

Sample of Performance Based Financing Agreement

Between
THE UN CAPITAL DEVELOPMENT FUND
(UNCDF)

And

Recipient Institution

[Date]

SAMPLE OF PERFORMANCE BASED FINANCING AGREEMENT

Between UNCDF and RECIPIENT INSTITUTION

The Performance Based Agreement (hereinafter referred to as the "Agreement") made between the **UN Capital Development Fund, represented by its Executive Secretary** (hereinafter referred to as "**UNCDF**") and **Name of Institution** represented by its **XXX**, (hereinafter referred to as the "**RECIPIENT INSTITUTION**")

The purpose of this Agreement is to support the implementation of **NAME OF UNCDF PROGRAMME XXX**).

WHEREAS **UNCDF** desires to provide funding to the **RECIPIENT INSTITUTION** in the context of **XXXX** that aims to complete an initial wave of research, analysis, mapping, recommendations and knowledge-sharing to track and understand the **XXXXXX** in the country of **XXXXX**. This wave of assessment, to be called the **XXXXX**.

WHEREAS **RECIPIENT INSTITUTION** is ready and willing to accept such funds from **UNCDF** for the activities identified below on the terms and conditions expressed in this agreement.

NOW, therefore, the parties hereto agree as follows:

1. Responsibilities of the RECIPIENT INSTITUTION

The RECIPIENT INSTITUTION agrees to undertake the activities described in this grant agreement **as per Annex A – "XXXXXX."** Funds provided pursuant to this Agreement shall be used for purposes related to producing results specified in in this agreement.

1.1. The RECIPIENT INSTITUTION agrees that the results shall be fully expressed in the following deliverables:

Table of Deliverables/Outputs				
Activity	Deliverables	Start Date	End Date	Support Required
•	• •			•
•	• •			•
•	• •			•
•	•			•
•	•			•
•	•			•

*indicates reports for publication.

1.2 For the purpose of defining 'submission' as stated above in respect of reports and publications:

- The final form of all blogs and documents for publication will be finalized between UNCDF and the RECIPIENT INSTITUTION prior to use or release. In the case of reports for publication, *submission* shall follow this process: RECIPIENT INSTITUTION shall provide draft versions for comments from UNCDF and other parties, as UNCDF requires.
- The RECIPIENT INSTITUTION shall provide final draft versions which address all comments and are provided in a form that may be independently edited and formatted.
- In the case of blogs and PowerPoint presentations, submission shall be done in formats provided by UNCDF and updated from time to time.
- The RECIPIENT INSTITUTION may not publish any materials developed under this agreement without the express written consent of UNCDF.

2. Key Results/Milestone and Payments

2.1 UNCDF shall provide funds to the RECIPIENT INSTITUTION of an amount of USD XXXXXX according the schedule set out below. Payments are subject to the RECIPIENT INSTITUTION achieving the Development Results represented in the disbursement conditions set forth in this article, if any.

Payment/ Date	Likely	Amount (in USD)	Key Results/ Milestones To Be Achieved	Disbursement Conditions
			•	
			•	
			•	

		•	
TOTAL	USDXXX		

2.2 Disbursement Conditions shall include meeting reporting requirements.

Mechanism	Timing/Due Date	Scope	Responsibility
Monthly Update report	5 th of ensuing month	Progress on implementation	Recipient Institution
End of Project Report		Summary of end of project.	Recipient Institution

2.3. The RECIPIENT INSTITUTION agrees to inform UNCDF about any problems it may face in attaining the objectives agreed upon.

3. Duration

3.1 This Agreement will come into effect on the signature date and shall expire on **XX/XX/XXXX**. It can be extended, if necessary by exchange of letters, noting the new expiration date.

3.2 Should any change arise in the countries where activities are planned, in case the type of activity needs to change as a result, a grant modification or increase might be approved based on exchange of letters and new budgets with the RECIPIENT INSTITUTION.

3.3 In case of need, this agreement can be extended and/or the amount reviewed to cover: circumstances in a country outside of the control of the RECIPIENT INSTITUTION which results in material delays or changes in scope of activities in that country; or additional case studies requested by UNCDF and additional measurement activities by UNCDF to achieve greater precision and definition by exchange of letters, noting the new budgets and duration, in addition to the reasons of such an extension and/or increase.

4. Payments

4.1 UNCDF shall provide funds in United States Dollars. The amount will be up to USD 200,000; (two hundred thousand dollars U.S. dollars). The Recipient Institution shall request disbursements with the supporting information to show that disbursement conditions have been met by submission of a Certificate of Milestone Completion (Annex B). All payments shall be deposited into the Recipient Institution's bank account of which the details are as follows:

NAME OF THE BANK: XXXX

BANK ROUTING NUMBER: XXXXXX

Swift code: XXXX

BENEFICIARY ACCOUNT NAME: XXXXX

BENEFICIARY ACCOUNT NUMBER: XXXXX

ADDRESS OF THE BANK: XXXXXXXXXX

4.3 The amount of payment of such funds is not subject to any adjustment or revision because of currency fluctuations or the actual costs incurred by the RECIPIENT INSTITUTION in the performance of the activities under this agreement.

5 Records, Information and Reports

5.1 The RECIPIENT INSTITUTION shall maintain clear, accurate and complete records in respect of the funds received under this Agreement.

5.2 The RECIPIENT INSTITUTION shall provide a progress report to UNCDF on a quarterly basis, with the activities carried out as at the report date, the budget/ expenses situation, and the plan forward.

5.3 The RECIPIENT INSTITUTION shall furnish, compile and make available at all times to UNCDF any records or information, oral or written, which UNCDF may reasonably request in respect of the funds received by the RECIPIENT INSTITUTION.

5.4 Within sixty days after completion of project activities, the RECIPIENT INSTITUTION shall provide UNCDF with a final report with respect to all expenditures made from such funds (including fees, travel and supplies).

5.5 All further correspondence regarding the implementation of this Agreement should be addressed to:

For UNCDF:

XXXXXX

For the RECIPIENT INSTITUTION:

XXXXXXXXX

6. Copyright, Patents and Other Proprietary Rights:

6.1 UNCDF is custodian of copyright, patents and other proprietary rights. Except as is otherwise expressly provided in writing in the Agreement, the UNCDF 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 RECIPIENT INSTITUTION has developed for the UNCDF 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, and the RECIPIENT INSTITUTION acknowledges and agrees that such products, documents and other materials constitute works made for the UNCDF. In line with the public good nature of the UNCDF, UNCDF will place all the deliverables for publication specified in the public domain with the intent that they can and should be freely and widely used by other parties and the RECIPIENT INSTITUTION shall not be excluded from the ability to use such deliverables on the same basis as other external parties.

6.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the RECIPIENT INSTITUTION: (i) that pre-existed the performance by the RECIPIENT INSTITUTION of its obligations under the Agreement, or (ii) that the RECIPIENT INSTITUTION may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Agreement, the UNCDF does not and shall not claim any ownership interest thereto, and the RECIPIENT INSTITUTION grants to the UNCDF 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.

6.3 At the request of the UNCDF; the RECIPIENT INSTITUTION shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UNCDF in compliance with the requirements of the applicable law and of the Agreement.

6.4 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 RECIPIENT INSTITUTION under the Agreement shall be the property of the UNCDF, shall be made available for use or inspection by the UNCDF at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNCDF authorized officials on completion of work under the Agreement.

7. Use of Name, Emblem or Official Seal of UNCDF or the United Nations:

7.1 The RECIPIENT INSTITUTION shall not advertise or otherwise make public the fact that it is a RECIPIENT INSTITUTION with UNCDF without the express written consent of UNCDF, nor shall the

RECIPIENT INSTITUTION, in any manner whatsoever use the name, emblem or official seal of UNCDF or The United Nations, or any abbreviation of the name of UNCDF or United Nations in connection with its business or otherwise.

7.2 However, the RECIPIENT INSTITUTION may represent in the course of the activities necessary to produce these results and in general that it has been appointed by UNCDF to complete the activities and deliverables specified in this agreement; provided that the RECIPIENT INSTITUTION or any party associated with it may not make any public announcement to this effect until UNCDF has issued an announcement.

7.3 The RECIPIENT INSTITUTION shall have no ability to make any representations which bind UNCDF other than in the direct course of delivering the specific results indicated here.

7.4 While all publications resulting from this Agreement shall follow the template and format to be defined by UNCDF, the authorship of RECIPIENT INSTITUTION, including specific members of the RECIPIENT INSTITUTION's consortium shall be acknowledged in each publication.

8. 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 ("Receiver") 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:

8.1 The receiver ("Receiver") of such information shall use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and, use the Discloser's Information solely for the purpose for which it was disclosed.

8.2 Provided that the Receiver 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 8, the Receiver may disclose Information to any other party with the Discloser's prior written consent; and, 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:

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

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

8.2.3 for the UNCDF, UNDP and UNV, as associated fund of UNDP.

8.3 The RECIPIENT INSTITUTION 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 RECIPIENT INSTITUTION will give the UNCDF sufficient prior notice of a request for the disclosure of Information in order to allow the UNCDF to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made, to the extent allowed by law.

8.4 The UNCDF 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.

8.5 The Receiver shall not be precluded from disclosing Information that is obtained by the Receiver

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 Receiver, or at any time is developed by the Receiver completely independently of any disclosures hereunder.

8.6 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 for a period not to exceed 2 years from termination.

9. General Provisions

9.1 This Agreement and the Annexes attached hereto shall form the entire Agreement between RECIPIENT INSTITUTION and UNCDF superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Agreement.

9.2 The RECIPIENT INSTITUTION shall carry out all activities described in its proposal with due diligence and efficiency. Subject to the express terms of this Agreement, it is understood that the RECIPIENT INSTITUTION shall have exclusive control over the administration and implementation of the activities referred to above in paragraph 1.1 in Coordination with UNCDF. If at any time RECIPIENT does not produce the required results in agreed timeframes and to level of quality acceptable, UNCDF may serve notice of its intent to terminate indicating the grounds; and if breaches in the performance are not rectified within an agreed timeframe, UNCDF may decide to declare this Agreement terminated by written notice to the RECIPIENT INSTITUTION as described in paragraph 9.6 below; and/or seek any other remedy as may be necessary.

9.3 UNCDF undertakes no responsibilities in respect of life, health, accident, travel or any other insurance coverage for any person, which may be necessary or desirable for the purpose of this Agreement or for any personnel undertaking activities under this Agreement. Such responsibilities shall be borne by the RECIPIENT INSTITUTION.

9.4 The rights and obligations of the RECIPIENT INSTITUTION are limited to the terms and conditions of this Agreement. Accordingly, the RECIPIENT INSTITUTION and personnel performing services on its behalf shall not be entitled to any benefit, payment, compensation or entitlement except as expressly provided in this Agreement.

9.5 The RECIPIENT INSTITUTION shall be solely liable for claims by third parties arising from the RECIPIENT INSTITUTION's acts or omissions in the course of performing this Agreement and under no circumstances shall UNCDF be held liable for such claims by third parties.

9.6 On the grounds defined in 9.2 above, this Agreement may be terminated by either party before completion of the Agreement by giving thirty (30) days written notice to the other party, and the RECIPIENT INSTITUTION shall promptly return any unutilized funds to UNCDF as per paragraph 9.7 below. Unutilized funds shall mean any funds in possession of RECIPIENT INSTITUTION after allowing for the settling all obligations incurred up to the date of termination. Also, in the event that funds are in fact due to RECIPIENT INSTITUTION for activities undertaken by RECIPIENT prior to termination, then these funds will be specified and paid by UNCDF to the RECIPIENT INSTITUTION.

9.7 The RECIPIENT INSTITUTION acknowledges that UNCDF and its representatives have made no

actual or implied promise of funding except for the amounts specified by this Agreement. If any of the funds are returned to UNCDF or if this Agreement is rescinded, the RECIPIENT INSTITUTION acknowledges that UNCDF will have no further obligation to the RECIPIENT INSTITUTION as a result of such return or rescission.

9.8 No modification of or change to this Agreement, waiver of any of its provisions or additional contractual provisions shall be valid or enforceable unless previously approved in writing by the parties to this Agreement or their duly authorized representatives in the form of an amendment to this Agreement duly signed by the parties hereto.

9.9 Any disputes between the Parties arising out of or relating to this Agreement which is not settled amicably or by other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed should appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

9.10 The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication or any such controversy or claim.

9.11 Nothing in or relating to this Agreement shall be deemed a waiver of any privileges and immunities of the United Nations, or UNCDF.

IN WITNESS WHEREOF, the undersigned, duly appointed representatives of UNCDF and the RECIPIENT INSTITUTION, respectively, have on behalf of UNCDF and the RECIPIENT INSTITUTION signed the present Agreement on the dates indicated below their respective signatures.

On behalf of UNCDF:

Name: Preeti Sinha

Title: Executive Secretary

Date_____

On behalf of the RECIPIENT INSTITUTION:

Name: XXXXXXXXXXXX

Title: XXXXXXXXXXXX

Date_____

Certification of *Milestone Completion* (For Grant Agreements)

1. To be Completed by the Unit Supervising the Financing Agreement

Name:		Agreement Reference:
Agreement	Agreement	Grantee Name:
Starting Date:	End date:	

2. To be completed by the Grantee

(a) As per the agreement the grantee is expected to deliver and complete during this period the following outputs/milestones:

No .	Result/Milestone as Stated in the Financing Agreement	Target Payment Date of Completion	Agreement Payment Amount

(b) Accordingly, I certify that the results/milestones indicated below are an accurate account of the services completed under the terms of the agreement:

Actual Results/ Milestones Achieved	Date Completed	Amount and Currency Billed for this Certificate

(c) The discrepancies between the deliverables listed in (a) and (b) are hereby explained by the following factors/changes:
(Indicate N/A if there are none)

Please make payment as indicated above to the bank account stated in the Financing Agreement.

Signature: _____ Date _____
 Name: _____ Signed: _____

3. To be completed by the Staff Supervising / Reviewing the Results/Milestones as per the Agreement.

I certify that the work/deliverables/milestones listed above have been verified by me and are all satisfactorily performed during the above-mentioned dates. The results/milestones for this period are hereby: (Please check appropriate box)

Accepted ☐ Not Accepted ☐

The amount being billed by the Service Provider is therefore hereby: (Please check appropriate box)

Authorized ☐ Not Authorized ☐

Signature: _____
 Name: _____

Date: _____

Annex 2: Project Description