Agreement

between

The United Nations Development Programme

and

[insert Company name][1]

under the

[insert name of Country Office Innovation Challenge]

[1] This model Agreement is intended for use with an entity/company in connection with the Innovation Challenge Policy Any deviations to the text should be made in consultation with the Legal Office, Bureau for Management Services (LO/BMS).

[insert date]

Dear Sir/Madam,

Ref.: xxx

The United Nations Development Programme (hereinafter referred to as "UNDP"), wishes to engage your company, duly incorporated under the Laws of [xxx] (hereinafter referred to as the "Innovator") in order to perform services in respect of the [insert Innovation Challenge name] in [insert country], and in accordance with the following Agreement:

1. AGREEMENT DOCUMENTS

1.1 The Innovator and UNDP (hereinafter referred to jointly as the "Parties") agree to be bound by the provisions contained in the following documents, which shall take precedence over one another in case of conflict in the following order:

a) this Agreement;
b) Requirements for [insert name of Innovation Challenge] funded Projects [*or* Terms of Reference], attached hereto as Annex I;
c) the Innovator's Project Proposal, dated [xxx], attached hereto as Annex II;
d) the Project Budget, Project Milestones and Means of Verification (attached hereto as Annex III).

1.2 All the above shall form the Agreement between the Innovator and UNDP, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Agreement.

2. LEGAL STATUS OF THE PARTIES:

2.1 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.

2.2 The Innovator shall be considered as having the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP). The Innovator's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNDP or the United Nations.

3. OBLIGATIONS OF THE PARTIES

3.1 The Innovator shall perform and complete the services described in the Project Proposal, attached hereto as Annex II (hereinafter the "Services"), with due diligence and efficiency, and in accordance with this Agreement. The Innovator shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory performance of the Services.

3.2 For the purposes of day to day operations of the Innovator and reporting related thereto, UNDP shall advise the Innovator in writing of the name of the [Monitoring and Evaluation Team] or [entity/individual] to which the Innovator shall report in conformity with the terms of this Agreement. If any circumstances should occur which may impair the developmental value of the Services, the Innovator shall consult immediately with UNDP regarding any actions that may be required.

3.3 The Innovator shall also provide all technical and administrative support needed in order to ensure the timely and satisfactory performance of the Services.

3.4 The Innovator shall submit to UNDP the deliverables specified hereunder according to the following schedule:

[LIST DELIVERABLES]	[INDICATE DELIVERY DATES]
xxx	xxx

In addition to the above list of deliverables, the Innovator shall be responsible for submitting all the reports, including financial reporting, set forth in Annex I (Requirements for [*insert Innovation Challenge name*] funded Projects).

3.5 All reports shall be written in the language of this Agreement, and shall describe in detail the Services rendered under the Agreement during the period of time covered in such report. All reports shall be transmitted by the Innovator by [mail, courier and/or fax] to the address specified in Article 38 below.

3.6 The Innovator represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Agreement. This is a material term, the breach of which shall be considered grounds for immediate termination of the Agreement.

3.7 The Innovator also represents and warrants the quality of the deliverables and reports foreseen under this Agreement in accordance with the highest industry and professional standards.

4. PRICE AND PAYMENT

4.1 In full consideration for the complete and satisfactory performance of the Services under this Agreement, UNDP shall pay the Innovator in accordance with the Project Milestone payment schedule stipulated in Annex III.

4.2 The price of this Agreement is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Innovator in the performance of the Agreement.

4.3 Payments effected by UNDP to the Innovator shall be deemed neither to relieve the Innovator of its obligations under this Agreement nor as acceptance by UNDP of the Innovator's performance of the Services.

4.4 UNDP shall effect payments to the Innovator after (i) acceptance by UNDP of the invoices submitted by the Innovator to the address specified in Article 38 below, and (ii) upon verification by [UNDP] or [Monitoring and Evaluation Team] that the Innovator has achieved the corresponding milestones, and for the following amounts:

MILESTONE	AMOUNT	MEANS OF VERIFICATION
xxx	xxx	xxx

Invoices shall indicate the milestones achieved and corresponding amount payable. Request for payment must be accompanied by evidence of achievement of milestones. This evidence is set out as the means of verification above.

4.5 The Innovator shall submit invoices for the work done in accordance with the milestones payments. Request for payment must be accompanied by a statement of project account in the same manner as the budget set out in Annex III and clearly identifying expenditure previously claimed, expenditure included in the current claim, the total project budget, and the unclaimed portion of the budget.

5. RESPONSIBILITY FOR EMPLOYEES:

To the extent that the Agreement involves the provision of the Services to UNDP by the Innovator's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Innovator's "personnel"), the following provisions shall apply:

5.1 The Innovator shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Agreement and will select reliable and competent individuals who will be able to effectively perform the obligations under the Agreement and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

5.2 Such Innovator personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Innovator may assign or may propose to assign to perform any obligations under the Agreement shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Innovator.

5.3 At the option of and in the sole discretion of UNDP:

5.3.1 the qualifications of personnel proposed by the Innovator (*e.g.,* a curriculum vitae) may be reviewed by UNDP prior to such personnel's performing any obligations under the Agreement;

5.3.2 any personnel proposed by the Innovator to perform obligations under the Agreement may be interviewed by qualified staff or officials of UNDP prior to such personnel's performing any obligations under the Innovator; and,

5.3.3 in cases in which, pursuant to Article 5.3.1 or 5.3.2, above, UNDP has reviewed the qualifications of such Innovator's personnel, UNDP may reasonably refuse to accept any such personnel.

5.4 Requirements specified in the Agreement regarding the number or qualifications of the Innovator's personnel may change during the course of performance of the Agreement. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

5.4.1 UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Innovator's personnel, and such request shall not be unreasonably refused by the Innovator.

5.4.2 Any of the Innovator's personnel assigned to perform obligations under the Agreement shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.

5.4.3 The withdrawal or replacement of the Innovator's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Agreement.

5.4.4 All expenses related to the withdrawal or replacement of the Innovator's personnel shall, in all cases, be borne exclusively by the Innovator.

5.4.5 Any request by UNDP for the withdrawal or replacement of the Innovator's personnel shall not be considered to be a termination, in whole or in part, of the Agreement, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.

5.4.6 If a request for the withdrawal or replacement of the Innovator's personnel is not based upon a default by or failure on the part of the Innovator to perform its obligations in accordance with the Agreement, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Innovator shall not be liable by reason of any such request for the withdrawal or replacement of the Innovator's personnel for any delay in the performance by the Innovator of its obligations under the Agreement that is substantially the result of such personnel's being withdrawn or replaced.

5.5 Nothing in Articles 5.2, 5.3 and 5.4, above, shall be construed to create any obligations on the part of UNDP with respect to the Innovator's personnel assigned to perform work under the Agreement, and such personnel shall remain the sole responsibility of the Innovator.

5.6 The Innovator shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Agreement and who may have access to any premises or other property of UNDP shall:

5.6.1 undergo or comply with security screening requirements made known to the Innovator by UNDP, including but not limited to, a review of any criminal history;

5.6.2 when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Agreement, such personnel shall immediately return any such identification to UNDP for cancellation.

5.7 Within one working day after learning that any of Innovator's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Innovator shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.

5.8 All operations of the Innovator, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Innovator's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP property without appropriate authorization from UNDP.

6. ASSIGNMENT:

The Innovator shall not assign or transfer, or cause to be assigned or transferred, whether actually or as a result of a take-over, merger, change of corporate ownership or control, or other change in identity or character of the Innovator, this Agreement or any part, share or interest therein. Any such assignment or transfer shall be considered "cause" under Article 17 (Termination).

7. SUBCONTRACTING:

In the event that the Innovator requires the services of subcontractors to perform any obligations under the Agreement, the Innovator shall obtain the prior written approval of UNDP. UNDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP reasonably considers is not qualified to perform obligations under the Agreement. UNDP shall have the right to require any subcontractor's removal from UNDP premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Innovator to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Agreement, and the Innovator 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 Agreement.

8. PURCHASE OF GOODS:

To the extent that this Agreement involves any purchase of goods by the Innovator using UNDP funds, whether in whole or in part, the Innovator shall exercise the same duty of care in purchasing the goods as if the funds were the Innovator's own, and giving consideration to the following principles of UNDP procurement:

a) best money for value;
b) fairness, integrity, and transparency; and
c) effective competition.

9. INDEMNIFICATION:

9.1 The Innovator shall indemnify, defend, and hold and save harmless, at his own expenses, UNDP, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

9.1.1 allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under the terms of the Agreement, in whole or in part, separately or in a combination contemplated by the Innovator's published specifications therefor, or otherwise specifically approved by the Innovator, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or,*

9.1.2 any acts or omissions of the Innovator, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Agreement, which give rise to legal liability to anyone not a party to the Agreement, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

9.2 The indemnity set forth in Article 9.1, above, shall not apply to:

9.2.1 A claim of infringement resulting from the Innovator's compliance with specific written instructions by UNDP directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Agreement or requiring the use of specifications not normally used by the Innovator; *or*

9.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Agreement if UNDP or another party acting under the direction of UNDP made such changes.

9.3 In addition to the indemnity obligations set forth in this Article 9, the Innovator shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 9, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

9.4 UNDP shall advise the Innovator about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Innovator shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

9.5 In the event the use by UNDP of any Goods, property or Services provided or licensed to UNDP by the Innovator, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Innovator, at its sole cost and expense, shall, promptly, either:

9.5.1 procure for UNDP the unrestricted right to continue using such Goods or Services provided to UNDP;

9.5.2 replace or modify the Goods and/or or Services provided to UNDP, or part thereof, with the equivalent or better Goods and/or Services, or part thereof, that is non-infringing; *or*,

9.5.3 refund to UNDP the full price paid by UNDP for the right to have or use such Goods, property or Services, or part thereof.

10. INSURANCE AND LIABILITY:

10.1 The Innovator shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Innovator's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Innovator or any of its subcontractors in the performance of the Agreement.

10.2 Unless otherwise provided in the Agreement, prior to commencement of performance of any other obligations under the Agreement, and subject to any limits set forth in the Agreement, the Innovator shall take out and shall maintain for the entire term of the Agreement, for any extension thereof, and for a period following any termination of the Agreement reasonably adequate to deal with losses:

10.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Agreement;

10.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Innovator's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Agreement;

10.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Innovator's performance under the Agreement, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Innovator, its personnel, agents, or invitees, or the use, during the performance of the Agreement, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Innovator; *and*,

10.2.4 such other insurance as may be agreed upon in writing between UNDP and the Innovator.

10.3 The Innovator's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

10.4 The Innovator acknowledges and agrees that UNDP accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Innovator in connection with the Agreement.

10.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Innovator and approved by UNDP, UNDP in its sole discretion, for purposes of

fulfilling the Innovator's requirements for providing insurance under the Agreement, the insurance policies required under the Agreement shall:

10.5.1 name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
10.5.2 include a waiver of subrogation of the Innovator's insurance carrier's rights against UNDP;
10.5.3 provide that UNDP shall receive written notice from the Innovator's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,
10.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.

10.6 The Innovator shall be responsible to fund all amounts within any policy deductible or retention.

10.7 Except for any self-insurance program maintained by the Innovator and approved by UNDP for purposes of fulfilling the Innovator's requirements for maintaining insurance under the Agreement, the Innovator shall maintain the insurance taken out under the Agreement with reputable insurers that are in good financial standing and that are acceptable to UNDP. Prior to the commencement of any obligations under the Agreement, the Innovator shall provide UNDP with evidence, in the form of certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Innovator has taken out insurance in accordance with the requirements of the Agreement. UNDP reserves the right, upon written notice to the Innovator, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Innovator under the Agreement. Notwithstanding the provisions of Article 10.5.3, above, the Innovator shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Agreement.

10.8 The Innovator acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Agreement nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Innovator's liability arising under or relating to the Agreement.

11. ENCUMBRANCES AND LIENS:

The Innovator 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 Innovator or that may become due for any work done or against any goods supplied or materials furnished under the Agreement, or by reason of any other claim or demand against the Innovator or UNDP.

12. EQUIPMENT FURNISHED BY UNDP TO THE INNOVATOR:

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

13. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

13.1 Except as is otherwise expressly provided in writing in the Agreement, 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 Innovator has developed for UNDP 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. The Innovator acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNDP. Notwithstanding the forgoing, the UNDP hereby grants the Innovator a world-wide, non-exclusive, non-transferable, and royalty-free license to use the intellectual property or other proprietary rights arising from the Innovator's activities under the Project. "Use" shall mean the ability to use, reproduce, sub-license, distribute and communicate products incorporating said proprietary rights for non-commercial purposes and exclusively on a non-profit basis.

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

13.3 At the request of UNDP, the Innovator 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 Agreement.

13.4 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 Innovator under the Agreement 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 Agreement.

14. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:

14.1 The Innovator 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 Innovator, in any manner whatsoever use the name, emblem or official seal of UNDP or the United Nations, or any abbreviation of the name of UNDP or the United Nations in connection with its business or otherwise without the written permission of UNDP.

14.2 The Innovator 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.

15. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") 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 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 Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Agreement and this Article 15, the Recipient may disclose Information to:

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

15.2.2 the Recipient'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: a corporate entity

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

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

15.2.2.2 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

15.3 The Innovator 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 Innovator 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.

15.4 UNDP may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

15.5 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.

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. 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*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Agreement. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Agreement. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause

constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Agreement.

16.2 If the Innovator is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Agreement, UNDP shall have the right to suspend or terminate the 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. In any case, UNDP shall be entitled to consider the Innovator permanently unable to perform its obligations under the Agreement in case the Innovator is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

16.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, 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 Innovator. The Innovator acknowledges and agrees that, with respect to any obligations under the Agreement that the Innovator must perform in areas in which UNDP is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays 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 Agreement.

17. TERMINATION:

17.1 Either Party may terminate the Agreement for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 18 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Agreement.

17.2 UNDP may terminate the Agreement at any time by providing written notice to the Innovator in any case in which the mandate of UNDP applicable to the performance of the Agreement or the funding of UNDP applicable to the Agreement is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Agreement, upon sixty (60) day's advance written notice to the Innovator, UNDP may terminate the Agreement without having to provide any justification therefor.

17.3 In the event of any termination of the Agreement, upon receipt of notice of termination that has been issued by UNDP, the Innovator shall, except as may be directed by UNDP in the notice of termination or otherwise in writing:

17.3.1 take immediate steps to bring the performance of any obligations under the Agreement to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
17.3.2 refrain from undertaking any further or additional commitments under the Agreement as of and following the date of receipt of such notice;
17.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Innovator agree in writing are necessary to complete any portion of the Agreement that is not terminated;
17.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Agreement terminated;
17.3.5 transfer title and deliver to UNDP the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Agreement terminated;
17.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to UNDP thereunder;
17.3.7 complete performance of the work not terminated;
17.3.8 take any other action that may be necessary, or that UNDP may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Agreement that is in the possession of the Innovator and in which UNDP has or may be reasonably expected to acquire an interest; *and*
17.3.9 return any unused funds to UNDP, if applicable.

17.4 In the event of any termination of the Agreement, UNDP shall be entitled to obtain reasonable written accountings from the Innovator concerning all obligations performed or pending in accordance with the Agreement. In addition, UNDP shall not be liable to pay the Innovator except for those Services provided to UNDP in accordance with the requirements of the Agreement, but only if such Services were ordered, requested or otherwise provided prior to the Innovator's receipt of notice of termination from UNDP or prior to the Innovator's tendering of notice of termination to UNDP.

17.5 UNDP may, without prejudice to any other right or remedy available to it, terminate the Agreement forthwith in the event that:

17.5.1 the Innovator is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
17.5.2 the Innovator is granted a moratorium or a stay, or is declared insolvent;
17.5.3 the Innovator makes an assignment for the benefit of one or more of its creditors;
17.5.4 a Receiver is appointed on account of the insolvency of the innovator;
17.5.5 the Innovator offers a settlement in lieu of bankruptcy or receivership; *or,*

17.5.6 UNDP reasonably determines that the Innovator has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Innovator to perform any of its obligations under the Agreement.

17.6 Except as prohibited by law, the Innovator shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 17.5, above, and resulting from or relating to a termination of the Agreement, even if the Innovator is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Innovator shall immediately inform UNDP of the occurrence of any of the events specified in Article 17.5, above, and shall provide UNDP with any information pertinent thereto.

17.7 The provisions of this Article 17 are without prejudice to any other rights or remedies of UNDP under the Agreement or otherwise.

18. SETTLEMENT OF DISPUTES:

18.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the 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 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.

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. 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, 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") and Article 34 ("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. PRIVILEGES AND IMMUNITIES:

Nothing in or relating to the 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. TAX EXEMPTION:

20.1 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 UNDP from such taxes, restrictions, duties, or charges, the Innovator shall immediately consult with UNDP to determine a mutually acceptable procedure.

20.2 The Innovator authorizes UNDP to deduct from the Innovator's invoices any amount representing such taxes, duties or charges, unless the Innovator has consulted with UNDP before the payment thereof and UNDP has, in each instance, specifically authorized the Innovator to pay such taxes, duties, or charges under written protest. In that event, the Innovator shall provide UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and UNDP shall reimburse the Innovator for any such taxes, duties, or charges so authorized by UNDP and paid by the Innovator under written protest.

21. SECURITY:

21.1 The responsibility for the safety and security of the Innovator and its personnel and property, and of UNDP's property in the Innovator's custody, rests with the Innovator.

The Innovator shall:

a) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the Services are being provided;
b) assume all risks and liabilities related to the Innovator's security, and the full implementation of the security plan.

21.2 UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this Agreement. Notwithstanding the foregoing, the Innovator shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 20.1 above.

22. AUDITS AND INVESTIGATIONS:

22.1 Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or the authorized agents of the UNDP at any time during the term of the Agreement and for a period of three (3) years following the expiration or prior termination of the Agreement. UNDP shall be entitled to a refund from the Innovator for any amounts shown by such audits to have been paid by UNDP other than in accordance with the terms and conditions of the Agreement. Should the audit determine that any funds paid by UNDP have not been used as per agreement clauses, the company shall reimburse such funds forthwith. Where the innovator fails to reimburse such funds, UNDP reserves the right to seek recovery and/or to take any other action as it deems necessary.

22.2 The Innovator acknowledges and agrees that, at any time, UNDP may conduct investigations relating to any aspect of the Agreement, the obligations performed under the Agreement, and the operations of the Innovator generally. The right of UNDP to conduct an investigation and the Innovator's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Agreement. The Innovator 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 Innovator's obligation to make available its personnel and any documentation for such purposes and to grant to UNDP access to the Innovator's premises. The Innovator shall require its agents, including, but not limited to, the Innovator's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNDP hereunder.

22.3 The Innovator also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the activities which are the subject of this Agreement, shall have direct recourse to the Innovator for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Agreement.

23. LIMITATION ON ACTIONS:

Except with respect to any indemnification obligations in Article 9, above, or as are otherwise set forth in the Agreement, any arbitral proceedings in accordance with Article 18.2, above, arising out of the Agreement must be commenced within three years after the cause of action has accrued.

24. ESSENTIAL TERMS:

The Innovator acknowledges and agrees that each of the provisions in Articles 25 to 33 hereof constitutes an essential term of the Agreement and that any breach of any of these provisions shall entitle UNDP to terminate the Agreement or any other contract with UNDP immediately upon notice to the Innovator, without any liability for termination charges or any other liability

of any kind. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

25. SOURCE OF INSTRUCTIONS:

The Innovator shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Agreement. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Innovator's performance under the Agreement, the Innovator shall promptly notify UNDP and provide all reasonable assistance required by UNDP. The Innovator shall not take any action in respect of the performance of its obligations under the Agreement that may adversely affect the interests of UNDP or the United Nations, and the Innovator shall perform its obligations under the Agreement with the fullest regard to the interests of UNDP.

26. STANDARDS OF CONDUCT:

The Innovator warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Agreement, or the award thereof, to any representative, official, employee or other agent of UNDP. The Innovator shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Agreement. In addition, in the performance of the Agreement, the Innovator shall comply with the Standards of Conduct set forth 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" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following documents then in force at the time of signature of the Agreement:

a) The UN Supplier Code of Conduct;
b) UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");
c) UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;
d) UNDP Social and Environmental Standards (SES), including the related Accountability mechanism;
e) UNDP Vendor Sanctions Policy; and
f) All security directives issued by UNDP.

The Innovator acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at www.undp.org or at https://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html. In making such acknowledgement, the Innovator represents and warrants that it is in compliance with the requirements of the foregoing, and will remain in compliance throughout the term of this Agreement.

27. CONFLICT OF INTEREST:

27.1 The Innovator warrants that at the time of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

27.2 If a conflict of interest arises or appears likely to arise during the duration of this Agreement, the Innovator shall:

a) immediately notify UNDP;
b) make full disclosure of all relevant information relating to the conflict; and
c) take such steps as UNDP reasonably requires to resolve or otherwise deal with the conflict.

28. SURVIVAL:

28.1 The following Articles survive the expiration or termination of this Agreement:

a) Article 9 (Indemnification);
b) Article 10 (Insurance and Liability);
c) Article 13 (Copyright, Patents and Other Proprietary Rights);
d) Article 15 (Confidential Nature of Documents and Information);
e) Article 18 (Settlement of Disputes); and
f) Article 19 (Privileges and Immunities).

29. NON-WAIVER OF RIGHTS:

The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

30. CHILD LABOR:

The Innovator represents and warrants that neither it, its parent entities (if any), nor any of the Innovator's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

31. MINES:

The Innovator represents and warrants that neither it, its parent entities (if any), nor any of the Innovator's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

32. SEXUAL EXPLOITATION:

32.1 In the performance of the Agreement, the Innovator 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 Innovator shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

32.2 The Innovator shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Innovator to perform any services under the Agreement. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Innovator shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

32.3 UNDP shall not apply the foregoing standard relating to age in any case in which the Innovator's personnel or any other person who may be engaged by the Innovator to perform any services under the Agreement is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Innovator's personnel or such other person who may be engaged by the Innovator to perform any services under the Agreement.

33. ANTI-TERRORISM:

The Innovator agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under this Agreement are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via https://www.un.org/securitycouncil/content/un-sc-consolidated-list. This provision must be included in all sub-contracts or sub-agreements entered into under this Agreement.

34. SUBMISSION OF INVOICES:

34.1 An original invoice shall be submitted by mail in English by the Innovator, after verification and written approval of, for each payment under the Agreement to the following address:

[insert address]
[insert address]
[insert address]
[insert address]

34.2 Invoices submitted by fax shall not be accepted by UNDP.

35. TIME AND MANNER OF PAYMENT:

35.1 Disbursements will be paid upon achievement of the agreed milestones stated in Section 4.4, and following submission of satisfactory invoices to UNDP. Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an invoice or so advise the Innovator of its non-acceptance within a reasonable time from receipt.

35.2 All payments shall be made by UNDP to the following Bank account of the Innovator:

_____ **[NAME OF THE BANK]**

_____ **[ACCOUNT NUMBER]**

_____ **[ADDRESS OF THE BANK]**

36. ENTRY INTO FORCE:

36.1 This Agreement shall enter into force upon its signature by both Parties.

36.2 The Innovator shall commence the performance of the Services not later than [xxx] and shall complete the Services by [xxx].

36.3 All time limits contained in this Agreement shall be deemed to be of the essence in respect of the performance of the Services.

37. MODIFICATIONS

37.1 Any modification to this Agreement shall require an amendment in writing between both parties duly signed by the authorized representative of the Innovator.

37.2 If the Agreement shall be extended for additional periods in accordance with the terms and conditions of the Agreement, the terms and conditions applicable to any such extended term of the Agreement shall be the same terms and conditions as set forth in the Agreement, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 37.1, above.

37.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning Services provided under the Agreement shall not be valid and enforceable against UNDP nor in any way shall constitute an agreement by UNDP thereto

unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 37.1, above.

38. NOTIFICATIONS

For the purpose of notifications under the Agreement, the addresses of UNDP and the Innovator are:

For UNDP:

[insert name],
[insert title],
[insert Country Office]
[insert address]
[insert phone]

For the Innovator:

[**INSERT NAME, ADDRESS, PHONE, FAX AND CABLE NUMBERS**]
[insert name],
[insert title],
[insert Country Office]
[insert address]
[insert phone]

If the above terms and conditions meet with your agreement as they are typed in this letter and in the Agreement Documents, please initial every page of this letter and its attachments and return to this office one original of this Agreement, duly signed and dated.

Yours sincerely,

_____
(UNDP Signature)
Name: _____

Title: _____

Date: _____

For [insert name of company/entity]

Agreed and Accepted:

Signature _____

Name: _____

Title: _____

Date: _____

[Insert the following Annexes]

ANNEX I: [Insert Innovation Challenge Requirements and/or Terms of Reference]

ANNEX II: [Innovator's Project Proposal]

ANNEX III: [Project Budget, Project Milestones and Means of Verification]