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Република Србија  
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КАНЦЕЛАРИЈА ЗА ИНФОРМАЦИОНЕ ТЕХНОЛОГИЈЕ  
И ЕЛЕКТРОНСКУ УПРАВУ

**DEVELOPMENT SERVICES DOCUMENT**

**Republic of Serbia**

Бр. 701-00-18/2017-01/14

Датум: 28.10.2019. године

**Development Services Title:** Government Data Center Support Services

**Project Number:**

**Start Date:** 28 October 2019

**End Date:** 28 October 2020

<b>Recipient</b>	Office for Information Technologies and Electronic Government (ITE)
<b>Address</b>	Nemanjina 11, Belgrade Serbia
<b>Phone/Fax</b>	+381 11 7358 400
<b>Email</b>	kancelarija@ite.gov.rs

**Summary of the development services to be provided:**

The Development Services Agreement is envisaged to provide a framework for services requested by the Government, for results and actions of the Government, for which it bears full accountability. The development services under this Agreement relate to construction management and contract management in relation to building the Government Data Center/Disaster Recovery Facility in Kragujevac. This facility will be a major component of the government's digital infrastructure and will provide secure, fast and reliable software services, platform services and infrastructure services to governmental institutions, public enterprises, municipalities and potentially other entities. Services under this agreement will include provision of assistance related to efficient project management, contract management and stakeholder coordination during construction of the facility, resulting in implementation of the project within the budget and on time. Services will also include support to monitoring of the project activities, review of the documentation, development of high-level analyses, identifying of the obstacles and potential risks, and proposal of mitigation measures. This agreement will cover one-year period.

<b>TOTAL VALUE:</b>	USD 109,180.00
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Agreed by (signatures):<sup>1</sup>

Government	UNDP
 Mr. MIHAILO JOVANOVIĆ Director, Office for IT and e-Government	 Ms. FRANCINE PICKUP Resident Representative, UNDP Serbia
Date: 28 October 2019	Date: 28 October 2019

<sup>1</sup> These signature boxes are only needed if Government must sign the development services project document. If government agreement is acknowledged another way, such as through the joint results group work plan, an exchange of letters or meeting minutes, then these boxes can be deleted



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## I. Objectives and Scope of Work

The Development Services Agreement is envisaged to provide a framework for services requested by the Government, for results and actions of the Government, for which it bears full accountability.

The development services under this Agreement were requested by the government's Office for Information Technologies and Electronic Government (ITE) and relate to construction management and contract management in the process of building the Government Data Center/Disaster Recovery Facility in Kragujevac.

In 2018, the World Bank initiated "Enabling Digital Governance Project" (EDGE). The project aims at contributing to development of digitalization in Serbia through implementation of the following components: 1) Foundations for digital service delivery; 2) Transforming services for citizens and businesses; and 3) Change management and institutional strengthening. For effectively managing and coordinating these and future projects with IFI financing, UNDP supported establishment of the Project Preparation and Implementation Department (PPID) at ITE.

PPID was engaged on supporting preparatory activities leading to approval of the WB loan. This work was successfully completed in April, when the loan was approved by the WB Board of Governors.

Through the "Digital Transformation for Development project", ITE was supported by specialized advisory services related to needs assessment and development of a roadmap for the data center/disaster recovery facility in the city of Kragujevac.

The roadmap laid out four different scenarios for development of the facility, in line with government needs. ITE selected one of the proposed scenarios ("high-efficiency modular scenario") for further development and production of technical documentation for the building permit.

Continuation of close cooperation will continue to be high on the agenda of both the UNDP project team and ITE/WB-PIU. Joint activities are foreseen in drafting and aligning the ongoing and future interventions, in order to maximize impacts and benefits of both projects.

More specifically, the services under this Agreement will include provision of assistance related to efficient project management, contract management and stakeholder coordination during construction of the facility, resulting in implementation of the project within the budget and on time. Services will also include support to monitoring of the project activities, review of the documentation, development of high-level analyses, identifying of the obstacles and potential risks, and proposal of mitigation measures.

Government Data Center/Disaster Recovery Facility in Kragujevac will be a major component of the government's digital infrastructure and will provide secure, fast and reliable software services, platform services and infrastructure services to governmental institutions, public enterprises, municipalities and potentially other entities. This will enable the government to rapidly deploy cost-effective, secure and citizen/business-focused e-services, while ensuring coordinated implementation of its ICT policies. On a wider scale, provision of services under this Agreement will contribute to the overarching processes of public administration reform. This Agreement also represents continuation of support provided by UNDP to the ITE under "Serbia at Your Fingertips – Digital Transformation for Development" project.

## II. Risks/Mitigation Measures, Including Any Due Diligence as May Be Required

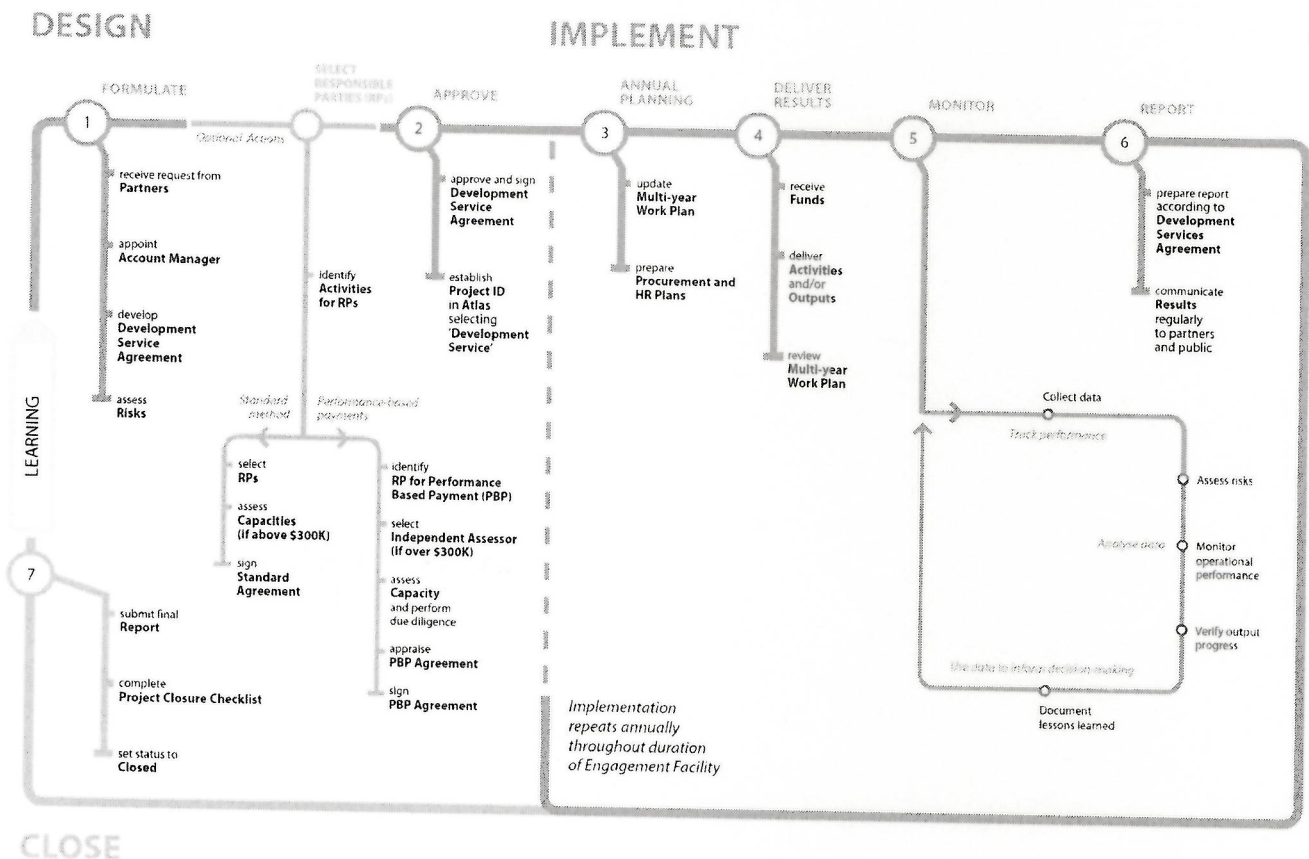
1. Risk: Political instability (e.g. snap parliamentary elections). Mitigation measures: suspend hiring consultants in case of snap elections; consult with the partners immediately after the new government is elected to discuss further project implementation;
2. Risk: Changing government priorities. Mitigation measures: maintain frequent communication and coordination with ITE to adjust the project workplan in a timely manner.

## III. Monitoring and Reporting Arrangements

As a distinct programming instrument, development services enable UNDP to help partners achieve development results. UNDP plays a specific and pre-defined role, delivering outputs and activities towards a result for which the partner (recipient of services) has accountability for strategy, design, oversight and quality assurance. UNDP is only responsible for the quality of the deliverable it provides, as detailed in Annex 1. All UNDP policies on audit and risk management, including application of the Social and Environmental Screening Procedure, equally apply to development services. The Portfolio Manager is accountable for overseeing performance, approving the budget and making course corrections, within the approved workplan.

If the corrections required are of substantive nature and/or exceed the ones set under Annex 1, the UNDP-Government Council shall approve the corrections prior to execution.

The following is a visual guide to UNDP development services:









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#### **IV. UNDP's Core Service Team and Responsible Parties**

Government Data Centre/Disaster Recovery Facility support services will be provided by UNDP Serbia – Competitiveness and Digital portfolio team, supported by the Operations Team. The account manager for this Development Services Agreement will be the Portfolio Manager of the Competitiveness and Digital portfolio.

In accordance with the approved Country Program Document 2016-2020, the UNDP Country Office shall provide services for the Project as described below:

- a) Procurement of services;
- b) Identification and/or recruitment and solution of administrative issues related to project personnel;
- c) Identification and facilitation of training activities, seminars and workshops;
- d) Administration of travel;
- e) Financial monitoring and reporting;
- f) Supervision of project implementation, monitoring and assistance in project assessment.

Costs for such services shall be covered through direct project costs as presented in the Multiyear Workplan.

The procurement of and the recruitment of project personnel by UNDP shall be in accordance with the UNDP's policies and procedures. Goods/end products procured or built/developed within the framework of the project shall be transferred to the ownership of relevant national partners. The relevant provisions of the Standard Basic Assistance Agreement (SBAA) between the Government and UNDP, including the provisions on liability and privileges and immunities, shall apply to the provision of such support services.

**Deliverables and Indicators**

Deliverable(s)	INDICATORS	Expected Date of Achievement
<p><b>Deliverable 1</b>  <i>Government Data Centre/Disaster Recovery Facility support team administered</i></p>	<p><i>1.1 Two required expertise identified and recruited</i></p>	<p>October 2020</p>



**Annex 1: Multi-Year Work Plan/Budget<sup>2</sup>**

EXPECTED DELIVERABLES	PLANNED ACTIVITIES	Timing		PLANNED BUDGET	
		2019	2020	Budget Description	Amount
Government Data Centre/Disaster Recovery Facility support team administered	1.1 Engagement of advisory services	X	X	71300 & 71200 Consultants	96,000.00
				64300 & 71400 Management and Backstopping	10,000.00
				<b>Sub-Total for Deliverable 1</b>	106,000.00
				Subtotal Direct Project Costs	106,000.00
				General Management Services (GMS) (3%)	3,180.00
				<b>TOTAL PROJECT COST (Direct Project Costs with GMS)</b>	109,180.00

<sup>2</sup> Cost definitions and classifications for programme and development effectiveness costs to be charged to the project are defined in the Executive Board decision DP/2010/32

## Annex 2

### SCHEDULE OF PAYMENT

This schedule of payment indicates the amount and timing of payment. Fees for the Development Services provided by UNDP must be paid by the Recipient before UNDP initiates the provision of Development Services.

#### A. Fee and Expenses Breakdown per Deliverable\*

No.	Deliverables	Fee + Expenses (Lump Sum, All Inclusive with GMS and DPC as per the Multiyear Workplan)	Payment Timing (Date)
1	Government Data Centre/Disaster Recovery Facility support team administered	USD 109,180.00	November 2019
	<b>Total Amount</b>	<b>USD 109,180.00</b>	

\*Basis for payment tranches

Disclaimer on Source of Funding : Financing Sources: Budget of the Republic of Serbia page 72, section 3 Government, Chapter 3.24 Office for IT and eGovernment, Program 0614, Feature 140, Project 4006 Serbia on Touch - Digital Transformation for Development, economic classification 462 Grants to International Organizations, amounting to 188,000,000 dinars (160,000,000 before rebalancing in the ITE Financial Plan, Economic Classification 462, page 6).



**UNDP GENERAL CONDITIONS FOR PROVISION OF DEVELOPMENT SERVICES**

**1.0 BASIS OF ARRANGEMENT and LEGAL STATUS OF THE PARTIES:**

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

- 1.1 Pursuant, inter alia, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
- 1.2 Nothing contained in or relating to the Agreement to which these General Conditions apply and to which such General Conditions form an integral part thereof, (each, an “Agreement”), shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or responsible parties (in the case of UNDP) or subcontractors (in the case of Recipient) of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
- 1.3 The Development Services are being provided by UNDP as assistance to the Recipient, further to the Agreement of the Government, towards the Recipient’s contribution to international development goals. The Development Services are performed by UNDP further to and consistent with its mandate. The Parties agree that nothing herein shall be construed as the Parties engaging in a commercial relationship.
- 1.4 UNDP will undertake the Development Services in accordance with its regulations, rules, policies and procedures, and without prejudice to its privileges and immunities.

**2.0 SOURCE OF INSTRUCTIONS:**

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

**3.0 UNDP'S RESPONSIBILITY FOR ITS PERSONNEL:**

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

**4.0 RECIPIENT'S DUTIES AND RESPONSIBILITIES:**

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



## **5.0 ASSIGNMENT:**

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

## **6.0 USE OF DEVELOPMENT SERVICES OF OTHER ENTITIES:**

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

## **7.0 COMPENSATION AND PAYMENT:**

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

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

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

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

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

## **8.0 ADMINISTRATION AND REPORTING:**

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

## **9.0 INDEMNIFICATION; LIABILITY**

9.1 (a) The Recipient agrees to indemnify and hold UNDP harmless from and against all claims, liabilities, losses, damages, and expenses (including the costs of UNDP's professional time) as incurred (collectively "Losses") relating to the Development Services, including any Losses asserted by the Recipient, its agents or representatives, or third parties and any Losses, costs, etc. sustained by UNDP when participating in any legal, regulatory, or administrative proceeding relating to the Development Services, except to the extent those Losses are determined by a final, non-



appealable order or arbitral award to have resulted from UNDP's gross negligence or willful misconduct in the performance of the Development Services.

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

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

#### **10.0 RECIPIENT ACKNOWLEDGEMENT:**

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

#### **11.0 INSURANCE AND LIABILITIES TO THIRD PARTIES:**

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

- (a) maintain appropriate insurance coverage with respect to third-party motor vehicle liability insurance;
- (b) maintain appropriate cargo insurance against loss of or damage to supplies and equipment, if any, purchased in whole or in part with funds provided under this Agreement until transferred to the Recipient;
- (c) with regard to its Staff, Consultants and other personnel, maintain appropriate health insurance; provide for compensation in respect of injury, sickness or death while performing official duties of UNDP; and maintain malicious acts insurance.

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

#### **13.0 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

**13.1** Except as is otherwise expressly provided in writing in the Agreement, the Recipient shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the UNDP has developed for the Recipient under the Agreement and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Agreement. Nonetheless, the Recipient shall grant UNDP a perpetual, royalty-free license to (reproduce, adapt, modify, distribute, sub-license) make use of such intellectual property or other proprietary rights for non-commercial purposes, including the ability to further license to other non-private sector Recipients and its programme governments in accordance with the requirements of



the agreement between UNDP and the Recipient(s) concerned and its basic cooperation agreement with programme governments, respectively.

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

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

#### **14.0 USE OF NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:**

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

#### **15.0 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

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

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

**15.1.1** use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

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

**15.2** Provided that the Disclosee has a written agreement with the following persons or entities requiring them to treat the Information as confidential in accordance with the Agreement and this Article 13, the Disclosee may disclose Information to:

**15.2.1** any other party with the Discloser's prior written consent; and,

**15.2.2** the Disclosee's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Agreement, and employees, officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Agreement, provided that, for these purposes a controlled legal entity means:

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



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

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

**15.3** The Disclosee may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Disclosee will give the UNDP sufficient prior notice of a request for the disclosure of Information in order to allow the UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

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

**15.5** The Disclosee shall not be precluded from disclosing Information that is obtained by the Disclosee from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Disclosee, or at any time is developed by the Disclosee completely independently of any disclosures hereunder.

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

## **16.0 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

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

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

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

## **17.0 TERM AND TERMINATION**

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



17.1 Either party may terminate this Agreement for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 18.2 ("Arbitration"), below, shall not be deemed a termination of this Agreement.

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

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

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

## 18.0 SETTLEMENT OF DISPUTES

18.1 **Amicable Settlement:** 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 the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

18.2 **Arbitration:** Any dispute, controversy, or claim between the Parties arising out of the Agreement or the breach, termination, or invalidity thereof, unless settled amicably under Article 18.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. 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 Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, Development Services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures 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 Agreement, 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.

## 19.0 PRIVILEGES AND IMMUNITIES:

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

## 20.0 TAX EXEMPTION

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



relation to the Development Services directly to the competent Governmental authority(is). In such case, if UNDP is able to recover the taxes paid, it shall reimburse them to the Recipient.

#### **21.0 INTEGRITY CLAUSE**

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

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

#### **22.0 AUDIT AND INVESTIGATION:**

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

#### **23.0 AUTHORITY TO MODIFY:**

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

