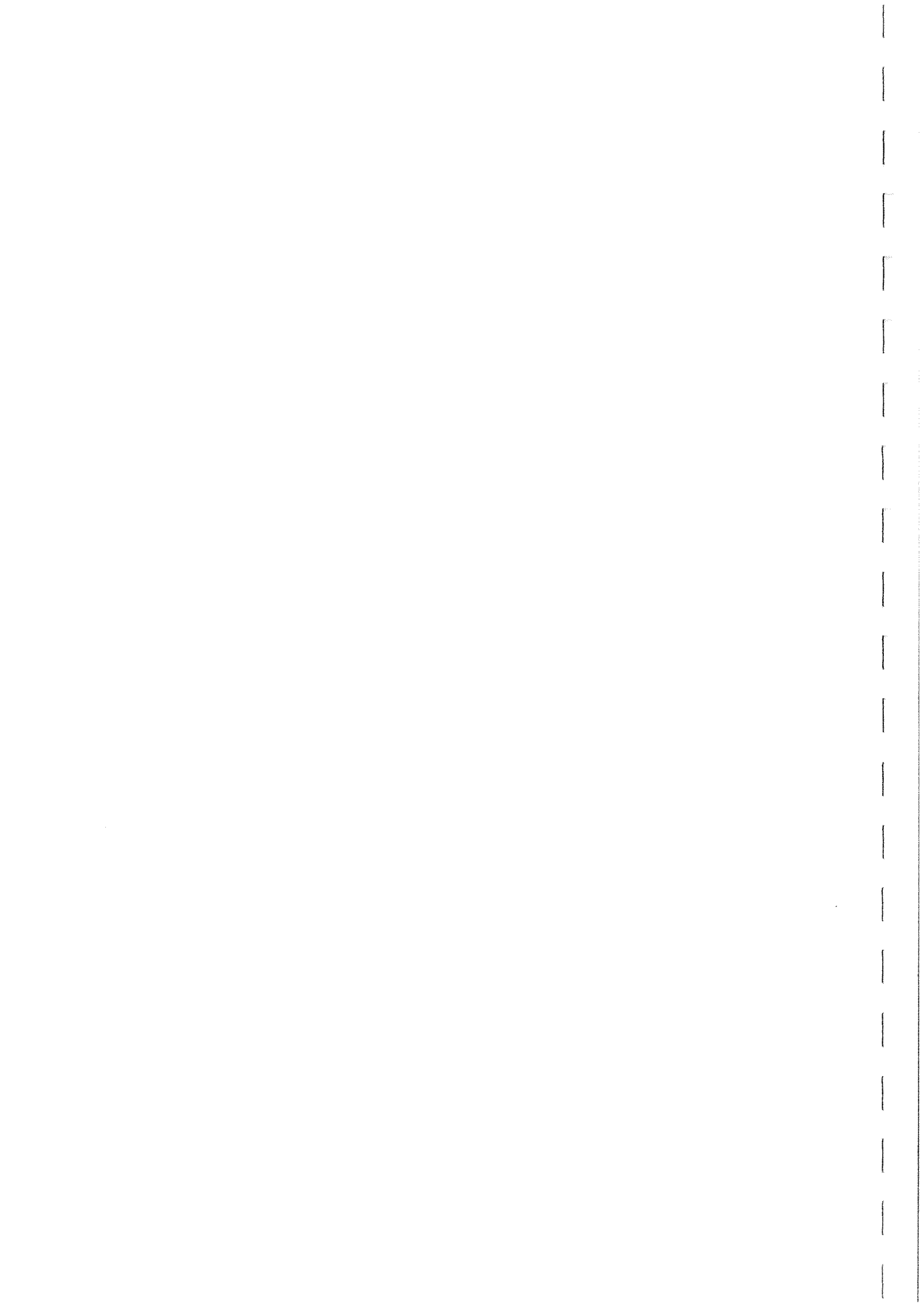
Section 5.04 **Insurance.** (a) UNDP may take out and maintain adequate insurance against loss or damage to equipment purchased by UNDP in whole or in part with funds provided by the CCDA or the ADB. The proceeds of such insurance shall be payable in a currency freely usable to replace or repair such equipment.

(b) The CCDA undertakes no responsibility in respect to life, accident, travel or any other insurance coverage for the employees or subcontractors of UNDP or for the dependents of any such persons.

### Section 5.05 **Ownership of Reports and Equipment.**

(a) All reports, documents, correspondence, draft publications, maps, drawings, notes, specifications, statistics, work product in any form and technical data compiled or prepared by UNDP in implementing the Project (in electronic form or otherwise and including computer-disks comprising data) (all together the "Intellectual Property") shall be owned by CCDA. UNDP shall have a free-of-royalty, unlimited, perpetual and irrevocable license to use and transfer such Intellectual Property."

(b) Any software and all computer programs developed by UNDP under this Agreement shall remain the property of UNDP. However, a perpetual license shall be granted



to the CCDA by UNDP to allow it to use the software uninterrupted and without any need to renew the license.

(c) Equipment and materials furnished to UNDP by the CCDA, or purchased by UNDP with funds supplied or reimbursed by the CCDA hereunder, shall be the property of the UNDP for the duration of the project. Ownership of the said project equipment and materials shall be transferred to the CCDA at the end of the project.

Section 5.06 **Disposal of Data and Equipment**. Upon completion or termination of the Services, UNDP shall:

(a) return to the CCDA any materials furnished to UNDP by the CCDA, or ADB respectively, for the purposes of the Services, and

(b) furnish to the CCDA inventories of the equipment referred to in Section 5.05(b) hereof as it then remains and dispose of the same as directed by the CCDA.

Section 5.07 **Relationship of Parties**. Nothing contained herein shall be construed as establishing or creating between the CCDA and UNDP a relationship of master and servant or principal and agent. It being agreed that the position of UNDP and of the personnel performing the Services is that of an independent contractor. The Parties acknowledge and agree that UNDP is an integral part of the United Nations.

Section 5.08 **Coordination**. UNDP shall, at all times, cooperate and coordinate with the CCDA, with respect to the project.

Section 5.09 **Integrity**. Allegations relating to possible corrupt, fraudulent, coercive, collusive practice, or any integrity violation shall be investigated by UNDP per UNDP Financial Regulations and Rules and procedures. Nothing in this section shall be deemed to waive or otherwise limit any right or authority of ADB under the Grant Agreement or otherwise, to investigate allegations or other information relating to possible corrupt, fraudulent, coercive, collusive or obstructive practices, or any integrity violation, as defined in ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time, by any party, or to sanction or take remedial action against any such party which ADB has determined to have engaged in such practices; provided, however that in this section, "party" does not include UNDP. To the extent consistent with UNDP's oversight framework, including regulations, rules, policies and procedures, and if requested by ADB, UNDP shall cooperate with ADB or such other entity in the conduct of such investigations. In connection with this, UNDP shall promptly notify ADB of any credible allegations of corrupt, fraudulent, coercive, collusive, obstructive practices or any integrity violation.

## **ARTICLE VI**

### **Suspension and Termination; Settlement of Disputes**

Section 6.01 **Impossibility of Performance**. UNDP shall promptly notify the CCDA of any situation or of the occurrence of any event beyond the control of UNDP, which makes it



impossible or impracticable for UNDP to carry out its obligations hereunder. Upon confirmation in writing by the CCDA of the existence of any such situation or event or upon failure of the CCDA to respond to such notice within thirty (30) days, UNDP shall be relieved from all liability for failure to carry out its obligations. In case of disagreement between the parties as to the existence of such situation or event, the matter shall be submitted to arbitration in accordance with Section 6.06 hereof.

Section 6.02 **Suspension.** (a) With the exception of funds already received and committed and for which UNDP has incurred a liability, the CCDA may, by notice to UNDP, suspend in whole or in part the disbursement of funds hereunder if UNDP shall have failed materially to carry out any of its obligations under this Agreement. Before deciding on any such suspension, the CCDA shall notify UNDP of its material failure and request it to remedy the failure within thirty (30) days.

(b) In the event of a major delay in the implementation of the work programme, the CCDA may suspend the respective payments provided for in Section 3.01 hereof. In such event, UNDP shall prepare a modified budget and payment schedule which shall take effect after approval by the CCDA, and payment shall be resumed in accordance with the modified schedule.

Section 6.03 **Termination by the CCDA.** The CCDA may terminate this Agreement by notice to UNDP:

(a) if the Loan/Grant Agreement shall have been terminated; or

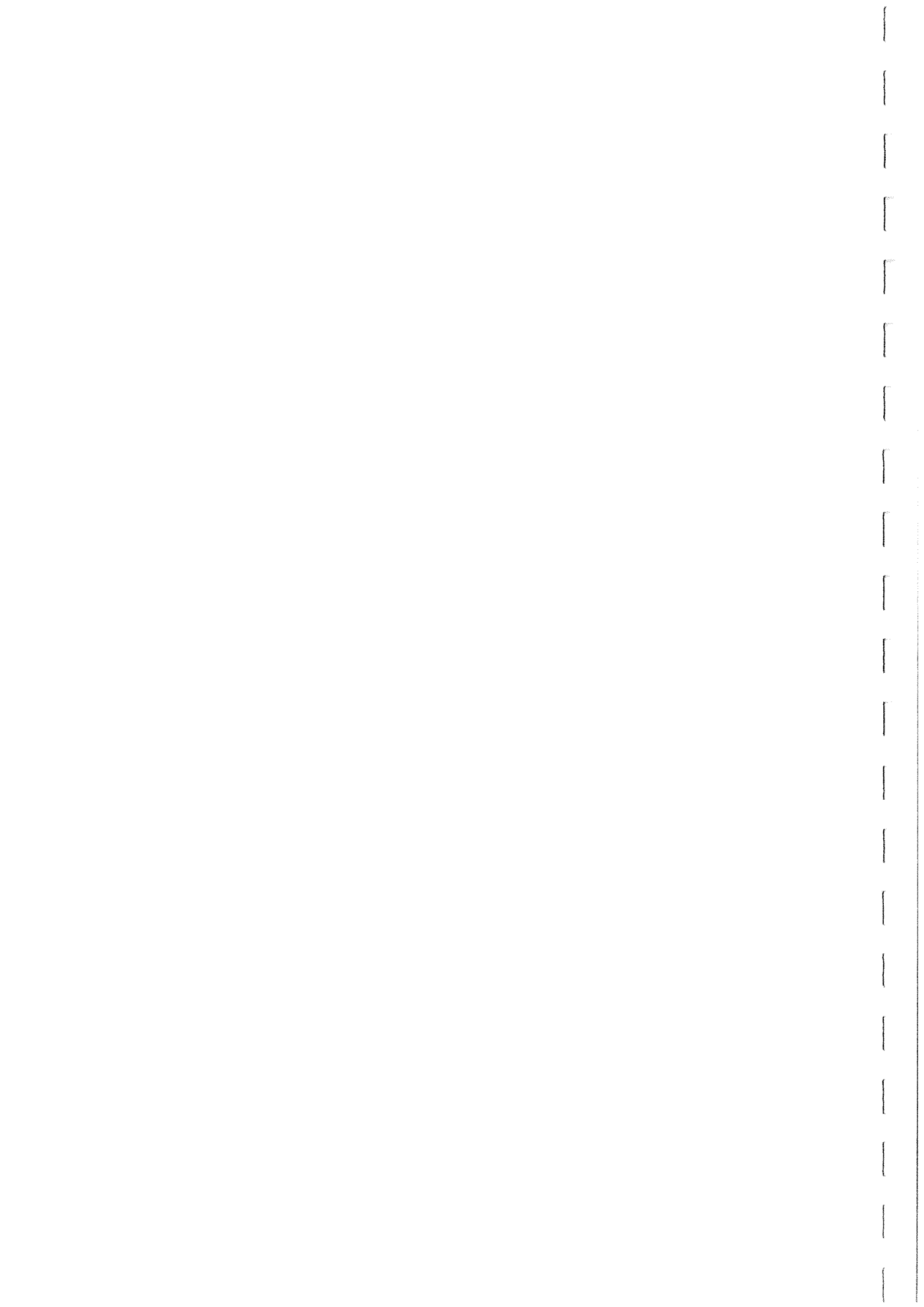
(b) if UNDP shall have failed materially to carry out any of its obligations under this Agreement, as long as it does not conflict with prevailing UN rules and regulations. Before deciding on any such termination, the CCDA shall notify UNDP of its material failure and request it to remedy the failure within thirty (30) days.

(c) if any personnel in Appendix C, or any other person or entity assigned by UNDP to render Services under this Agreement, is found to be engaged in corrupt, fraudulent, collusive, coercive practices or to be in a conflict of interest or any integrity violation and UNDP fails to take adequate steps to prevent the situation and/or remedy the situation.

(d) at any time at the discretion of the CCDA, upon not less than thirty (30) days' notice of its intention to terminate, as long as it does not conflict with prevailing UN rules and regulations.

Section 6.04 **Termination by UNDP.** UNDP may, by notice to the CCDA, terminate this Agreement:

(a) if payments as provided in Section 3.01 hereof are not received within thirty (30) days after the due dates, and such default has not been remedied within fifteen (15) days after notice has been given by UNDP to the CCDA; and



(b) if any situation or event referred to in Section 6.01 shall have continued for a period of thirty (30) days after UNDP shall have relieved of its obligations in accordance with the provisions of that Section.

Section 6.05 **Procedure for Termination**. (a) Upon receipt of any notice referred to in Section 6.03, or upon giving any notice under Section 6.04, UNDP shall take immediate steps to bring the Service to a close in a prompt and orderly manner and to reduce expenditures to a minimum.

(b) Upon termination of this Agreement (unless such termination shall have been occasioned by the default of UNDP) and provided UNDP has partly or substantially performed its obligations under the Agreement up to the date of termination, there shall be an equitable reduction in the Agreement Price, to reflect the reduction in the Services, provided that in no event shall UNDP receive less than its actual costs up to the effective date of termination, plus reimbursement of cost for legal obligations that were validly entered into prior to receipt of the notice of termination. In the event that ADB has made an advance payment for which the corresponding deliverables have not been submitted by UNDP and accepted by the CCDA, UNDP shall reimburse to CCDA (i) the advance payment (or part thereof) made to UNDP which UNDP has not committed or spent; and (ii) funds which UNDP has recovered from third parties with respect to such deliverables.

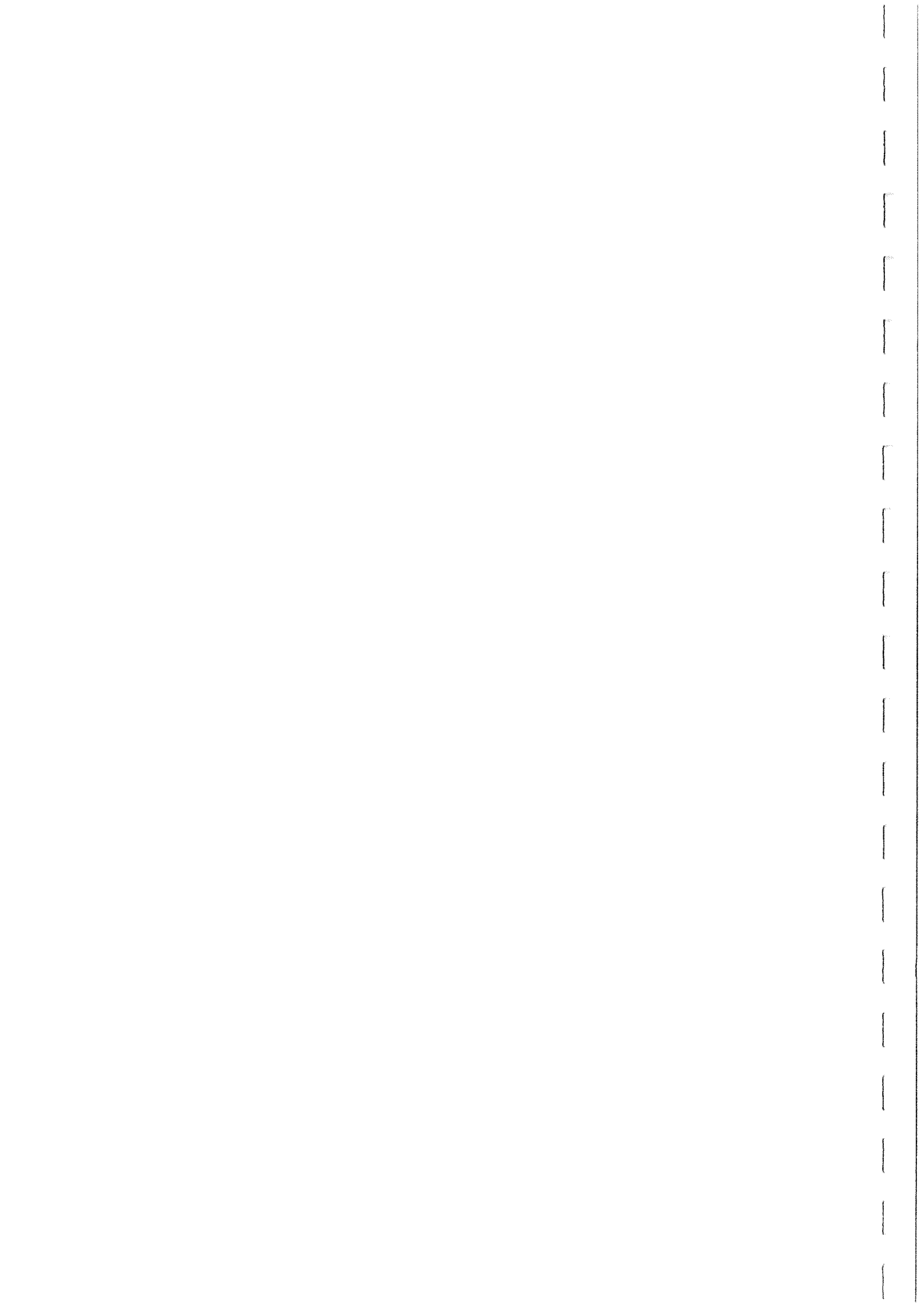
Section 6.06 **Settlement of Disputes**. (a) **Amicable Settlement** The Parties shall use their best efforts to settle amicably any disputes, controversy or claim arising out of this Agreement or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties

(b) **Arbitration** 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 of this Article 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. In addition, unless otherwise expressly provided in this Agreement, the arbitral tribunal shall have no authority to award interest in excess of five percent (5%) 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 controversy, claim or dispute.

## **ARTICLE VII Miscellaneous**

Section 7.01 **Privileges and Immunities**. Nothing in this Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

Section 7.02 **Authorized Representative of UNDP**. Any action required or permitted to be taken, other than those actions that require UNDP's Resident Representative to revert





to UNDP HQ New York for clearance (legal, financial or otherwise), and any documents required or permitted to be executed, under this Agreement may be taken or executed on behalf of UNDP by the Resident Representative or his designated representative.

Section 7.03 **Authorized Representative of the CCDA.** (a) Except for variations as set out in Section 7.04 hereof, all orders, directions and instructions pertaining to technical aspects of the Services shall be given on behalf of the CCDA to UNDP by the Managing Director, Climate Change & Development Authority or a designated representative.

(b) All notices, orders, directions, instructions and other documents relating to the employment, termination, discharge, compensation or expenses of UNDP, shall be given on behalf of the CCDA to UNDP by the Managing Director, Climate Change & Development Authority or a designated representative.

Section 7.04 **Variations.** (a) The Agreement may be varied by agreement between the parties. All such variations shall be in writing signed by the authorized representative of UNDP and the Managing Director, Climate Change & Development Authority.

(b) The CCDA or UNDP may notify the other party of any proposal, to alter, amend, omit, add to, or otherwise vary the Services. UNDP shall submit to the CCDA an estimate for the proposed change in the Services within twenty one (21) working days of receipt of a notice of variation, and the said estimate shall comprise the following:

- (i) an estimate of the impact (if any) of the variation on the current Personnel Schedule;
- (ii) a detailed schedule for execution of the variation showing the resources to be employed and any significant milestones;
- (iii) a detailed costing covering the total amount of the variation; and
- (iv) a proposed revision (if any) of the schedule of payments pursuant to Appendix D.

(c) UNDP shall not perform the variation until the CCDA has authorized a change order in writing including a revised Agreement Amount, based on the estimate provided by UNDP pursuant to (b) above.

(d) Changes mutually agreed upon as a variation shall constitute part of the Services and the provisions and conditions of this Agreement shall apply to such variation

Section 7.05 **Conflict of Interest.** Except as the CCDA shall otherwise specifically agree in writing, no Personnel of UNDP involved with this project shall engage in any other activities relating to the Project, other than the Services.

Section 7.06 **Notices and Requests.** Any notice or request required or permitted to be given or made under this Agreement shall be in writing and in the English language. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, cable, telex or facsimile to the party to which it is required to be given or made



at such party's address specified in writing to the party giving such notice, or making such request.

Section 7.07 **Confidentiality**. UNDP and its personnel shall not, at any time, communicate to any person or entity any confidential information acquired during the Services, nor shall UNDP and its personnel make public the recommendations formulated during, or after the Services. For the purposes of this section 7.07, "confidential information" means any information or knowledge UNDP and/or its personnel may acquire from performing the Services under this Agreement that is not otherwise available to the public. This clause does not apply to the technical data that is part of the Intellectual Property (as defined in Section 5.05).

**For the Climate Change and Development Authority**

Attention: Ruel Yamuna, Managing Director  
Address: Climate Change and Development Authority

Telephone No.: +675 325 7620  
Email Address: ryamuna959@gmail.com

**For UNDP**

Attention: Dirk Wagener, Resident Representative  
Address: Country Office, United Nations Development Programme, Papua New Guinea  
Telephone No.: +675 321 2877  
Email Address: dirk.wagener@undp.org

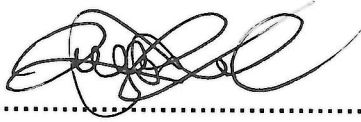
Section 7.07 **Effective Date**. (a) This Agreement shall become effective upon the date notice is given to proceed with the Services under Section 1.02 of this Agreement.

(b) Should this Agreement not have become effective within two (2) months after the date hereof, this Agreement shall lapse forthwith unless the CCDA shall otherwise agree.

**IN WITNESS WHEREOF**, the parties hereof have caused this Agreement to be signed in their respective names and delivered at the principal office of the CCDA, as the day and year first above written

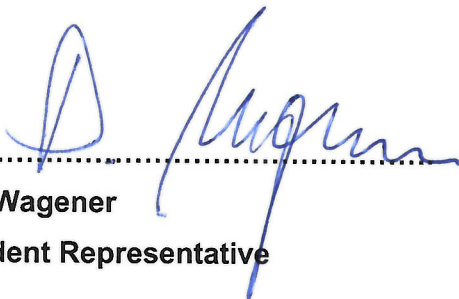


**For the Climate Change and Development Authority**



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**Ruel Yamuna**  
**Managing Director**

**For the United Nations Development Programme**



.....  
**Dirk Wagener**  
**Resident Representative**

**List of Appendices**

- A**      **Terms of Reference advertised by BRCC**
- B**      **Proposal submitted by UNDP**
- C**      **Personnel Schedule**
- D**      **Milestone Payment Schedule**
- E**      **Workplan**



Appendix D – Milestone Based Payment Schedule

#	Deliverable	Target Completion Date	Amount Paid at Quarter Commencement
1	<p><b>Submission and acceptance of Milestone Completion Report containing</b></p> <ul style="list-style-type: none"> <li>• 21 climate change vulnerability assessments plans (CCVAPs).</li> <li>• 21 awareness raising campaigns/community consultations reports.</li> <li>• 21 investment priority plans endorsed/approved by communities.</li> </ul>	Q2 2020	25% (US\$ 749,790)
2	<p><b>Submission and acceptance of Milestone Completion Report containing</b></p> <ul style="list-style-type: none"> <li>• 5 Provincial Training completion reports on SGF applications and investment plan</li> <li>• Submission and acceptance of all SGF applications (from 21 island communities)</li> <li>• 9 resource assessment reports on fisheries ecosystems and food security</li> <li>• 9 Community Training Completion Report on reef and coastal management and other food security initiatives</li> <li>• 5 workshop completion report (one in each province and AROB) in formulating, facilitating and mainstreaming climate change adaptation plans into the LLG, district and provincial development plans.</li> </ul>	Q4 2020	25% (US\$ 749,790)
3	<p><b>Submission and acceptance of Milestone Completion Report containing</b></p> <ul style="list-style-type: none"> <li>• Completion report of <u>nine</u> home gardens demonstrated (as adaptation measures against climate change) in identified target communities.</li> <li>• Completion report of <u>nine</u> mangrove forest rehabilitation demonstrated.</li> <li>• Completion report of <u>three</u> watershed rehabilitation demonstrated in communities adjoining target vulnerable islands.</li> <li>• Completion report of <u>nine</u> food processing and preservation initiatives piloted in nine island communities (with 50% women participation).</li> <li>• 21 Gender-responsive disaster response strategies (developed in vulnerable island communities).</li> <li>• Completion report on the establishment of trained disaster management committees (one in each LLG)</li> <li>• Training completion report of 21 trainings (one in each island) conducted on emergency response</li> </ul>	Q2 2021	25% (US\$ 749,790)





#	Deliverable	Target Completion Date	Amount Paid at Quarter Commencement
4	<b>Submission and acceptance of Final/Completion Report containing</b> <ul style="list-style-type: none"> <li>• Completion report for all approved subprojects (21 islands communities)</li> <li>• Final sustainability report detailing long-term plan to sustain project progress and maintain infrastructure</li> </ul>	Q3 2021	25% (US\$ 749,790)

