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Item 6 of the provisional agenda*

**Discussion on the Due diligence assessment of the Sustainable
Human Settlements Foundation**

Technical note to the ad hoc working group on programmatic, budgetary and administrative matters

I. Introduction

This technical note is submitted in response to the request from the ad hoc working group on programmatic, budgetary and administrative matters in its session held on 27 September 2023.

The Sustainable Human Settlements Foundation is a not-for-profit foundation for the charitable purpose of direct financial support to UN-Habitat. The Foundation includes a regulated fund of funds in which donations are pooled in an endowment that will be invested for the benefit of UN-Habitat to fulfil unfunded or underfunded mandates.

II. Scenarios of termination of the contribution agreement

A. Termination authority

As per the privity of contracts, the authority to terminate the agreement is vested with the signatories of the agreement. Such authority may be further regulated by governance mechanisms of each party of the agreement, e.g., by boards and councils.

Option 1: The Executive Director has full authority to terminate the agreement at his or her discretion. This option is standard unless other directives are decided.

Option 2: The Executive Director has authority to terminate the agreement only upon request by the Executive Board. This option is possible if the Executive Board decides to place this limitation on the Executive Director. Such governance on termination would be in line with the governance already decided by the Executive Board on entry into the agreement. In this option, the Executive Board may make the request to the Executive Director to proceed with termination with or without the Executive Director making the proposal to do so.

* HSP/EB.2023/10.

B. Nature and manner of termination

The nature and manner of termination include the conditions under which the agreement may be terminated.

Option 1: Either party has the right to terminate the agreement by giving prior notice to the other party within a defined number of days and in a standard manner of termination. The standard number of days, or notice period, is thirty days. The nature of termination may be without cause, i.e., no reason needs to be provided.

Option 2: Termination is permitted only if either party fails to fulfil any of its responsibilities under the agreement, i.e., with cause. This option requires evidence of a material breach and may be subject to appeal or contestation.

III. Scenarios of validity and periodic review of the contribution agreement

A. Validity

The validity of the agreement is the period or duration of the agreement prior to renewal or extension. A longer validity of the agreement favours the prospects of investments in the Foundation, and therefore favours the prospects of contributions from the Foundation to UN-Habitat.

Option 1: A validity of ten years, with periodic reviews of the performance of the parties by the Executive Board.

Option 2: A validity of less than ten years, with periodic reviews of the performance of the parties by the Executive Board. Experts have advised that a term of less than five years will critically weaken the viability of the Foundation.

B. Periodic review

Within the validity of the agreement, periodic reviews may be conducted as quality assurance of the performance of all parties, and as an opportunity to take a decision of termination if appropriate. Assuming signature of the agreement before the end of 2023, the first periodic review may be considered as soon as in the first session of the Executive Board of 2025, after one full year of operation and the availability of the audited financial statements.

Option 1: The first periodic review in the first session of the Executive Board of 2025, with the subsequent review in the first session of the Executive Board of 2027, after three full years of operation, with further reviews every two or three years.

Option 2: The first periodic review in the first session of the Executive Board of 2025, with subsequent annual reviews in the first session of the Executive Board of each year.

IV. Indemnity

The standard indemnity clause of UN-Habitat is as follows:

The Foundation shall indemnify, hold and save harmless, and defend at its own expense, UN-Habitat, its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind, including their costs and expenses, arising out of or omissions of the Foundation, or the Foundation's employees, officers, agents or sub-contractors,

in the implementation of this Agreement. This provision shall extend, *inter alia*, to claims and liability in the nature of worker's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Foundation, its employees, officers, agents or sub-contractors. The obligations under this Article do not lapse upon termination of this Agreement.
