

## MODEL MOU ON COOPERATION WITH A COMMERCIAL ENTITY

### Memorandum of Understanding on Cooperation

between

United Nations Industrial Development Organization (UNIDO)

and

[Name of Commercial Entity]

The United Nations Industrial Development Organization (UNIDO), whose headquarters are located at Vienna, Austria, as represented by Director-General, Mr. Kandeh K. Yumkella,

and

The [name of commercial entity], whose headquarters are located at ..., as represented by [name of chief executive officer or other official],

WHEREAS UNIDO, as a specialized agency of the United Nations, has the primary responsibility in promoting industrial development in the developing countries and in countries with economies in transition;

WHEREAS the mission of [name of commercial entity] (hereinafter referred to as the “Company”[“Corporation”/etc.]) is ...,

WHEREAS UNIDO recognizes the significant contribution that can be made by the private sector to its strategic objectives and therefore actively promotes cooperation arrangements with private sector stakeholders,

WHEREAS the Company supports the objectives of UNIDO as stipulated in UNIDO’s Constitution and intends to collaborate with UNIDO within the framework of the present Memorandum of Understanding (hereinafter referred to as the “Memorandum”),

NOW THEREFORE, UNIDO and the Company (hereinafter referred to as the “Partner” or collectively as “the Partners”) hereby declare as follows:

### **Article 1 (Objectives)**

1. The Partners agree that they will cooperate closely and consult one another on matters of mutual interest in order to achieve their common objectives, which include:

- (a) ...
- (b) ...
- (c) ...
- (d) ....

2. The Partners agree to work together in good faith, through joint and concerted cooperation in accordance with the provisions of this Memorandum, in order to implement the objectives set forth above.

### **Article 2 (Scope of the Memorandum)**

1. This Memorandum establishes a framework for cooperation between the Partners and determines the conditions and modalities within which the Partners will collaborate to achieve their common objectives. The Memorandum defines the areas, institutional arrangements, and general conditions that will govern the cooperation of the Partners.

2. The Memorandum constitutes the entire understanding of the Partners with respect to its subject matter and supersedes all oral communications and prior written documents.

3. The Partners agree that this Memorandum does not confer any exclusivity regarding activities covered by this Memorandum and that they may collaborate on similar activities with other partners.

### **Article 3 (Areas of Cooperation)**

Subject to the programme of work of the Partners and to the provisions of this Memorandum, the Partners agree to carry out common initiatives in the areas of cooperation of mutual interest identified in the Annex to this Memorandum, which may be modified from time to time by written agreement of the Partners.

### **Article 4 (Joint Activities and Projects)**

1. In particular, the Partners agree to explore possibilities for joint collaboration on activities and projects in the areas of cooperation as

opportunities arise. The Annex to this Memorandum contains a list of concepts for initial activities and projects that have been identified by the Partners.

2. The Partners will negotiate in good faith the terms of any subsequent agreement(s) that are required to implement their collaboration at the project level. Such agreement(s) will normally be concluded in the form of an exchange of letters setting out the deliverables and responsibilities of UNIDO and of the Company in respect of the project, including the financial and other support the Company will provide to UNIDO. Such agreement(s) will be subject to the regulations, rules, instructions, directives and procedures in force in UNIDO and of the Company, and will incorporate the General Conditions contained in Article 8 below.

3. The Partners may form working groups, made up of representatives from each Partner, which will be responsible for monitoring the development and execution of particular projects.

#### **Article 5 (Exchange of Information and Documents)**

The Partners agree to undertake an exchange of relevant information and documents, subject to such restrictions and arrangements as may be considered necessary by either Partner to preserve the confidential nature of certain information and documents.

#### **Article 6 (Focal Points)**

1. For the purpose of facilitating the day-to-day implementation of this Memorandum, direct contacts will be made between representatives of the Partners.

2. UNIDO will assign an overall programme coordinator, who will be responsible for coordinating all communication and the implementation of the Memorandum.

3. The Company will nominate a focal point, who will be responsible for coordinating all communication and the implementation of the Memorandum.

#### **Article 7 (Public Announcements)**

Subject to the prohibition in Article 8, paragraph 3 below, either Partner may issue press releases or make public announcements relating to the Memorandum; however, the Company will first provide a draft of any press release to UNIDO for review and approval before being issued.

## Article 8 (General Conditions)

1. Financial Contribution: The implementation of activities and projects envisaged in this Memorandum will depend on the availability of the necessary financial resources and will be made in accordance with the regulations, rules, instructions, directives and procedures in force for UNIDO and the Company.
2. Liability and Status: Nothing in or relating to this Memorandum will be construed as establishing a legal partnership (such as, by way of clarification, partnership liability), joint venture, agency, exclusive arrangement, or other similar relationship between UNIDO and the Company. Neither the Company nor anyone whom it may employ will be considered as an agent or official of UNIDO and, except as otherwise provided, will not be entitled to any privileges, immunities, compensation or reimbursements, nor will be authorized to commit UNIDO to any expenditure or other obligations.
3. Use of Name, Emblem or Official Seal of UNIDO or its Affiliates: The Company and its affiliates will not in any manner whatsoever use the name, emblem or official seal of UNIDO or its affiliates, or any abbreviation of the name of UNIDO or its affiliates, in connection with its business or otherwise without express prior written permission of UNIDO.
4. Status of UNIDO: The Company will respect the status of UNIDO as an intergovernmental organization of the United Nations system. Nothing in or relating to this Memorandum will be deemed as a waiver, express or implied, of any of the privileges and immunities of UNIDO.
5. Representation: The Company confirms that it is not directly involved in the production of goods or the delivery of services which would be opposed to the objectives or principles of UNIDO.
6. Conformity with Laws: The Company will respect the laws of the countries in which it operates. The Company will not permit any official of UNIDO to receive a direct or indirect profit from this Memorandum or from any subsequent agreement(s) between the Partners.
7. Assignment: The Partners will not assign, transfer, pledge or make other disposition of the present Memorandum or any part thereof or of any of their rights, claims or obligations under the present Memorandum except with the prior written approval of the other Partner. Any of the aforementioned actions taken without such written approval will not be valid.
8. Non-waiver: Any waiver by a Partner of a breach of a provision of this Memorandum will not operate or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Memorandum. A failure by a Partner to insist upon strict adherence to any term of this Memorandum on one or more occasion will not be considered a waiver or deprive that Partner of the right thereafter to insist upon strict adherence to that term or

any other term of this Memorandum. Any waiver must be in writing and signed by the Partner against whom enforcement is sought.

9. Indemnification: The Company will hold harmless, defend and indemnify UNIDO against all lawsuits, claims, costs and liabilities resulting from any intellectual property disputes or other disputes occurring under the present Memorandum and which arise out of acts or omissions of the Company, its agents or employees.

10. Audit: The Partners agree that each will be subject exclusively to the internal and external auditing rules applicable to it. Upon request, the Partners will provide one another with copies of their external audit reports. [OPTIONAL]

11. Evaluation: Subject to the provisions of any agreement concluded pursuant to the provisions of Article 4, the results of each Project will be jointly evaluated by the Partners.

#### **Article 9 (Governing Law and Settlement of Disputes)**

1. The present Memorandum will be construed in accordance with general principles of law, to the exclusion of any single national system of law.

2. In the event of a dispute, controversy or claim arising out of or relating to this Memorandum or to any agreement(s) concluded pursuant to this Memorandum, the Partners will use their best efforts to promptly settle such dispute through direct negotiation.

3. Any dispute that is not settled within sixty (60) days from the date a Partner has notified the other of the nature of the dispute and of the measures that should be taken to rectify it, will be resolved through consultation between the executive heads of the Partners or their duly authorized representatives. If the dispute cannot be settled amicably through consultation, it will be settled by arbitration. The arbitration will be conducted in accordance with the modalities to be agreed upon by the Partners, or in the absence of agreement, with the rules defined by the United Nations Commission on International Trade Law (UNCITRAL) then prevailing. The language of the arbitration will be English, and the place of arbitration will be Vienna. The arbitral tribunal will not have the power to impose general, incidental, indirect, special, punitive or consequential damages, including, without limitation, for lost profits. The Partners will accept the arbitral award as final.

4. If any term of this Memorandum is found to be invalid, illegal or unenforceable, it is the intention of the Partners that the remainder of this Memorandum will not be affected thereby; provided, however, that no Partner's rights under this Memorandum have been materially adversely affected.

### Article 10 (Notification)

The addresses for service of notices under the present Memorandum shall be:

UNIDO: Vienna International Centre  
Wagramerstr. 5, P.O. Box 300  
A-1400 Vienna, Austria

The Company: ...

### Article 11 (Final Provisions)

1. This Memorandum will take effect upon its signature by the authorized representatives of the Partners.
2. This Memorandum is concluded for an initial period of ... years as of the date of signature by the Partners, and it may be renewed, following mutual consultation, by exchange of letters for a ...-year period or such other period as the Partners may decide.
3. This Memorandum may only be changed, modified, amended or supplemented by written agreement of the Partners.
4. The Partners may terminate this Memorandum by written agreement. Each Partner will have the right to terminate this Memorandum, for any reason and at any time, by giving six months' written notice to the other Partner. In the event of termination, steps will be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the United Nations Industrial Development Organization and the [name of commercial entity], respectively, have signed the present Memorandum of Understanding, in English and in two originals, on the date(s) and at the place(s) set forth below:

For the United Nations  
Industrial Development  
Organization:

For the [name of commercial entity]:

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Kandeh K. Yumkella  
Director-General  
Place:  
Date:

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[Name]  
[Functional title]  
Date: ...  
Place: .....

## Annex

### Areas of Cooperation

- (a) ...
- (b) ...
- (c) ...
- (d) ....

### Initial Activities and Projects

- (a) ...
- (b) ...
- (c) ...
- (d) ....