

**HOST COUNTRY AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF
THE UNION OF MYANMAR
AND
THE UNITED NATIONS OFFICE
FOR PROJECT SERVICES**

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PREAMBLE

This Agreement dated and effective as of 21st day of October, 2015 is entered into between UNOPS, and the Government, collectively with UNOPS the “Parties”, or individually a “Party”.

WHEREAS, UNOPS is a subsidiary organ of the United Nations established by General Assembly decision 48/501 of 19 September 1994 as a central resource for the United Nations system in procurement, contracts management and other capacity development activities, as well as its value in providing efficient, cost-effective services to partners in its specialized areas;

WHEREAS, the UNOPS Strategic Plan for 2014-2017 highlights UNOPS’ commitment to providing its partners with advisory, implementation and transactional support services in sustainable project management, infrastructure and procurement;

WHEREAS UNOPS and the Government wish to establish the terms and conditions under which UNOPS shall, in the framework of the operational activities of the United Nations and within its mandate, implement Projects in Myanmar,

WHEREAS the Government wishes to request assistance from the UNOPS for the benefit of its people;

NOW, THEREFORE, the Government and UNOPS have agreed as follows.

ARTICLE I

Definitions

For the purpose of the present Agreement, the following definitions shall apply:

"Appropriate authorities" means central, local and other competent authorities under the law of the Country;

"Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

"Country" means the country where a UNOPS office is located or which receives Project support from a UNOPS office located elsewhere;

"Experts on mission" means experts coming within the scope of Articles VI and VII of the Convention;

"**Government**" means the Government of the Republic of the Union of Myanmar;

"**Head of the office**" means the official in charge of the UNOPS office;

"**Parties**" means UNOPS and the Government;

"**Persons performing services for UNOPS**" means individuals, other than officials, engaged by UNOPS to perform services in the execution of Projects of cooperation;

"**Project**" means any undertaking by UNOPS on behalf of one or more of its clients in respect of which a separately identifiable project account (or accounts) has been established;

"**UNOPS**" means the United Nations Office for Project Services;

"**UNOPS office**" means any organizational unit through which UNOPS provides assistance, including any field offices established in the country;

"**UNOPS officials**" means all members of the staff of UNOPS employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly Resolution 76 (I) of 7 December 1946.

ARTICLE II

Scope of the Agreement

1. The present Agreement embodies the general terms and conditions under which UNOPS shall implement Projects in the Country.
2. UNOPS Projects in the Country shall be implemented in accordance with its rules and regulations.

ARTICLE III

Projects implemented by UNOPS

1. Project agreements concluded by UNOPS shall define the particulars of the Projects, setting out the objectives of the activities to be carried out, the undertakings of UNOPS, the Government and any participating organizations and the estimated financial resources required to carry out the Projects.
2. The Government shall permit UNOPS officials, experts on mission and persons performing services for UNOPS entire freedom to observe and monitor all phases and aspects of the Projects implemented by UNOPS.
3. The Government shall cooperate with UNOPS in providing the appropriate means necessary for adequately informing the public about the Projects carried out under the present Agreement.

ARTICLE IV

UNOPS office

1. UNOPS may establish and maintain a UNOPS office in the Country as the Parties may consider necessary to facilitate the implementation of Projects.
2. UNOPS may, with the agreement of the Government, establish and maintain a regional/area office in the Country to provide Project support to other countries in the region/area.
3. In the event that UNOPS does not maintain a UNOPS office in the Country, it may, with the agreement of the Government, implement Projects agreed to between UNOPS and the Government under the present Agreement through a UNOPS regional/area office established in another country.

ARTICLE V

Assignment to UNOPS office

1. UNOPS may assign to its office in Country officials, experts on mission and persons performing services for UNOPS, as is deemed necessary by UNOPS, to provide support to Projects implemented by UNOPS.
2. UNOPS shall, from time to time, notify the Government of the names of UNOPS officials, experts on mission and persons performing services for UNOPS; UNOPS shall also notify the Government of any changes in their status.

ARTICLE VI

Government contribution

1. The Government shall provide to UNOPS as mutually agreed upon and to the extent possible:
 - a) Appropriate office premises for the UNOPS office, alone or in conjunction with the United Nations system organizations;
 - b) Costs of postage and telecommunications for official purposes;
 - c) Costs of local services such as equipment, fixtures and maintenance of office premises;
 - d) Transportation for UNOPS officials, experts on mission and persons performing services for UNOPS in the performance of their official functions in the Country.

2. The Government shall also assist UNOPS:
 - a) In the location and/or in the provision of suitable housing accommodation for internationally recruited UNOPS officials, experts on mission and persons performing services for UNOPS;
 - b) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNOPS office premises.
3. The Government shall provide to UNOPS and its personnel, throughout Myanmar, such security as is required for the effective performance of its activities.
4. In the event that UNOPS does not maintain a UNOPS office in the Country, the Government undertakes to contribute towards the expenses incurred by UNOPS in maintaining a UNOPS regional/area office elsewhere, from which support is provided to the Projects implemented in the Country, up to a mutually agreed amount, taking into account contributions in kind, if any.

ARTICLE VII

UNOPS supplies, equipment and other assistance

1. Supplies, equipment and other assistance intended for the Projects implemented by UNOPS under the present Agreement shall be transferred to the Government upon arrival in the Country.
2. UNOPS may place on the supplies, equipment and other materials intended for Projects such markings as are deemed necessary to identify them as being provided by UNOPS.
3. The Government shall grant UNOPS all necessary permit and licenses for the importation of the supplies, equipment and other materials under the present Agreement. It shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transportation and distribution of such supplies, equipment and other materials after their arrival in the country.
4. While paying due respect to the principles of international competitive bidding, UNOPS will, to the extent possible, attach high priority to the local procurement of supplies, equipment and other materials which meet UNOPS requirements in quality, price and delivery terms.
5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for Projects, are utilized in conformity with the purposes stated in the Project agreements and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be

required of any recipient of supplies, equipment and other materials furnished by UNOPS unless, and only to such extent as, provided in the relevant Project agreements.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for Projects. In respect of supplies and equipment purchased locally for Projects, the Government shall, in accordance with Section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNOPS, return to UNOPS any funds, supplies, equipment and other materials that have not been used in the Projects.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under this Agreement. The form and content of the accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNOPS shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNOPS financial years, transmit to UNOPS progress reports on the Projects and certified financial statements, audited in accordance with existing government rules and procedures.

ARTICLE VIII

Intellectual property rights

1. The Parties agree to cooperate and exchange information, and separately agree on the intellectual property rights in relation to, any discoveries, inventions or works, resulting from Project activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by the Government and UNOPS under applicable law.

2. Patent rights, copyrights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this Article resulting from Projects implemented by UNOPS may be made available by UNOPS free of royalties to other governments with which UNOPS cooperates for their use and exploitation in Projects.

ARTICLE IX

Applicability of the Convention

1. The Convention shall be applicable mutatis mutandis to UNOPS, its office, property, funds and assets and to its officials and experts on mission in the Country.

ARTICLE X

Legal status of UNOPS office

1. UNOPS, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. (a) The premises of the UNOPS office shall be inviolable. The property and assets of UNOPS, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

(b) The appropriate authorities may not enter the office premises, except with the express consent of the Head of the UNOPS office.

3. The appropriate authorities shall be under a special duty to take all appropriate steps to protect the UNOPS office against any intrusion or damage and to prevent any disturbance of the peace of the UNOPS office or impairment of its dignity.

4. The archives of UNOPS, and in general all documents belonging to it, shall be inviolable wherever located.

ARTICLE XI

UNOPS funds, assets and other property

1. Without being restricted by financial controls, regulations or moratoria of any kind:

- a) UNOPS may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;
- b) UNOPS shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations or agencies of the United Nations system; UNOPS shall be accorded the most favorable, legally available rate of exchange for its financial activities.

2. UNOPS, its assets, income and other property shall:

- a) Be exempt from all direct taxes, value-added tax, fees, tolls or duties; it is understood, however, that UNOPS will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under Government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized;

- b) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNOPS for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;
- c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

ARTICLE XII

UNOPS officials

1. Officials of UNOPS shall:
 - a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNOPS;
 - b) Be exempt from taxation on the salaries and emoluments paid to them by UNOPS;
 - c) Be immune from national service obligations;
 - d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
 - e) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions to the Government;
 - f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
 - g) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country.
2. The head of the UNOPS office and other senior officials, as may be agreed between UNOPS and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the UNOPS office may be incorporated in the diplomatic list.
3. UNOPS officials shall also be entitled to the following facilities applicable to members of diplomatic missions of comparable ranks:
 - a) To import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing government regulation;
 - b) To import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing government regulation.

ARTICLE XIII

Experts on mission

1. Experts on mission shall be granted the privileges and immunities specified in Article VI, sections 22 and 23 of the Convention.
2. Experts on mission may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

ARTICLE XIV

Persons performing services for UNOPS

1. Persons performing services for UNOPS shall:
 - a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNOPS;
 - b) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.
2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNOPS may be accorded such other privileges, immunities and facilities as specified in Article XII above, as may be agreed upon between the Parties.

ARTICLE XV

Access to facilities

UNOPS officials, experts on mission and persons performing services for UNOPS shall be entitled to:

- a) Prompt clearance and issuance, free of charge, of visas, licenses or permits, where required;
- b) Unimpeded access to or from the Country, and within the Country, to all sites of cooperation activities, to the extent necessary for the implementation of Projects.

ARTICLE XVI

Locally recruited personnel assigned to hourly rates

1. The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNOPS. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNOPS.

ARTICLE XVII

Facilities in respect of communications

1. UNOPS shall enjoy, in respect of its official communications, treatment not less favorable than that accorded by the Government to any diplomatic mission (or intergovernmental organization) in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.
2. No official correspondence or other communication of UNOPS shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNOPS shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.
3. UNOPS shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Geneva, 1992) and the regulations annexed thereto.

ARTICLE XVIII

Facilities in respect of means of transportation

1. The Government shall grant UNOPS necessary permits or licenses for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNOPS of civil airplanes and other craft required for Project activities under the present Agreement.

ARTICLE XIX

Waiver of privileges and immunities

1. The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations and UNOPS, and not for the personal benefit of the persons concerned.
2. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in Articles XII, XIII and XIV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNOPS.

ARTICLE XX

Claims against UNOPS

1. UNOPS' implementation of Projects under the present Agreement is undertaken for the benefit of the Government and people of the country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.
2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNOPS, UNOPS officials, experts on mission and persons performing services on behalf of UNOPS and shall, in respect of such claims, indemnify and hold them harmless, except where the Government and UNOPS agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

ARTICLE XXI

Settlement of disputes

1. Any dispute between UNOPS and the Government relating to the interpretation and application of the present Agreement which is not settled by negotiation or 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 shall appoint a third, who shall be the chairman. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen (15) 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 for 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.

ARTICLE XXII

Entry into force

1. The present Agreement shall enter into force immediately upon signature by the Government and UNOPS.
2. The present Agreement supersedes and replaces the previous Basic Agreement, including addenda thereto, between UNOPS and the Government.

ARTICLE XXIII

Amendments

1. The present Agreement may be modified or amended only by written agreement between the Parties hereto.

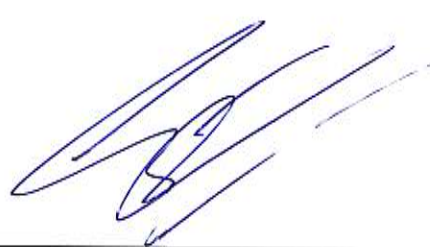

ARTICLE XIV

Termination

1. The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such an additional period as might be necessary and as mutually agreed upon for the orderly cessation of UNOPS activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized plenipotentiary of the Government and duly appointed representative of UNOPS, have on behalf of the Parties signed the present Agreement, in English.

Done at Nay Pyi Taw on this 21st day of October, 2015

<p>FOR THE UNITED NATIONS OFFICE FOR PROJECT SERVICES</p> <p>Name: Mr. Sanjay Mathur Title: Director & Representative</p>  <p>_____ Signature</p>	<p>FOR THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR</p> <p>Name: H.E. Daw Lei Lei Thein Title: Deputy Minister Ministry of National Planning and Economic Development</p>  <p>_____ Signature</p>
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