

APPENDIX 8 – UNIDO CONTRACT FORM

CONTRACT

BETWEEN

THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

AND

[CONTRACTOR]

FOR THE PROVISION OF ERP SOFTWARE AND IMPLEMENTATION SERVICES

2010

This Contract comprises this cover page, a table of contents and () pages of text and () Annexes (A through

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CONTRACT¹⁾

THIS CONTRACT, dated as of the Effective Date, is entered into by and between the United Nations Industrial Development Organization (hereinafter referred to as "UNIDO"), having its headquarters located at Wagramer Strasse 5, A-1220 Vienna, Austria, and <name of the contractor> (hereinafter referred to as "the Contractor"), having its principal office located at . UNIDO and the Contractor are collectively referred to herein as the "Parties", and each individually as a "Party".

RECITALS

WHEREAS, the Contractor desires to provide to UNIDO, and UNIDO desires to obtain from the Contractor, the Enterprise Resource Planning software package (hereinafter referred to as the "Software Package") and implementation services described in this Contract on the terms and conditions set forth in this Contract;

[WHEREAS, the Contractor agrees to furnish to UNIDO and UNIDO agrees to accept, on the terms and conditions set forth in this Contract, an irrevocable, non-exclusive, non-transferable, royalty-free, worldwide and fully-paid up perpetual license to use the Software Package ("Software Package") [[configured] by the Contractor, as appropriate, to meet UNIDO requirements][, and operating on _____ platform or on any other platforms which support _____];

WHEREAS, UNIDO desires the Contractor to install and test such Software Package onsite at the UNIDO's Headquarters and to ensure that such Software Package is fully functioning in a networked mode;

WHEREAS, the Contractor agrees to provide consultancy services, project management services, maintenance services and warranty services on the terms and conditions set forth in this Contract;

WHEREAS, the Contractor represents that it possesses the requisite knowledge, skill, personnel, resources and experience and that it is fully qualified, ready, willing and able to provide [the Software Package, and (see footnote 1)] such consultancy, support, maintenance services and warranty services on the terms and conditions of this Contract;

WHEREAS, the Contractor represents that it is ready, willing and able to provide such [Software Package – (see footnote 1)] and services;

WHEREAS, UNIDO and the Contractor have engaged in extensive negotiations and discussions that have culminated in the formation of the relationship described in this Contract.

Now, THEREFORE, for and in consideration of the Contract set forth below, UNIDO and the

¹⁾ In case software license agreement is signed with the Contractor

Contractor agree as follows:

1. CONTRACT DOCUMENTS

1.1 Contract Documents

This Contract together with the Annexes and Exhibits and the named documents described in the following Articles and which are or which shall be attached hereto, incorporated herein, and made a part hereof ("Contract Documents") constitute the entire contract between UNIDO and the Contractor for the subject matter hereof ("Contract").

1.2 Annexes and Exhibits

The Annexes and Exhibits to this Contract are as follows:

- (a) Annex A: UNIDO General Terms and Conditions of Contract;
- (b) Annex B: UNIDO Request for Proposal No xxx, dated xxx, including UNIDO Terms of Reference dates xxx;
- (c) Annex C: the Contractor's Proposal, dated _____, prepared and submitted by the Contractor to UNIDO in response to the RFP.
- (d) Annex D: Form of Statement of Work (to be prepared after contract award);
- (e) Annex E: Form of Performance Bank Guarantee;
- (f) Annex F: Form of Project Change Request (to be prepared after contract award)

2. CONSTRUCTION AND INTERPRETATION

2.1 Entire Contract

This Contract, including all the Contract Documents, contains and constitutes the entire Contract and understanding by and between the Parties concerning the subject matter hereof and supersedes all prior representations, contracts and proposals, whether written or oral, by and between the Parties on this subject matter. No promises, understandings, obligations or contracts, oral or otherwise, relating to the subject matter hereof exist between the Parties except as expressly set forth herein. Any document or receipt issued in connection with this Contract shall be consistent with the terms and conditions of this Contract and, in case of any inconsistency, the terms and conditions of this Contract shall prevail.

2.2 Order of Precedence

Except as may otherwise be specifically provided in this Contract, in the event of any inconsistencies, conflicts, or discrepancies between or among the Contract Documents, this Contract shall be interpreted on the basis of the following order of priority of the Contract Documents:

- (i) This Contract;
- (ii) Annex A;
- (iii) Statement(s) of Work
- (iv) Annex B: UNIDO Request for Proposal including UNIDO Terms of Reference ;

- (v) Annex C; and
- (vi) All other Annexes, including the schedules thereto, or other documents which are expressly referred to or incorporated into this Contract.

2.3 Interpretation

- (a) The headings preceding the text of Articles and the headings to Annexes and Exhibits, the table of contents and the table of Annexes and Exhibits included in or attached to this Contract are used for convenience only and are not to be considered in construing or interpreting this Contract.
- (b) Any reference to an Annex, Exhibit or Article shall be to such Annex, Exhibit or Article of this Contract, unless otherwise expressly provided.
- (c) The use of the terms "including," "include" or "includes" shall in all cases herein mean "including without limitation," "include without limitation", or "includes without limitation," respectively.
- (d) Words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires.
- (e) The Parties acknowledge and agree that they have mutually negotiated the terms and conditions of this Contract and that any provision contained herein with respect to which an issue of interpretation or construction arises shall not be construed to the detriment of the drafter on the basis that such Party or its professional advisor was the drafter, but shall be construed according to the intent of the Parties as evidenced by the entire Contract.

3. DEFINITIONS

3.1 Definitions

In addition to terms elsewhere defined in this Contract, the following terms shall have the meanings set forth below for purposes of this Contract:

"Acceptance" means written notification from the UNIDO Project Manager to the Contractor that indicates that a particular Deliverable or Milestone, as appropriate, satisfies the applicable Acceptance Criteria. Deliverables and Milestones accepted pursuant to the foregoing written notification shall be considered "Accepted".

"Acceptance Criteria" means the criteria used by UNIDO to evaluate Acceptance for each Deliverable, and for each Milestone separately and as integrated with any previously Accepted Milestone(s) as provided herein. The term "Acceptance Criteria" shall be deemed to include that each Deliverable and Milestone shall (i) meet the applicable Detailed Design Document related to such Deliverable or Milestone, (ii) meet or exceed the warranties set forth in Article 17, and (iii) operate in accordance with such other specific criteria as may be developed by the Parties as part of the implementation process herein. With regard to Milestones, the term "Acceptance Criteria" shall also be deemed to include the requirement that each Milestone be fully operational and integrated with any and all prior Milestones, and that all Milestones work together seamlessly without any errors or defects and in strict accordance with all other criteria in the Acceptance Criteria as described herein.

"Acceptance Period" means, with respect to any particular Deliverable or Milestone, that period of time specified in the Implementation Schedule during which UNIDO shall have the right to determine whether such Deliverable or Milestone meets the Acceptance Criteria. If no Acceptance Period is specified for a particular Deliverable or Milestone, such period shall be ____ Business Days from the date such Deliverable or Milestone is received by UNIDO in accordance with the terms hereof, provided, however, that such period shall be deemed extended as necessary to accommodate reasonable Acceptance testing, including any testing required to determine that the Acceptance

Criteria has been met.

"Approved Benchmark" has the meaning set forth in Article 15.7(a).

"Benchmarking" has the meaning set forth in Article 15.7(a).

"Business Day" means any calendar day between Monday and Friday, except any official holiday as promulgated by the Director-General of UNIDO.

"Change in Control" means the (i) sale, transfer or other disposition of all or substantially all of the assets of the Contractor, or (ii) any change in the beneficial ownership of 50% or more (or such lesser percentage that constitutes Control) of the outstanding voting securities or other ownership interests of the Contractor.

"Comparison Services" has the meaning set forth in Article 15.7(a).

"Completion Date" means, for any Deliverable, Milestone or task, the date listed in the applicable Implementation Schedule on or before which such Deliverable, Milestone, or task must be completed or delivered to UNIDO, as applicable.

"Consents" means any consents, authorizations or approvals that are necessary for (i) the Contractor to grant any licenses or rights of use to the Software Package, Contractor Proprietary Software or the Contractor Methodologies, or (ii) assign any of its interests in work made for hire; or (iii) UNIDO to use any of the Contractor equipment.

"Contract" has the meaning set forth in Article 1.1.

"Contract Documents" has the meaning set forth in Article 1.1.

"Contractor" has the meaning set forth in the introductory paragraph.

"Contractor Account Executive" has the meaning set forth in Article 11.1.

"Contractor Agents" means the agents, subcontractors and other representatives of the Contractor, other than the Contractor employees.

"Contractor Methodologies" means the Contractor Proprietary Methodologies and the Contractor Third Party Methodologies.

"Contractor Personnel" means the Contractor Agents and officials and employees of the Contractor.

"Contractor Project Manager" has the meaning set forth in Article 11.2.

"Contractor Proprietary Methodologies" means the Methodologies used in the performance of the Services that are owned, acquired or developed by the Contractor.

"Contractor Proprietary Software" means the Software used in the performance of the Services that are owned, acquired or developed by the Contractor.

"Contractor Software" means the Contractor Proprietary Software and the Contractor Third Party Software.

"Contractor Third Party Methodologies" means the Methodologies used in the performance of the Services that are licensed or leased by the Contractor from a third party.

"Contractor Third Party Software" means the Software used in the performance of the Services that are licensed or leased by the Contractor from a third party (including by a common or open source license).

"Control" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract, or otherwise.

"Deficiency" means in the case of any Deliverable or Milestone, a failure of such Deliverable or Milestone to meet the Acceptance Criteria applicable to such Deliverable or Milestone. The term "Deficiency" shall also be deemed to include any error, problem, non-conformity or defect resulting

from (i) incorrect functioning of one or more Deliverables or Milestones where such error, problem or defect renders any Deliverable or Milestone inoperable or unable to perform repeatedly, without interruption, or (ii) any error, problem or defect which impacts the use or performance of the Deliverable or Milestone as reasonably determined by UNIDO, or (iii) incorrect or incomplete documentation.

"Deliverables" means any and all items to be developed and delivered by the Contractor to UNIDO under this Contract including as described in the Statement of Work.

"Detailed Design Document" has the meaning set forth in Article 4.7.

"Effective Date" has the meaning set forth in Article 19.1.

"Final Project Acceptance" has the meaning set forth in Article 5.4.

"General Conditions" has the meaning set forth in Article 1.2(a).

"Privileges and Immunities" means, as applicable, UNIDO's privileges and Immunities pursuant to the UNIDO Constitution, the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies, any other international instrument or in accordance with international law.

"Implementation Schedule" means the schedule which identifies the various tasks and responsibilities of the Parties as identified in the applicable Statement of Work.

"Issuer" has the meaning set forth in Article 6.3(e).

"Key Contractor Personnel" means the Contractor Account Executive, Contractor Project Manager(s) and such other members of the Contractor Personnel designated as Key Contractor Personnel in the Statement of Work.

"Liquidated Damages" has the meaning set forth in Article 6.2(a).

"Maximum Contract Price" has the meaning set forth in Article 15.1.

"Methodologies" means processes, procedures and methodologies.

"Milestone" means a discrete portion of a Project as further described in the applicable Statement of Work which are identified together as an event in the Implementation Schedule.

"Milestone Acceptance" has the meaning set forth in Article 5.2.

"Milestone Acceptance Test" has the meaning set forth in Article 5.2.

"Party" or "Parties" has the meaning set forth in the introductory paragraph.

"Performance Bank Guarantee" has the meaning set forth in Article 6.3(a).

"Performance Standards" means quantitative levels of performance applicable to the provision of the Services, resources and Deliverables.

"Project" means the set of activities conducted under an applicable Statement of Work.

"Proposal" has the meaning set forth in Article 1.2(c).

"Reports" has the meaning set forth in Article 8.2.

"RFP" has the meaning set forth in Article 1.2(b).

"Service Location(s)" means any UNIDO Service Location or Contractor Service Locations, as applicable.

"Services" means the work to be performed by the Contractor under this Contract, as set forth in this Contract and the Statement of Work, and any incidental services, functions or responsibilities not specifically described in this Contract or the Statement of Work, but which are required for and are related to the proper performance and delivery of the services described in this Contract.

"Software" means (i) the source code and object code versions of any applications, operating system software, computer software languages, utilities, other computer programs, in whatever form or media, including the tangible media upon which the foregoing are recorded, together with all corrections, improvements, updates and releases thereof, (ii) any software development and performance testing tools, and related know-how, methodologies, processes, technologies or algorithms, and (iii) any documentation related to any of the foregoing.

"Software Package" means a package of Enterprise Resource Planning software as specified in the UNIDO Terms Reference ...

"Specification" means the written description of the functional and technical requirements, operations and procedures which shall form the basis for the Deliverables.

"Statement of Work" has the meaning set forth in Article 4.1.

"Term" has the meaning set forth in Article 19.1.

"Termination Assistance Period" means a period of time designated by UNIDO, commencing on the date a determination is made by UNIDO pursuant to this Contract that there will be an expiration or termination of this Contract or a Statement of Work and continuing for up to eighteen (18) months after the expiration or termination of this Contract or a Statement of Work, during which period the Contractor shall provide the Termination Assistance Services in accordance with the terms and conditions of this Contract.

"Termination Assistance Services" means (i) the Services (and any replacements thereof or substitutions therefore), to the extent UNIDO requests such Services during the Termination Assistance Period, (ii) the Contractor's cooperation with UNIDO in the transfer of the Services to UNIDO in order to facilitate the transfer of the Services to UNIDO, and (iii) any services requested by UNIDO in order to facilitate the transfer of the Services to UNIDO.

"Turnover Rate" has the meaning set forth in Article 11.5.

"UNIDO Project Manager" has the meaning set forth in Article 13.1.

"United Nations Industrial Development Organization" or "UNIDO" has the meaning set forth in the introductory paragraph.

"UNIDO Agents" means the agents, consultants, software providers, service providers, subcontractors and other representatives of UNIDO, but in all events excluding UNIDO employees and the Contractor Personnel.

"UNIDO Service Location" means any UNIDO service location and any location that UNIDO designates to conduct its business and or provide services.

"UNIDO Software" means UNIDO Proprietary Software and UNIDO Third Party Software.

"UNIDO Third Party Software" means the Software used in the performance of the Services that are licensed or leased by UNIDO from a third party (including by a common or open source license).

"Use" means the right to load, execute, store, transmit, display, distribute, copy, maintain, modify, enhance and create (and have created) derivative works.

4. SERVICES

4.1 Services

During the Term of this Contract, UNIDO will request the Contractor to provide certain services, resources and Deliverables as are mutually agreed upon from time to time by UNIDO and the Contractor and confirmed in mutually agreed to statements of work providing details thereof as

specified in paragraph 4.2 herein below. The statements of work shall be supplementary to the UNIDO's Terms of Reference (included in Annex B to the Contract) which contain a general description of UNIDO's requirements. The statements of work shall be substantially in the form attached hereto as Annex D and signed by the Chief, Procurement Services Unit on behalf of UNIDO and an authorized representative of the Contractor ("Statement of Work"). The Parties acknowledge and agree that the terms of any Statement of Work shall not be binding on the Parties unless and until authorized representatives of both of the Parties have signed such Statement of Work in accordance with this Article 4.

4.2 Statements of Work

This Contract establishes the standard provisions that will apply to each Statement of Work. Each Statement of Work will include, at a minimum:

- (a) a statement that the Statement of Work is being placed pursuant to this Contract, and specifying the Contract number,
- (b) the identity of the initiator of such Statement of Work, including, at a minimum, the name, title, address, telephone number and (if applicable) e-mail address of the official of UNIDO authorizing the Statement of Work, together with the address of the facility or facilities of the official authorizing the Statement of Work,
- (c) a description of the Services, resources and Deliverables that the Contractor will provide thereunder and the expected outcome of the Services,
- (d) the Implementation Schedule,
- (e) the Acceptance Criteria,
- (f) the Fees for the Services set forth in the Statement of Work,
- (g) a description of the role of UNIDO in connection with such services, resources and Deliverables,
- (h) the Performance Standards, if any,
- (i) Liquidated Damages, if any, and
- (j) all other information as may be necessary for the Contractor to complete the transaction contemplated by such Statement of Work.

Each Statement of Work, when executed by the Parties, will be attached hereto and made a part hereof for all purposes. The Parties acknowledge and agree that, unless otherwise clearly agreed in writing by means of a written amendment of this Contract, nothing contained in a Statement of Work shall be deemed, interpreted or otherwise construed as varying from, derogating from, adding to, or in any other way altering the essential terms and conditions of this Contract that would otherwise apply to the transaction contemplated by such Statement of Work. Accordingly, any terms for the acquisition of Services omitted from any Statement of Work, including but not limited to price, shall be obtained by reference to the applicable provisions of this Contract. In the event of an inconsistency between this Contract and any Statement of Work, the terms and conditions of this Contract shall prevail unless the Statement of Work expressly references and supersedes the conflicting provision in this Contract. Any changes or modifications made to this Contract will apply to all Statements of Work and any changes or modifications made to any Statement of Work will apply only to that Statement of Work, unless the Parties otherwise expressly agree in writing. The Parties specifically acknowledge and agree that the Contractor shall not provide Services and UNIDO shall not be bound to accept or to pay for any Services unless and until the Parties have executed a Statement of Work therefore to the Contractor, which Statement of Work fulfills all of the requirements of this Contract, including, at a minimum, those set forth in this Article 4.2. UNIDO and the Contractor shall maintain copies of all Statement of Works under this Contract which shall form an integral part of this Contract.

4.3 Amendments to Statement of Work

No modification of, or change in this Contract or any related Statement of Work, or waiver of any of its provisions shall be valid unless approved in the form of a written amendment to this Contract or the relevant Statement of Work, signed by duly authorized representatives of the Parties.

4.4 Performance

The Contractor and the Contractor Personnel shall perform the Services under this Contract with the necessary care and diligence, and in accordance with the highest professional standards. The Contractor shall cause each Deliverable and Milestone to be delivered and the Project(s) to be completed in accordance with the applicable Implementation Schedule.

4.5 Contractor Testing

The Contractor warrants and represents that each and every Deliverable and Milestone to be provided hereunder shall be delivered to UNIDO after such Deliverable and Milestone has been thoroughly tested by the Contractor, in accordance with the applicable Statement of Work and is free of any Deficiency.

4.6 Extension of Time for Performance

The Contractor acknowledges and agrees that time and timely performance in completing the Project(s) are of the essence in this Contract and that the Contractor is being compensated hereunder for such timely performance. Failure by the Contractor to deliver and implement the Project(s) in accordance with the applicable Implementation Schedule will result in expense and damage to UNIDO. In the event any Milestone set forth in an Implementation Schedule is not met, the Contractor shall not earn and UNIDO shall not be required to remit payment associated with such Milestone until such Milestone is met and such failure may result in the payment of Liquidated Damages in accordance with Article 6. In the event the Contractor anticipates a delay in the delivery of any Deliverable or Milestone in accordance with the applicable Implementation Schedule, the Contractor shall immediately notify UNIDO of the extent of such delay and the overall impact such delay may have on completing the Project in accordance with the terms hereof. In such event, UNIDO may, in its sole discretion, extend the Contractor's time to complete delivery of such Deliverables or Milestones. The Contractor shall use its best efforts to ensure that any delay in the delivery of a Deliverable or Milestone shall not result in the delay of any Deliverable or Milestone to be subsequently delivered to UNIDO hereunder.

4.7 Detailed Design Document

(a) For each Deliverable hereunder, the Contractor shall (i) identify the business requirements of UNIDO it is addressing, (ii) develop a detailed specification for such Deliverable, (iii) develop a description of the methodology and procedure to complete such Deliverable, address all issues and matters set forth in or referred to in the applicable Statement of Work at a level of detail that will allow UNIDO and the Contractor Personnel to use such Deliverables as contemplated herein, and (iv) develop Acceptance Test procedures designed to ensure such Deliverable meets applicable Acceptance Criteria (each a "Detailed Design Document"). Each of items (i) through (iv) shall be subject to the approval of UNIDO.

(b) The Detailed Design Document shall constitute a Deliverable. The Contractor shall submit the Detailed Design Document to UNIDO for Acceptance. The Contractor shall not commence work under the Detailed Design Document until such Detailed Design Document has been accepted by

UNIDO.

4.8 Training

As part of the Services, the Contractor shall provide technical and user training on-site at UNIDO as specified in the applicable Statement of Work. The Contractor shall be responsible for providing all training materials associated with the training sessions.

4.9 Service Locations

The Services shall be provided to UNIDO from (i) UNIDO Service Locations, (ii) the Contractor Service Locations, and (iii) any other location for which the Contractor has received the approval of UNIDO, to be given in the sole discretion of UNIDO. The Contractor and the Contractor Agents may not provide or market services to a third party or to itself from a UNIDO Service Location without the consent of UNIDO, to be given in the sole discretion of UNIDO.

4.10 Provision of Services

The Contractor shall directly render all Services exclusively through its employees and the Contractor Agents under its control who are authorized in accordance with this Contract. No subcontracting shall release the Contractor from its responsibility for its obligations under this Contract. The Contractor shall be responsible for the work and activities of each of the Contractor Agents, including compliance with the terms of this Contract. The Contractor shall be responsible for all payments to Contractor Agents.

4.11 Performance Targets

- (a) Performance Targets for certain of the Services shall be set forth in the Statements of Work.
- (b) The Contractor recognizes that its failure to meet a Performance Target may have a material adverse impact on the business and operations of UNIDO and that the damage from the Contractor's failure to meet a Performance Target is not susceptible of precise determination. Accordingly, in the event that the Contractor fails to meet a Performance Target, then the Contractor shall be liable to UNIDO to pay the applicable Performance Target credit set forth in the applicable Statement of Work, if any.
- (c) If the Contractor fails to provide the Services in accordance with the applicable Performance Targets, the Contractor shall, as soon as reasonably practicable, (i) perform a root cause analysis to identify the cause of such failure, (ii) provide UNIDO with a report detailing the cause of, and procedure for correcting, such failure, (iii) correct such failure, and (iv) provide UNIDO with assurance satisfactory to UNIDO that such failure shall not recur after the procedures have been completed.
- (d) The Contractor shall, on a continuous basis, as part of its total quality management process, endeavor to identify ways to improve the Performance Targets and identify proven techniques and tools that may benefit UNIDO either operationally or financially.
- (e) The Contractor shall implement the necessary measurement and monitoring tools and procedures required to measure and report the Contractor's performance of the Services against the applicable Performance Targets. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Performance Targets, and shall be subject to audit by UNIDO. Upon request by UNIDO and subject to any prohibitions or restrictions on the use or disclosure of such tools and procedures contained in the applicable license agreement, the Contractor shall provide UNIDO with information and access to such tools and procedures for purposes of verification.

4.12 Recipients

The Contractor shall provide the Services to UNIDO in accordance with this Contract. With respect to the Contractor's obligations and license grants contained in this Contract, the term "UNIDO" shall include UNIDO Headquarters and all its offices outside Headquarters.

5. IMPLEMENTATION AND ACCEPTANCE

5.1 Milestone Implementation

A Project is comprised of Deliverables grouped together in Milestones which shall be implemented in accordance with the applicable Implementation Schedule.

5.2 Milestone Acceptance and Procedure

Acceptance testing for each Milestone shall be comprised of the following procedures which shall occur in the following order:

- (i) the Contractor shall conduct all necessary testing of the particular Milestone,
- (ii) the Contractor then shall certify in writing that the Milestone meets and conforms with the Acceptance Criteria,
- (iii) UNIDO then will conduct its own acceptance test of that particular Milestone during the Acceptance Period (the "Milestone Acceptance Test") to ensure and verify that the Milestone meets and conforms with the Acceptance Criteria, and
- (iv) upon completion of the procedures described above, that meet with the sole satisfaction of UNIDO and include proper and complete incorporation of the Detailed Design Document, the particular Milestone will be accepted by UNIDO (the "Milestone Acceptance"). After Milestone Acceptance, UNIDO will notify the Contractor as soon as practicable and will pay the Contractor that portion of the payments due, if any, for completion of the applicable Milestone set forth in the Milestone and Payment Schedule set forth in the applicable Statement of Work.

5.3 Further Milestones

The process described in Article 5.2 will be repeated for each Milestone of the Project.

5.4 Final Project Acceptance

After Milestone Acceptance of the last Milestone, if the Project meets the Acceptance Criteria and the terms of this Contract, to the sole satisfaction of UNIDO, UNIDO will notify the Contractor that the Project has been successfully completed ("Final Project Acceptance").

5.5 Cure Period

- (a) If any Milestone or Deliverable thereof fails to pass the applicable Milestone Acceptance Test, then UNIDO shall contact the Contractor, specifying the nature of such failure in reasonable detail, and the Contractor shall have five (5) Business Days in which to correct the problem at its own cost after which UNIDO shall have thirty (30) Business Days to re-conduct the Milestone Acceptance Test. This process may be repeated until the applicable Milestone meets the Acceptance Criteria and is accepted by UNIDO in accordance with this Article 5.5.

(b) Notwithstanding (a) above, if, after a three (3) efforts, the Contractor is unable to correct all Deficiencies preventing Acceptance of a Milestone or a Deliverable thereof; UNIDO may at its election:

- (i) Allow the Contractor to continue its efforts to make corrections;
- (ii) Directly, or by use of a third party, make the necessary corrections or otherwise furnish the Milestone or Deliverable, and charge to the Contractor an amount equal to the costs incurred by UNIDO in making such correction or furnishing the Milestone or Deliverable itself or through a third party. UNIDO shall not be responsible for paying any portion of the amount UNIDO would have been required to pay the Contractor for the Milestone or Deliverable. In such event the Contractor will, at no additional charge to UNIDO, provide all necessary cooperation and assistance in connection with UNIDO or any third party engaged by UNIDO making the necessary corrections to, or otherwise furnishing, the Milestone or Deliverable;
- (iii) Accept the Milestone or Deliverable with its Deficiencies and reach agreement with the Contractor on an equitable reduction to the Contractor's charges for developing such Milestone or Deliverable to reflect the uncorrected Deficiencies; or
- (iv) Terminate the applicable Statement of Work or Contract in accordance with Article 19 hereof.

5.6 Deliverables

All Deliverables, whether or not such Deliverable is a product of a particular Milestone, as described above, shall meet the Acceptance Criteria and the terms of this Contract before such Deliverable will be accepted by UNIDO.

6. LIQUIDATED DAMAGES AND PERFORMANCE BANK GUARANTEE

6.1 Timely Performance of Services

The Contractor acknowledges the requirement of UNIDO that the Services be performed in accordance with the applicable Implementation Schedule specified in the Statement of Work. In particular, UNIDO will suffer both financial loss and inconvenience as a result of late performance. The Contractor therefore acknowledges that time is of the essence in relation to the performance of the Services.

6.2 Liquidated Damages

- (a) Should the Contractor be in delay without prejudice to any other rights that UNIDO may have under this Contract or otherwise, UNIDO may, at its sole option, demand liquidated damages for such delay (the "Liquidated Damages"). Such Liquidated Damages shall be set forth in the applicable Statement of Work, or, if not provided therein, in this Contract. The Parties agree and acknowledge that calculation of the damages from a breach would be difficult to estimate accurately and that the amount of the Liquidated Damages is a reasonable approximation thereof and is intended as the fair allocation and liquidation of damages and not as a penalty against the Contractor.
- (b) The Parties agree that any rights to terminate this Contract shall have no effect on the right of UNIDO to claim Liquidated Damages pursuant to this Article 6.
- (c) Liquidated Damages shall be payable by virtue of the sole fact of the delay without the need for any previous notice or any legal or arbitral proceedings, or proof of damage, which shall in all cases be considered as ascertained.
- (d) UNIDO shall have the right to deduct any Liquidated Damages to which it is entitled under the terms of this Contract from any monies due from UNIDO to the Contractor, or to recover the same

as a debt due from the Contractor.

6.3 Performance Bank Guarantee

(a) Within one (1) month following the Effective Date of this Contract, the Contractor shall provide to UNIDO, at the Contractor's sole cost and expense, a performance bank guarantee in accordance with the Form of Performance Bank Guarantee set forth in Annex E hereto, or a similar guarantee acceptable to UNIDO, in the amount of € ____ [EURO _____] with such surety or sureties as shall be approved by UNIDO in its sole discretion (the "Performance Bank Guarantee").

(b) The Performance Bank Guarantee shall serve as a security in respect of the Services hereunder to be satisfactorily and timely completed by the Contractor and shall provide for a source of compensation for any loss of or damage to UNIDO property. The Performance Bank Guarantee shall also provide a source of compensation for UNIDO for any warranties or Liquidated. Damages provided for in this Contract. If the Contractor fails to deliver the Performance Bank Guarantee to UNIDO within the time limit specified herein, UNIDO shall, without prejudice to any other rights or remedies, be entitled to withhold payment from any one or more invoices submitted by the Contractor up to the required amount of the Performance Bank Guarantee

(c) The Performance Bank Guarantee shall require the Issuer to deliver the money required by UNIDO immediately upon first written demand by UNIDO, without having to prove the liability of the Contractor. The Performance Bank Guarantee shall be enforceable without the need to have recourse to any judicial or arbitral proceedings, without any objection, opposition or recourse by the Issuer and without it being necessary to provide evidence to the Issuer of any shortcoming of or any default by the Contractor. The Performance Bank Guarantee shall not be subjected to any form of suspension by interim relief, whether by judicial or arbitral order.

(d) The Performance Bank Guarantee shall remain in force until such time as UNIDO notifies the Contractor in writing that all obligations in relation to this Contract have been fully and satisfactorily performed by the Contractor.

(e) The Performance Bank Guarantee shall be issued by a prime commercial and accredited bank acceptable to UNIDO (the "Issuer"). If the Issuer of the Performance Bank Guarantee files for bankruptcy or is declared bankrupt, becomes insolvent or is liquidated or its right to do business is suspended or terminated, the Contractor shall within five (5) Business Days thereafter provide another Performance Bank Guarantee which shall be issued by an Issuer and in a form acceptable to UNIDO. The Contractor shall have an obligation to promptly notify UNIDO in writing in the event that any of the foregoing has occurred or is likely to occur.

7. CHANGE MANAGEMENT

7.1 Project Change Request Initiation

Any request by either Party for a change in the scope of or in the nature of any Deliverables or Services shall be made in writing and in a Project Change Request form, as set forth in Annex F. The Project Change Request shall, at a minimum, specify:

- (i) The nature of the proposed change in the scope of the Services or the Deliverables affected by the Project Change Request;
- (ii) The reason for the proposed change in the scope of the Services or the Deliverables affected by the Project Change Request;
- (iii) The estimated impact, if any, of the proposed change in the scope of the Services or the Deliverables affected by the Project Change Request; and
- (iv) The estimated impact, if any, of the Fees to be paid in accordance with this Contract for the

Services or Deliverables affected by the Project Change Request.

7.2 Review of Project Change Request

Within ten (10) Business Days after receiving a Project Change Request, the receiving Party will inform the other Party in writing whether it agrees to perform (in the case of Contractor) or to agree to have performed (in the case of UNIDO) such proposed change in accordance with the Project Change Request. In case of any acceptance of such a proposed Project Change Request with conditions or with terms adding to or varying from those set forth in the proposed Project Change Request by the offering Party, the receiving Party will provide the offering Party with written specification of the conditions for acceptance of the Project Change Request or with the proposed additional or varying terms of the Project Change Request, which, at a minimum shall specify the effects of the proposed change on the scope of the Services, the Fees, and any other contractual issues that arise. The Party originally offering the Project Change Request shall then have an additional five (5) Business Days to inform the other Party in writing whether the proposed Project Change Request, including the additional or varying terms or other conditions, is acceptable.

7.3 Acceptance of Project Change Request

If a Project Change Request is accepted by both Parties, as required above, such acceptance shall be denoted by the signature of the authorized representatives of both of the Parties on the Project Change Request within three (3) Business Days, and the Project Change Request shall be deemed appended to and incorporated into the applicable Statement of Work. The Parties shall ensure that the Project Change Request is signed by duly authorized representatives of the Parties in order to become a legally binding amendment to the applicable Statement of Work

7.4 Continued Performance

The Parties acknowledge and agree that they will continue to perform their respective obligations under this Contract as initially agreed in the original Statement of Work for Services until any Project Change Request has become effective in accordance with the provisions of Article 7.3 above. Unless the Project Change Request fully signed by the authorized representatives of UNIDO has become effective in accordance with the provisions of Article 7.3 above, the Parties shall perform their respective obligation as initially agreed in the Statement of Work before the proposed Project Change Request.

7.5 Changes to Implementation Schedule

The Parties shall adjust any Implementation Schedule in the Statement of Work to accommodate any changes required thereto as a result of any Project Change Request that becomes effective in accordance with the provisions of Article 7.3 above.

8. GOVERNANCE, REPORTS AND MEETINGS

8.1 Governance

The Contractor and UNIDO shall jointly implement a governance structure and governance procedures. All governance meetings will be hosted at a time and location acceptable to UNIDO. UNIDO may replace or reassign its governance committee members upon notice to the Contractor. The Contractor shall not replace or reassign its governance committee members

unless UNIDO consents to such replacement or reassignment. Before assigning an individual to a governance committee, the Contractor shall notify UNIDO of the proposed assignment, introduce the individual to appropriate personnel of UNIDO, provide UNIDO with any information regarding the individual that may be reasonably requested by UNIDO, and obtain the approval of UNIDO for such assignment.

8.2 Reports

The Contractor shall provide UNIDO with reports pertaining to the performance of the Services and the Contractor's other obligations under this Contract sufficient to permit UNIDO to monitor and manage the Contractor's performance ("Reports"). The Reports to be provided by the Contractor shall include those described in Annex G and in the applicable Statement of Work in the format and at the frequencies provided therein. In addition, from time to time, UNIDO may identify additional Reports to be generated by the Contractor and delivered to UNIDO on an ad-hoc or periodic basis. All Reports shall be provided to UNIDO as part of the Services and at no additional charge to UNIDO. All Reports shall be provided in electronic form both in pdf (with signatures of the Contractor's authorized officials) and MS Word formats.

8.3 Back-Up Documentation

As part of the Services, the Contractor shall provide UNIDO with such documentation and other information available to the Contractor as may be reasonably requested by UNIDO from time to time in order to verify the accuracy of the Reports provided by the Contractor. In addition, the Contractor shall provide UNIDO with all documentation and other information reasonably requested by UNIDO from time to time to verify that the Contractor's performance of the Services is in compliance with this Contract.

8.4 Meetings

During the Term, representatives of the Parties shall meet regularly and as requested by UNIDO to discuss matters arising under this Contract. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings. Such meetings shall include, at a minimum, the following:

- (i) A daily and/or weekly operational review meeting;
- (ii) A periodic meeting at least monthly of an "operational management committee" (including at least UNIDO Project Manager and the Contractor Account Executive) to review performance and monthly reports, planned or anticipated activities and changes that might impact performance, and such other matters as appropriate;
- (iii) A quarterly management meeting to review the Contractor's overall performance under this Contract, review progress on the resolution of issues, and discuss such other matters as appropriate; and
- (iv) Such other meetings of UNIDO and the Contractor, including senior management of the Contractor, as UNIDO may reasonably request.

9. REVIEW: IMPROPER PERFORMANCE

9.1 Review of Services

UNIDO reserves the right to review all Services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract.

UNIDO shall perform such review in a manner that will not unduly hinder the performance of the Services by the Contractor. The Contractor shall cooperate with all such reviews by UNIDO, at no cost or expense to UNIDO.

9.2 Non-Conformance

If any Services performed by the Contractor do not conform to the requirements of this Contract, without prejudice to and in addition to any of the other right and remedies of UNIDO under this Contract or otherwise, UNIDO shall have the following options, to be exercised in its sole discretion:

- (i) If UNIDO determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, UNIDO may request the Contractor in writing to take, and the Contractor shall take, at no cost or expense to UNIDO, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed Services within [] Business Days of receipt of the written request from UNIDO or within such shorter period as UNIDO may have specified in the written request if emergency conditions so require, as determined by UNIDO in its sole discretion;
- (ii) If the Contractor does not promptly take corrective measures or if UNIDO reasonably determines that the Contractor is unable to remedy the improper performance in a timely manner, UNIDO may obtain the assistance of other entities or persons and have corrective measures taken at the cost and expense of the Contractor. In addition, in the event of UNIDO must obtain the assistance of other entities or persons, the Contractor shall cooperate with UNIDO and such entity or person in the orderly transfer of any Services already completed by the Contractor;
- (iii) If UNIDO, in its sole discretion, determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, UNIDO may terminate the applicable Statement of Work or this Contract in accordance with Article 19 without prejudice to and in addition to any of its other rights and remedies under this Contract or otherwise.

10. COMPLIANCE WITH LAWS, AUTHORIZATIONS, CONSENTS

10.1 Compliance with Laws

In addition to the Contractor's obligation under Article 14 of the UNIDO General Conditions, the Contractor shall be aware of and shall comply with all applicable international standards and local labor laws, ordinances, rules and regulations pertaining to the employment of local and international staff in connection with the Services in the countries described in the Statements of Work, including, without limitation, regulations associated with the payment of the employer's portions of income tax, insurance, social security or other similar payments.

10.2 Regulatory Approvals and Export Controls

- (a) The Contractor shall be responsible, at its own cost, for obtaining and maintaining all necessary regulatory approvals by any international, national, or local authority as are required in connection with the Services to be provided under this Contract. However, in the event that any such authority requires, without prejudice to the privileges and immunities of UNIDO as may be applicable, that UNIDO rather than the Contractor shall obtain or maintain such approvals, then the Contractor shall assist UNIDO in preparing all necessary submissions to the authority concerned.
- (b) In the event that a governmental authority fails to recognize UNIDO's exemption from export restrictions, the Contractor shall cooperate with UNIDO to determine a mutually acceptable solution.

10.3 Changes in Law and Regulations

(a) The Contractor shall promptly identify and notify UNIDO of any changes in the law applicable to the Contractor that may relate to the provision of the Services. The Contractor and UNIDO shall work together to identify the impact of such changes on how UNIDO uses, and the Contractor provides, the Services (including whether the impact on the provision of the Services has any impact on the Fees).

(b) The Contractor shall perform the Services regardless of changes in the law applicable to the Contractor; provided, however, that the Contractor shall not be required to violate any such law. If such changes prevent the Contractor from performing its obligations under this Contract, the Contractor shall develop and, upon the approval of UNIDO, implement a suitable work-around until such time as the Contractor can perform its obligations under this Contract without such work-around; provided, however, that if any change in the law applicable to the Contractor or work-around results in an increase in the Fees to UNIDO under this Contract, UNIDO can terminate the affected portion of the Services without payment of any kind due to the Contractor for such termination and the Parties shall negotiate and implement an equitable adjustment to the applicable Fees.

10.4 Consents

The Contractor shall, at its own cost and expense, obtain, maintain and comply with the Consents. If the Contractor is unable to acquire a Consent despite using its best efforts to do so, the Contractor shall implement, at its cost and expense, and subject to the prior approval of UNIDO, alternative methods as necessary to provide the Services in accordance with this Contract without such Consent.

11. CONTRACTOR PERSONNEL**11.1 Contractor Account Executive**

The Contractor shall appoint an individual (the "Contractor Account Executive") who from the Effective Date of this Contract shall serve, on a full-time basis, as the primary Contractor representative under this Contract. The Contractor's appointment of any Contractor Account Executive shall be subject to the prior approval of UNIDO. The Contractor Account Executive shall (i) have overall responsibility for managing and coordinating the performance of the Contractor's obligations under this Contract, and (ii) be authorized to act for and on behalf of the Contractor with respect to all matters relating to this Contract.

11.2 Contractor Project Manager(s)

The Contractor shall appoint an individual (the "Contractor Project Manager") who will serve as the primary point of contact for UNIDO for each Project. The Contractor Project Manger(s) shall be based on-site at UNIDO during such periods as required by UNIDO. Each Contractor Project Manger shall oversee and manage the performance of the Contractor's obligations regarding the applicable Project, including but not limited to:

- (i) technical leadership in all aspects of the Project,
- (ii) supervision of the Contractor Personnel and coordination of the Contractor and UNIDO personnel,
- (iii) ensuring that all Deliverables, Milestones and tasks are achieved by their Completion Date and that the Project is completed in accordance with the Implementation Schedule,
- (iv) ensuring that all Deliverables satisfy the requirements of the Acceptance Criteria,

- (v) coordinating turnover of all Deliverables and Milestones to UNIDO,
- (vi) administering and processing Project Change Requests,
- (vii) using reasonable efforts to attend all Project status meetings, and
- (viii) helping resolve Project issues and escalating issues within the Contractor or UNIDO as necessary.

11.3 Contractor Personnel Agreements

All contracts for the Contractor Personnel shall provide that (i) UNIDO is not liable to any such Personnel under any such contract or for any reason and (ii) the term of such contract is subject to termination in the event of expiration or termination of this Contract. UNIDO reserves the right to review all such contracts upon request.

11.4 Key Contractor Personnel

Without limiting and further to Article 3 (Responsibility for Employees) of the UNIDO General Conditions, the Parties agree as follows:

- (i) All Key Contractor Personnel shall be dedicated to the UNIDO account on a full-time basis unless otherwise specified in the applicable Statement of Work.
- (ii) The Contractor shall maintain backup procedures and conduct replacement procedures for Key Contractor Personnel as necessary to assure an orderly succession for Key Contractor Personnel removed from the account for any reason. Upon request of UNIDO, the Contractor shall make such procedures available to UNIDO.

11.5 Turnover of Project Staff

UNIDO and the Contractor agree that it is in their best interests to minimize the turnover rate of the Contractor Personnel ("Turnover Rate"). Accordingly, the Contractor shall use all reasonable efforts to keep the Turnover Rate to a level acceptable to UNIDO. If UNIDO notifies the Contractor that the Turnover Rate is not acceptable, the Contractor shall as soon as reasonably practicable:

- (i) provide to UNIDO sufficient data to establish the actual extent of the Turnover Rate including, in particular, the Turnover Rate among Key Contractor Personnel;
- (ii) meet with UNIDO to discuss the impact of the level of the Turnover Rate; and
- (iii) submit to UNIDO a proposal for reducing the Turnover Rate, which, once agreed in writing between UNIDO and the Contractor, shall form part of this Contract.

12. CONTRACTOR RESPONSIBILITIES

12.1 Resources

Except as expressly provided otherwise in this Contract, the Contractor shall provide, at its own expense, all personnel, equipment, supplies, materials, tools, transportation and other facilities necessary for delivering the Services and otherwise meeting its obligations under this Contract. The Contractor acknowledges that UNIDO shall have no obligation to provide any assistance to the Contractor in performing the Services other than as expressly set forth herein.

12.2 Improved Technology

In providing the Services to UNIDO, the Contractor shall

- (a) identify opportunities to implement new technologies and methodologies advantageous to the business operations of UNIDO and, upon the approval of UNIDO, implement such technologies and methodologies,
- (b) maintain a level of technology used to provide the Services that (i) allows UNIDO to take advantage of technological advances in order to remain competitive, (ii) is at least current with the level of technology that the Contractor uses in providing services to its other customers, and (iii) is at least current with the level of technology generally adopted from time to time in UNIDO or in similar international intergovernmental organizations, and
- (c) meet with UNIDO periodically, at least once during every one hundred and eighty (180) day period (and more often if appropriate due to changes or improvements in the information technology industry or any technology relating to the Services), in accordance with procedures agreed by the UNIDO Account Executive, to inform UNIDO of any new information processing technology the Contractor is developing or information technology trends and directions of which the Contractor is otherwise aware that could reasonably be expected to have an impact on UNIDO or the business operations of UNIDO.

12.3 Cooperation with Third Parties

UNIDO may from time to time hire UNIDO Agents to perform services or provide products to UNIDO. The Contractor shall cooperate with and work in good faith with any UNIDO Agents as requested by UNIDO, including by providing the following:

- (i) in writing, to the extent available, applicable requirements, standards and policies applicable to the Services so that the goods and services provided by UNIDO Agent may work in conjunction with or be integrated with the Services;
- (ii) in writing, the applicable requirements of any required interfaces for the UNIDO Agent's work product;
- (iii) the Contractor's quality assurance, and its development and performance acceptance testing, for UNIDO Agent's work product;
- (iv) assistance and support services to UNIDO, UNIDO Agent or any other third party, including the Contractor's participation as required to permit the Contractor, UNIDO, UNIDO Agents or any other third party to acquire the knowledge necessary to efficiently operate and maintain UNIDO Agent's work product; and
- (v) access to the Software, equipment and facilities used to provide the Services, to the extent that such access is required for the services provided by the UNIDO Agent.

12.4 Accidents, Theft, Loss of Equipment

The Contractor shall promptly report any accidents, theft or loss of equipment or other property used by the Contractor for delivering the Services under this Contract, or other incidents of a similar nature to UNIDO. In addition, the Contractor shall cooperate with all investigations into such accidents, theft or loss of equipment or other property, or other incidents, which may be institute by UNIDO and/or governmental or other authorities.

13. UNIDO RESOURCES

13.1 UNIDO Project Manager

UNIDO shall appoint an individual (the "UNIDO Project Manager") who from the Effective Date of this Contract shall serve as the primary UNIDO representative under this Contract. The UNIDO Project Manager shall (a) have overall responsibility for managing and coordinating the performance of the obligations of UNIDO under this Contract and (b) be authorized to act for and on behalf of UNIDO with respect to all matters relating to this Contract. Notwithstanding the foregoing, the UNIDO Project Manager may, upon notice to the Contractor, delegate such of his or her responsibilities to other UNIDO employees as the UNIDO Project Manager deems appropriate. UNIDO may replace the UNIDO Project Manager upon notice to the Contractor.

13.2 UNIDO Personnel

UNIDO will provide the Contractor reasonable and timely access to UNIDO personnel as may be reasonably required by the Contractor for performing the Services.

13.3 Equipment and Supplies

(a) If UNIDO provides the Contractor with any UNIDO equipment or supplies, the Contractor shall use such equipment and supplies solely for purposes of performing the Services. Any other use by the Contractor of any other UNIDO equipment or supplies is prohibited.

(b) The Contractor shall be responsible and accountable to UNIDO for equipment or supplies provided by UNIDO or purchased with funds provided or to be reimbursed by UNIDO. The Contractor shall take reasonable measures to preserve such equipment or supplies from loss or damages until returned to UNIDO.

(c) UNIDO and UNIDO Agents shall have access at all reasonable times to the premises in which any UNIDO equipment or supplies are located for the purposes of inspecting such equipment or supplies.

(d) Within [] Business Days of the Effective Date, UNIDO shall provide a list of UNIDO equipment and supplies which UNIDO intends to make available for use by the Contractor in performing this Contract. At such time, the Contractor's duly authorized representative and the representative or agent of UNIDO shall conduct a joint inspection of such equipment and supplies to determine the quantity, working order and condition of the equipment and supplies. Items missing or not in working order shall be recorded. UNIDO may replace missing items or repair items not in working order. The Contractor's duly authorized representative and the representative or agent of UNIDO shall sign this list, indicating their agreement as to the condition of UNIDO-furnished equipment and supplies, and the list shall thereupon become part of this Contract. This list may be updated from time to time during the Term of this Contract and shall as so updated become part of this Contract. If the Contractor does not participate in the inspection of UNIDO-furnished equipment and supplies mentioned above, the Contractor shall accept the listing provided by UNIDO. No later than [] Business Days prior to the expiration or termination of this Contract, or when such equipment and supplies are no longer needed by the Contractor, the Contractor and the representative or agent of UNIDO shall conduct a joint inspection of UNIDO-furnished equipment and supplies to determine the quantity, working order and condition of the equipment and supplies. The Contractor shall replace missing items and repair or maintain items not in working order, subject to normal wear and tear, before returning them to UNIDO and before the expiration or termination of this Contract.

(e) Subsequent issue of equipment or supplies by UNIDO to the Contractor shall only be effected to a duly authorized representative of the Contractor who shall acknowledge receipt in writing of such equipment or supplies.

13.4 Use of UNIDO Facilities

If UNIDO grants the Contractor access to any UNIDO Service Location, such access shall be solely for purposes of performing the Services. Use of such location by the Contractor does not constitute a leasehold interest in favor of the Contractor or any Contractor Agents. The Contractor shall comply with the following obligations:

- (i) The Contractor and the Contractor Agents shall comply with the requirements related to UNIDO Service Locations contained in this Contract;
- (ii) The Contractor and the Contractor Agents shall use UNIDO Service Locations in an efficient manner. To the extent that the Contractor or the Contractor Agents operate in arch areas in a manner that unnecessarily increases facility costs incurred by UNIDO, UNIDO reserves the right to set-off such increased costs;
- (iii) The Contractor and the Contractor Agents shall keep UNIDO Service Locations in good order, not commit or permit waste or damage to such facilities, not use such facilities for any unlawful purpose or act;
- (iv) The Contractor and the Contractor Agents shall permit UNIDO and UNIDO Agents to enter into those portions of UNIDO Service Locations occupied by the Contractor Personnel at any time to perform facilities-related services, conduct audits in accordance with the Contract, and otherwise as requested by UNIDO;
- (v) The Contractor and the Contractor Agents shall not make any improvements or changes involving structural, mechanical or electrical alterations to UNIDO Service Locations without the written approval of UNIDO. Any such improvements or changes shall become the property of UNIDO or its lessors;
- (vi) When the Contractor no longer requires space in UNIDO Service Locations to perform the Services, the Contractor shall return such space to UNIDO in substantially the same condition as when the Contractor began using such space, subject to ordinary wear and tear; and
- (vii) the Contractor shall at all times keep the premises free of accumulation of waste materials or rubbish caused by its operations. At the completion of the Services, the Contractor shall remove all its waste materials, rubbish, tools, equipment, machinery and surplus materials from and about the premises. If the Contractor fails to clean up the premises upon the completion of the Services, UNIDO may do so, and the Contractor shall be liable for the costs thereof.

13.5 Policies and Procedures

UNIDO shall inform and, to the extent necessary, update the Contractor of its security regulations, policies and procedures. UNIDO shall provide the Contractor Personnel with the necessary security passes and access to areas necessary for the performance of this Contract.

14. LICENSES**14.1 Contractor Software and Methodologies**

- (a) The Contractor shall provide UNIDO with access to the Contractor Software and Contractor Methodologies during the Term and Termination Assistance Period.
- (b) Prior to using any Contractor Software or Methodologies to provide the Services, the Contractor shall: (i) submit such Software or Methodologies to UNIDO for review and approval of such Software or Methodologies and its use, (ii) with respect to the Contractor Third Party Software and Contractor Third Party Methodologies, use all reasonable efforts to obtain from the applicable

third party the right to assign to UNIDO at no cost the applicable license agreement, and (iii) if the Contractor is unable to obtain such right, notify UNIDO of the approximate cost of obtaining such right or obtaining a separate license to such Software or Methodologies.

(c) The Contractor hereby grants to UNIDO, during the Term and Termination Assistance Period, in connection with the receipt and use of the Services, a global, fully-paid up, non-exclusive, non-transferable, license to (i) Use the Contractor Proprietary Software and the Contractor Proprietary Methodologies, and (ii) Use, to the extent permissible under the applicable third party agreements, the Contractor Third Party Software and the Contractor Third Party Methodologies in the Contractor's possession on or after the Effective Date. UNIDO may permit, to the extent permissible under applicable third party agreements, UNIDO Agents to Use the Contractor Software and the Contractor Methodologies in connection with the receipt and use of the Services. Upon the request of UNIDO, the Contractor shall provide UNIDO with a list of all the Contractor Software and the Contractor Methodologies being used to provide the Services as of the date of such request. Except as is otherwise expressly provided herein, the Contractor shall own all rights in the Contractor Software and the Contractor Methodologies. All rights not expressly granted to UNIDO in this Contract with respect to the Contractor Software and the Contractor Methodologies are reserved to the Contractor.

14.2 Exit Rights

(a) Upon the request of UNIDO at any time during the Termination Assistance Period, the Contractor shall grant to UNIDO, at no cost to UNIDO, a global, perpetual, irrevocable, fully paid-up, non-exclusive, non-transferable license to Use, and sublicense to third parties to Use, in connection with the use by UNIDO, provision (to itself) or receipt from its agents of services similar to the Services, any or all the Contractor Proprietary Software and the Contractor Proprietary Methodologies used to provide the Services as of the time of the request of UNIDO, or, if such request is made after the last day of the Term, used to provide the Services as of the last day of the Term, in each case as requested by UNIDO. The Contractor shall deliver to UNIDO a copy of the foregoing upon the request of UNIDO. Upon the request of UNIDO, the Contractor shall provide to UNIDO support and maintenance services for any Contractor Proprietary Software or Contractor Methodologies licensed under this Article on terms, conditions, and prices agreed upon by the Contractor and UNIDO, as applicable, which shall in no event be less favorable to UNIDO than the Contractor's most favorable terms, conditions, and prices for such services provided to similar customers.

(b) Upon the request of UNIDO at any time during the Termination Assistance Period, with respect to the Contractor Third Party Software and Methodologies used to provide the Services as of the time of the request of UNIDO, or, if such request is made after the last day of the Term, then used to provide the Services as of the last day of the Term, the Contractor shall, and shall cause the Contractor Agents to, (i) assign to UNIDO at the option of UNIDO, the license agreements for which the Contractor obtained assignment rights pursuant to Article 14.2 applicable to such Software and Methodologies, and (ii) use best efforts to transfer, assign or sublicense all the Contractor Third Party Software and Methodologies not subject to assigned agreements under clause (i) above to UNIDO at no cost such that (A) UNIDO may Use, and sublicense to third parties the right to Use, such Software and Methodologies in connection with the use by UNIDO, provision (to itself) or receipt from its agents of services similar to the Services, or (B) its agents may Use, and sublicense to third parties the right to Use, such Software and Methodologies in connection with the provision of services similar to the Services to UNIDO. Upon the request of UNIDO, the Contractor shall assist UNIDO in obtaining directly from third parties any Software or substitute therefor for which UNIDO does not assume the applicable third party agreements.

(c) Upon the request of UNIDO, with respect to any Software or Methodologies used to provide the Services as of the time of the request of UNIDO, or, if such request is made after the last day of the Term, then used to provide the Services as of the last day of the Term, and that the Contractor or the Contractor Agents operate on equipment located at one or more of the Contractor Service Locations, the Contractor shall, and shall cause the Contractor Agents to, provide to UNIDO remote access to and

use of such Software and Methodologies together with all hosting, maintenance, support and other services required for UNIDO to use such Software and Methodologies to enable UNIDO to receive services similar to the Services after the last day of the Term, all on terms, conditions, and prices agreed upon by the Contractor and UNIDO, which shall in no event be less favorable to UNIDO than the Contractor's then-current standard terms, conditions, and prices for such services provided to similar customers.

14.3 Source-Code Escrow

Upon the request of UNIDO, the Contractor shall deposit the source code to the Contractor Proprietary Software and the Contractor Proprietary Methodologies with a third party escrow agent selected by UNIDO to be held, released to UNIDO, and licensed to UNIDO in accordance with an escrow agreement agreed by the Parties.

15. FEES

15.1 Fees

In full consideration for the complete, satisfactory and timely performance by the Contractor of all its obligations under a Statement of Work, UNIDO will pay the Contractor the fees set forth in the applicable Statement of Work ("Fees"). Such Fees shall not exceed € ____ [EURO ____] (the "Maximum Contract Price"). The Contractor shall not do any work, or render or perform any Services which would result in any payment by UNIDO of any amount in excess of the Fees. In no event shall UNIDO be obliged to pay the Contractor any money in excess of the Fees, except on the basis of a written amendment to the specific Statement of Work and associated requirement, nor shall the Contractor be required to perform any Services in excess of those indicated in the Statement of Work, except pursuant to a Project Change Request and a Statement of Work amended in accordance with this Contract. The Fees include all taxes, insurance, duties, levies, and other charges of any nature imposed by any authority or entity.

15.2 Payments

Payments under this Contract shall be made to the Contractor thirty (30) Business Days from (i) receipt by UNIDO of the Contractor's written invoice and supporting documentation and (ii) certification by UNIDO that the Services represented by the invoice have been satisfactorily completed, unless UNIDO disputes the invoice or a portion thereof. Payments shall be made by [description of payment instructions]. Payments made in accordance with this Article shall constitute a complete discharge of the obligations of UNIDO with respect to the relevant invoices or portions thereof. Payments effected by UNIDO to the Contractor shall not relieve the Contractor of its obligations under this Contract and shall not be deemed to be acceptance by UNIDO of the Contractor's performance.

15.3 Invoicing

All payments made by UNIDO to the Contractor shall be payable by UNIDO only in response to the Contractor's original and accurate invoices submitted in accordance with this Article 15. The Contractor's invoices shall contain, at a minimum, this Contract number and a complete description of the item provided or the Services performed in accordance with this Contract. The Contractor shall be solely responsible for ensuring that all supporting documentation sufficient for UNIDO to identify the payment requested in relation to the relevant provisions of this Contract accompanies each invoice, or is available upon the request of UNIDO. The Contractor shall submit its invoices to: _____.

15.4 Fee Disputes

The Contractor acknowledges and agrees that UNIDO may withhold payment in respect of any invoice in the event that, in the opinion of UNIDO, the Contractor has not performed its obligations in accordance with the terms and conditions of this Contract, or if the Contractor has not provided sufficient documentation in support of the invoice. If UNIDO disputes any invoice or a portion thereof, UNIDO shall notify the Contractor accordingly, including a brief explanation of why UNIDO disputes the invoice or portion hereof. With respect to disputes regarding only a portion of the invoice, UNIDO shall pay the Contractor the amount of the undisputed portion in accordance with Article 15.2 above. UNIDO and the Contractor shall consult in good faith to promptly resolve outstanding issues with respect to any disputed invoice. Once a dispute regarding an invoice or a portion thereof has been resolved, UNIDO shall pay the Contractor the relevant amount within twenty (20) Business Days from the resolution of such dispute.

15.5 No Interest Payments

The Contractor shall not be entitled to interest on any late payment for any sums payable under this Contract nor any accrued interest on payments withheld by UNIDO that are subject to dispute.

15.6 Set-Off

In addition to any other rights and remedies available to it, UNIDO shall have the right, without prior notice to the Contractor, any such notice being waived by the Contractor, upon any amounts becoming due and payable hereunder to the Contractor, to set-off any payment, indebtedness or other claim (including, without limitation, any overpayment made by UNIDO to the Contractor and any claims for damage to or loss of UNIDO property made available to or in care of the Contractor) owing by the Contractor to UNIDO hereunder or under any other agreement between the Parties. UNIDO shall promptly notify the Contractor of such set-off and the reasons therefore, provided, however, that the failure to give such notice shall not affect the validity of such set-off.

15.7 Benchmarking

(a) UNIDO shall have the right, but not the obligation, at any time to conduct a measurement and comparison benchmarking process to compare the Fees applicable under this Contract to industry standards ("Benchmarking"). UNIDO may utilize any entity of its choice for conducting such measurements and comparisons to perform the Benchmarking (the benchmark service provider selected by UNIDO is referred to herein as the "Approved Benchmarker"). The services used by the Approved Benchmarker for such comparison shall be those provided to another third party of a similar nature, breadth and volume as those provided hereunder ("Comparison Services"), and will be normalized as described below. The Benchmarking will occur in times and intervals as requested by UNIDO. The Approved Benchmarker will be engaged by both Parties, and UNIDO and the Contractor will equally split the fees and expenses charged by the Approved Benchmarker for each Benchmarking. The agreement with the Approved Benchmarker will include reasonable confidentiality and security provisions that are binding on the Approved Benchmarker.

(b) The Approved Benchmarker will normalize the Benchmarking results with a view to achieving as close to a reasonable like-to-like comparison as possible, considering material distinguishing characteristics including but not limited to:

- (i) the size, scope and term of the contracts,
- (ii) the locations where UNIDO receives the services,

- (iii) special industry characteristics relevant to UNIDO, if any,
 - (iv) volumes,
 - (v) performance standards, and
 - (vi) pricing.
- (c) If the Approved Benchmarker cannot obtain comparative information on any particular material distinguishing characteristics, the Approved Benchmarker will take the omission of such information into account in its best professional judgment.
- (d) The Approved Benchmarker will provide to the Contractor and UNIDO a copy of the Approved Benchmarker's report. If a Benchmarking indicates that the Contractor's pricing for the benchmarked Services is higher than the mean of the pricing established by the Benchmarking, the Contractor shall promptly (and in any event within thirty (30) Business Days after receipt of the Approved Benchmarker's report), submit a plan and schedule to UNIDO for the review and approval by UNIDO, with a view to decreasing the Fees so that such changes, taken together, will reflect the pricing established by the Benchmarking. Fee decreases, if any, will be effective according to the approved plan and schedule.
- (e) If the Contractor fails to submit a plan and schedule to UNIDO in accordance with Article 15.8 (d), or if following the Contractor's submission of such plan and schedule the Parties are unable to agree upon decreases in Fees as set forth in Article 15.8 (d) within sixty (60) Business Days after submission of the Approved Benchmarker's report to UNIDO and the Contractor, UNIDO may terminate the benchmarked Services, and other Services that are interrelated with the benchmarked Services.

16. RECORD RETENTION

16.1 Record Retention

The Contractor shall segregate its books and maintain separate and complete records relating to this Contract and the Services, including, without limitation, [list of required documents]. The Contractor shall retain records and supporting documentation sufficient to satisfy the requirements set forth in this Article and to document the Services and the Fees paid or payable by UNIDO under this Contract in accordance with the retention policies and procedures of UNIDO as in effect from time to time, and in any event for at least seven (7) years after the later of (i) the termination or expiration of this Contract and (ii) the end of the Termination Assistance Period. Upon expiration or termination of this Contract, the Contractor shall deliver copies of these records in full to UNIDO, if requested.

17. REPRESENTATIONS, WARRANTIES AND COVENANTS

17.1 By UNIDO

UNIDO represents and warrants that:

- (a) UNIDO is an international, inter-governmental organization founded by its Member States pursuant to the Constitution of UNIDO, which entered into force on 21 June 1985; and
- (b) UNIDO has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by UNIDO has been duly authorized.

17.2 By the Contractor

The Contractor represents and warrants that:

- (a) the Contractor is a corporation duly incorporated, validly existing and in good standing under the laws and regulations of _____.
- (b) the Contractor has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor and shall not conflict with, result in a breach of, or constitute a default under any other agreement to which the Contractor is a party or by which the Contractor is bound;
- (c) the Contractor is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract;
- (d) the Contractor is in compliance with all laws applicable to the Contractor's obligations under this Contract and has obtained all applicable permits and licenses required of the Contractor in connection with its obligations under this Contract;
- (e) there is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract,
- (f) neither the Services, nor any patented device, copyrighted materials, or any other goods, property or services provided or licensed to UNIDO under the terms of this Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefore, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party, and the Contractor is not aware of any facts upon which such a claim of infringement could be made; and
- (g) the Contractor and the Contractor Agents have full power and authority to grant UNIDO the rights granted herein without the consent of any other party and any materials developed or furnished by the Contractor and the Contractor Agents to UNIDO are free of any and all restrictions, settlements, judgments or adverse claims.

18. ADDITIONAL COVENANTS**18.1 By the Contractor**

The Contractor covenants and agrees with UNIDO that during the Term and the Termination Assistance Period:

- (a) the Contractor shall provide the Services with promptness, diligence and in a professional manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services, and the Contractor shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services;
- (b) the Contractor shall comply with all the laws applicable to the Contractor in the performance of this Contract and shall obtain all applicable permits and licenses required of the Contractor in connection with its obligations hereunder;
- (c) neither the Services, nor any patented device, copyrighted materials, or any other goods, property or services provided or licensed to UNIDO under the terms of this Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefore, or otherwise specifically approved by the Contractor, constitutes an infringement of any

patent, copyright, trademark, or other intellectual property right of any third party;

(d) the Deliverables shall perform in accordance with the Detailed Design Document and other Acceptance Criteria, including the warranties set forth herein for a period of _____ from the date of Final Project Acceptance;

(e) the Contractor shall use all reasonable efforts to prevent the introduction of viruses, trojan horses, worms, spyware or similar items into the Software or equipment, provided that in the event a virus or similar item is found to have been introduced into the Software or equipment the Contractor shall use its best efforts to mitigate the effects of the virus or similar item and, if the virus or similar item causes a loss of operational efficiency or loss of data, mitigate and restore such losses;

(f) the Contractor shall not insert into the Software used to provide the Services any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services. With respect to any disabling code that may be part of the Software, the Contractor shall not invoke such disabling code at any time (whether during or after the Term) for any reason. If at any time the licensor of any Contractor Third Party Software shall invoke or threaten to invoke any disabling code in the Contractor Third Party Software licensed to the Contractor which could adversely affect the Services, the Contractor shall use its best efforts to preclude such action on the part of such licensor;

(g) neither the Contractor nor any Contractor Agents shall make any unauthorized representations on behalf of UNIDO or about UNIDO, nor commit or bind UNIDO other than as specifically authorized in writing; and

(h) any work product shall be free from defects in materials, design, and workmanship, and in conformance with any applicable documentation, manuals, specifications or requirements.

19. TERM AND TERMINATION

19.1 Effective Date and Term

This Contract shall become effective as and from the date that this Contract has been signed by the Parties hereto (the "Effective Date"). If this Contract is signed on different dates by the authorized representatives of the Parties, then the Effective Date shall be the latter date on which it has been signed by both Parties. The term of this Contract shall be for the period of three (3) years with possibility of extension at UNIDO's sole discretion

19.2 Extension of Term

Pursuant to a written amendment of this Contract concluded by the Parties, this Contract may be extended for additional periods, to be agreed upon between the Parties, on the same terms and conditions as set forth herein. If the term of this Contract is extended by means of such an amendment, then references to the "Term" of this Contract herein shall be interpreted to include such an extended period.

19.3 Termination

This Contract may be terminated in case of occurrence of any of the following events:

(a) Either Party may terminate this Contract for cause, in whole or in part, upon thirty (30) Business Days' notice, in writing, to the other Party. The initiation of arbitral proceedings in accordance with the provisions herein shall not be deemed a termination of this Contract;

(b) UNIDO may terminate forthwith this Contract at any time should the mandate or the funding of UNIDO be curtailed or terminated, in which case the Contractor shall be reimbursed by UNIDO for all reasonable costs incurred by the Contractor prior to the receipt of the notice of termination;

(c) In the event of any termination by UNIDO under this Article, no payment shall be due from

UNIDO to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract;

(d) Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a receiver be appointed on account of the insolvency of the Contractor, UNIDO may, without prejudice to any other right or remedy it may have under the terms of this Contract, terminate this Contract forthwith. The Contractor shall immediately inform UNIDO of the occurrence of any of the above events;

(e) All other events as provided for in the UNIDO General Conditions.

19.4 Termination of Statement of Work

Unless otherwise provided for in this Contract, termination rights applicable to a specific Statement of Work shall be set forth in such Statement of Work.

20. SUSPENSION OF CONTRACT, TERMINATION ASSISTANCE AND EXIT RIGHTS

20.1 Suspension of Contract

Notwithstanding any other rights under this Contract, UNIDO, in its sole discretion, may at any time during the term of this Contract suspend the Contract upon _____ Business Days written notice to the Contractor [insert description of payment obligations in the event of suspension].

20.2 Termination Assistance

Upon the request of UNIDO at any time during the Termination Assistance Period, the Contractor shall provide, and shall cause the Contractor Agents to provide, all necessary assistance to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to UNIDO during the Termination Assistance Period, including the Termination Assistance Services, regardless of the reason for the termination, expiration or cessation of Services. The quality and level of performance of the Services during the Termination Assistance Period shall be consistent with the quality and level of performance of the Services during the Term generally.

20.3 Payment

The Fees include all Termination Assistance Services provided by the Contractor during the Term, and the Contractor shall not charge UNIDO any variable or other fees for such services. For Termination Assistance Services provided by the Contractor after the last day of the Term, the Contractor shall provide such services (a) in the case of Termination Assistance Services that are Services, at the rates in effect for such Services immediately prior to termination or expiration of the Contract and (b) for Termination Assistance Services for which no rates exist immediately prior to such termination or expiration, at the Contractor's standard commercial rates then in effect, subject to discounts consistent with the discounts applied under this Contract or the Contractor's most favorable rates for similarly situated customers for all other services, whichever is lower. Termination Assistance Services provided after the last day of the Term shall be subject to the provisions of this Contract as such provisions would have been applicable to the Services prior to the effective date of termination or expiration. After the expiration of the Termination Assistance Period, the Contractor shall (i) answer questions from UNIDO regarding the Services at the applicable time and materials rates for such services set forth in this Contract and (ii) deliver to UNIDO any remaining UNIDO-owned reports and documentation still in the Contractor's possession.

21. ALTERNATE SOURCE, ALLOCATION OF RESOURCES**21.1 Alternate Source**

If the performance of all or a portion of the Services is prevented, hindered or delayed for more than _____ (___) Business Days, UNIDO may procure the affected Services from an alternate source and the Contractor shall reimburse UNIDO for the costs and expenses incurred by UNIDO in procuring such Services. If the performance of all or a portion of the Services is prevented, hindered or delayed for more than ____ (___) Business Days, UNIDO, at its sole discretion, may (a) terminate any portion of this Contract or a Statement of Work affected by the non-performance, hindrance or delay; or (b) terminate this Contract or a Statement of Work, in each case as of the date specified by UNIDO in a notice to the Contractor and without payment of any termination fee.

21.2 Allocation of Resources

Whenever a *Force Majeure* event or a disaster causes the Contractor to allocate limited resources between or among the Contractor's customers, the Contractor shall not provide to any other customers of the Contractor priority over UNIDO. The Contractor shall not redeploy or reassign any Key Contractor Personnel to another account in the event of a *Force Majeure* event.

22. INDEMNIFICATION**22.1 Indemnity by the Contractor**

(a) The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, UNIDO, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

(b) In addition to the indemnification obligations set forth in Article 22.1 (a), the Contractor shall indemnify, defend and hold and save harmless, UNIDO, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature against UNIDO, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

- (i) the inaccuracy, untruthfulness or breach of any representation or warranty made by the Contractor in Article 17.2;
- (ii) any loss, destruction or damage to UNIDO real or other tangible property;
- (iii) the Contractor's failure to comply with the applicable laws;
- (iv) a breach of the covenants in Article 18;
- (v) a breach of Article 1 (Confidential Nature of Documents) of the General Conditions; and
- (vi) the Contractor shall indemnify UNIDO from any costs and expenses incurred in connection with the enforcement of this Article 22.1.

23. DAMAGES

23.1 Consequential Damages

Neither UNIDO nor the Contractor shall be liable for any indirect, incidental, special, or consequential damages, arising out of or relating to its performance or failure to perform under this Contract, even if advised of the possibility of such damages.

23.2 Direct Damages

The Contractor shall be liable to UNIDO for any direct damages arising out of or relating to the Contractor's performance or failure to perform under this Contract, which damages include but are not limited to:

- (a) costs of implementing and performing work-arounds regarding a service failure;
- (b) costs of replacing lost, stolen or damaged goods or materials;
- (c) costs of reconstructing or reloading data;
- (d) costs to procure replacement services from an alternate source as a result of a failure to perform, to the extent in excess of the applicable Fees;
- (e) overtime, straight time and related expenses and allocated overhead (including travel, lodging, wages) as a result of a failure to perform;
- (f) payments or penalties imposed by a governmental or regulatory body as a result of a failure to comply; and
- (g) attorney's fees.

23.3 Basis of the Bargain

Each Party acknowledges that the foregoing limitations are an essential element of the Contract between the Parties and that in the absence of such limitations the pricing and other terms set forth in this Contract would be substantially different.

23.4 Exclusions

The limitations or exculpations of liability set forth in Article 23.1 shall not apply to:

- (a) the failure of (i) UNIDO to make payments of Fees or (ii) the Contractor to issue credits or otherwise make payments due under this Contract;
- (b) indemnification claims, as set forth in Article 22;
- (c) breaches of Article 22.1 (a);
- (d) liability resulting from the fraud, recklessness, or intentional or willful misconduct of a Party;
- (e) damages occasioned by the Contractor's wrongful termination of the Contract, abandonment of work performed or to be performed, or willful refusal to provide the Services; and
- (f) otherwise to the extent that such limitation is not permitted by applicable law.

an original, but all of which taken together shall constitute one single Contract between the Parties.

24.3 Consents, Approvals, Requests and Notices

Except as specifically set forth in this Contract, (a) all consents and approvals to be given by either Party under this Contract shall not be unreasonably withheld or delayed and each Party shall make only reasonable requests under this Contract, and (b) all notices, requests, consents, approvals, agreements, authorizations, acknowledgements, waivers and other communications required or permitted under this Contract must be made in writing.

24.4 Severability

If any provision of this Contract shall be held to be invalid, illegal or unenforceable (in whole or in part), the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

24.5 Cumulative Remedies

No right or remedy herein conferred upon or reserved to either Party is exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Contract, or under applicable law, whether now or hereafter existing.

24.6 Survival

The terms of Articles 14.3 and 16.1, and Articles 22, 23 and 24 shall survive the expiration or termination of this Contract.

24.7 Third Party Beneficiaries

Each Party intends that this Contract shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

24.8 Continuity of Services

The Contractor acknowledges that the timely and complete performance of its obligations pursuant to this Contract is critical to the business and operations of UNIDO. Accordingly, in the event of a dispute between UNIDO and the Contractor, the Contractor shall continue to perform its obligations under this Contract in good faith during the resolution of such dispute unless and until this Contract is terminated in accordance with the provisions hereof.

24.9 Covenant of Further Assurances

UNIDO and the Contractor covenant and agree that, subsequent to the execution and delivery of this Contract and, without any additional consideration, each of UNIDO and the Contractor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Contract.

24.10 Bankruptcy

Subject to and without derogation from the privileges and immunities, facilities and exemptions of UNIDO, the Parties acknowledge and agree that the intellectual property provisions of

this Contract constitute licenses of an intellectual property right by the Contractor to UNIDO.

24.11 Audits and Investigations

(a) Each invoice paid by UNIDO may be subject to a post-payment audit by auditors, whether internal or external, of UNIDO or by other authorised and qualified agents of UNIDO at any time during the term of the Contract and for a period of seven (7) years following the expiration or prior termination of the Contract. UNIDO shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by UNIDO other than in accordance with the terms and conditions of the Contract.

(b) The Contractor acknowledges and agrees that, from time to time, UNIDO may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of UNIDO to conduct an investigation and the Contractor’s obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. The Contractor shall provide its full and timely co-operation with any such inspections, post-payment audits or investigations. Such co-operation shall include, but shall not be limited to, the Contractor’s obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNIDO access to the Contractor’s premises at reasonable times and on reasonable conditions in connection with such access to the Contractor’s personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor’s attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNIDO hereunder.

24.12 Good Faith and Fair Dealing

In entering into this Contract, UNIDO and the Contractor each acknowledge and agree that all aspects of the business relationship and dealings between UNIDO and the Contractor contemplated by this Contract shall be governed by the fundamental principle of good faith and fair dealing except as otherwise explicitly provided herein.

IN WITNESS WHEREOF, each of UNIDO and the Contractor has caused this Contract to be signed and delivered by its duly authorized representative.

[Contractor] _____

UNIDO

Signature

Name _____

Name

Title

Date

Title

Date