MODEL
TURN-KEY/SEMI TURN KEY

CONTRACT NO.

between

THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
(UNIDO)

and

__________________________________________________________

UNIDO Project Number:

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

CMO/OSS/PRO
UNIDO
CONTRACT

between

THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

and

for the

PROVISION OF SERVICES AND SUPPLY OF EQUIPMENT, MATERIALS AND PARTS

related to

<name of the project>

in the

<country of the project>

THIS CONTRACT is made 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", and together with UNIDO hereinafter collectively referred to as "the Parties"), having its principal office located at <address of the Contractor>.

WHEREAS, UNIDO, in agreement with the EUROPEAN UNION (hereinafter referred to as “EU”) has agreed to provide assistance in carrying out the project entitled “< >” (hereinafter referred to as "the “Project” and “Project Area” respectively);

WHEREAS, UNIDO and the EU have signed the Grant Agreement effective on 14 December 2018 defining the project goals, modalities and the financial arrangements between the EU and UNIDO;

WHEREAS, in this connexion, UNIDO, acting in agreement with the EU, desires to engage the Contractor to provide all the requisite machinery, equipment, components and tools together with the spare parts, materials, engineering drawings and technical specifications as well as the training services and
certain technical supervision personnel required for the construction, erection, installation, testing, commissioning and initial operation, in the Project Area, of a <name of the plant> (hereinafter referred to as “the Plant”), at <location> (hereinafter referred to as “the Plant Site”);

WHEREAS, the Contractor represents that he possesses the required technical knowledge, personnel and facilities for the purpose and that he is ready, willing and able to construct, erect, install, test, commission and operate the Plant referred to hereinabove;

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1.00 DEFINITIONS

1.01 In the Contract (as hereafter defined) the following words and expressions shall have the meanings hereby assigned to them:

a) (i) "Contract" means this Contract, UNIDO's General Conditions of Contract (Annex A), Privileges and Immunities Section (Annex B), Instructions to Contractors for the Dispatch of Reports (Annex C), Packing and Marking of Shipments (Annex D), Drawings, Specifications and Manuals (Annex E), Performance Bank Guarantee (Annex F), UNIDO Terms of Reference dated <date> (Annex G), the Contractor's Proposal of <date>, which the Contractor submitted in reply to UNIDO’s Request for Proposal No. <number> dated <date>, and such further documents as may be expressly incorporated in the Contract by the Parties.

(ii) "Terms of Reference" means detailed specification of the Work under the Contract and any modification thereof or addition thereto agreed upon by UNIDO and the Contractor, attached as Annex G.

(iii) "Technical Documentation" means all technical and technological documentation, engineering drawings and specifications, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor in accordance with the requirements of the Contract and approved by UNIDO.

(iv) "Contractor’s Proposal" means the Contractor's proposal to UNIDO for the execution and completion of the Work and the remedying of any defects therein in accordance with
the provisions of the Contract, as submitted in reply to UNIDO’s Request for Proposal No. <number> dated <date> and accepted by UNIDO.

b) (i) "Work" means all the work to be executed in accordance with the Contract, including design, engineering, manufacturing, supply of equipment, parts and materials, construction, installation, erection, commissioning, testing, initial operation, labour, services, facilities, to be provided, supplied or performed by Contractor and/or any of its subcontractors or suppliers of any tier in accordance with the requirements to build and commission the Plant and remedy any defects therein and to fulfill the Contractor's obligations under the Contract.

(ii) "Plant" means the <name and brief description of the Plant> to be constructed at the Plant Site as described in the Terms of Reference.

(iii) "Equipment" means all equipment, components, machinery, tools, raw and other materials, spare parts, appliances and things of whatsoever nature required to be supplied by the Contractor for construction, erection, installation, testing, commissioning and initial operation of the Plant pursuant to the Contract.

(iv) "Plant Site" means the place(s) where the Plant is located, including the Plant, and any other places as may be specifically designated in the Contract as forming part of the Plant Site.

(v) "Training" or “On-the-Job Training” means training (including industrial safety) by the Contractor of the Project Counterpart's staff/workers and other local staff at the Plant Site in accordance with the Contract.

(vi) "Key Technical Personnel" means Contractor's personnel, including a Team Leader and other supervisory personnel listed in paragraph 3.07 of the Contract, assigned by the Contractor for the execution of the Work including, but not limited to, the supervision of the construction, erection, installation, testing, commissioning and initial operation of the Plant at the Plant Site pursuant to the Contract.

(vii) "Site Engineer" means a qualified engineer employed by UNIDO to supervise the execution of the Work at the Plant Site. The Site Engineer shall in general carry out such duties as are required for the satisfactory execution of the Contract.
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(This paragraph (vii) will be included when the Project foresees appointment of a Site Engineer)


(ii) “DAP (INCOTERMS 2010)” means Delivery At Place as ascribed to it by INCOTERMS 2000.

d)  (i) “Action” means the cooperation programme or project partly or wholly financed by the EU, which may be carried out by UNIDO as described in Annex D;

(ii) “Budget Implementation Tasks” means Tasks consisting of carrying out procurement procedures, and awarding, signing and executing the resulting procurement contracts, notably accepting deliverables, carrying out payments and recovering the funds unduly paid, where the following condition is met: works, services, supplies and other benefits are directly provided to the partner country or to any other relevant beneficiary population in the Action;

(iii) “Project Counterpart” means the recipient of the technical assistance under the Project;

(iv) “Sound Financial” means Management Principle overarching the implementation of the Grant Agreement, namely economy, effectiveness and efficiency. The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.

The Parties agree that words and abbreviations, not specifically defined hereinabove, but which have well-known technical or trade meanings, are used in the Contract in accordance with such recognized meanings.
2.00 AIM OF THE CONTRACT

2.01 Synopsis
The aim of the Contract is to design, manufacture, deliver, construct, erect, install, test, commission and operate the Plant for the initial period of    (hereinafter referred to as “the Initial Period”).

3.00 RESPONSIBILITIES OF THE CONTRACTOR

3.01 Statement of Work and Supply
Given the aim of this Contract, the Contractor shall, on the terms and conditions hereinafter set forth:

a) supply the Technical Documentation necessary to construct, erect, install, test, commission, operate and repair the Plant. The Technical Documentation shall be in the English language.

b) manufacture and deliver DAP the Plant Site (INCOTERMS 2010), the Equipment and Technical Documentation, as per the Terms of Reference (Annex G hereto), and the Contractor's Proposal.

c) provide the services at the Plant Site of his Technical Personnel for:

- construction and erection of the Plant;

- installation of the Equipment to be supplied in accordance with the Contract;

- testing, commissioning and initial operation of the Plant, and

- On-the-Job Training of the staff/workers of the Project Counterpart and other local personnel. On-the-Job Training shall be primarily related to operation, maintenance and repair of the Plant.

In this connexion, the Contractor's scope of work and supply shall be as generally detailed in, but not necessarily limited to:

1) the Terms of Reference, which are attached hereto as Annexe G and

2) the Contractor's Proposal.
3) European Union Grant Agreement ACA/2018/403-134 (hereinafter referred to as “the Grant Agreement”)

Contractor's general responsibility includes all items necessary for the proper execution and completion of the Work. The Contractor shall carefully study the Contract as well as the risks, contingencies and other circumstances, which may influence or affect the execution of this Contract. Where the Contractor observes errors, inconsistencies, omissions or ambiguities, he shall immediately in writing refer same to UNIDO for UNIDO's written interpretation or correction. If the Contractor fails to notify UNIDO before signing the Contract, the Contractor shall be deemed to have waived any claim relating to said error, discrepancy, omission or ambiguity, shall be deemed to have estimated the most expensive material or method of execution of the Work, and shall bear an appropriate amount attributable to the costs of correction.

While the Annexes and the Contractor’s Proposal form integral parts of the Contract, if there are discrepancies or conflicts between or among the Contract and its Annexes, then the document to prevail shall be given precedence in the following order:

(1) Contract

(2) Annexes A, B, C, D, E, F, H

(3) Terms of Reference (Annex G)

(4) Contractor's Proposal

3.02 Commencement and Completion of the Work

a) The Contractor shall commence the Work under the Contract no later than <month & year>.

b) The Contractor shall provide the technical specifications and documentation necessary for the preparation of the Plant Site, including the plans for the installation and the technical specifications of the Equipment foundations, within <number of months> from the date of commencement of the Work under the Contract.

c) The Contractor shall deliver the Equipment to the Plant Site in the month of .

d) All the Work under the Contract shall be completed by the Contractor and performance warranted
under paragraph 3.08 shall be reached in the Performance Tests conducted under paragraph 3.09 no later than <month and year>.

3.03 **Testing of the Equipment before Shipment**

a) During the manufacture and assembly of the Equipment at the Contractor's or his sub-contractors' and/or suppliers' premises or works, UNIDO shall have, at all reasonable times, the right to examine the same at such premises and to call for such tests of the materials and workmanship which, in the Parties' opinion, are usual and typical for the type of the Equipment concerned. The cost of all such tests as described above shall be borne by the Contractor. Any other tests required by UNIDO shall be to the account of UNIDO. The cost of UNIDO's personnel in this connection shall be to the account of UNIDO.

b) If UNIDO so requests, the Contractor shall present sufficient documentary evidence that the materials used in the manufacture of the Equipment meet the specifications requirements. Test certificates shall be submitted for special construction materials only. With respect to large castings and forgings, the Contractor shall, where necessary and usual, carry out at his own cost x-ray, laser and/or ultrasonic tests.

c) UNIDO shall have the right to be present at tests carried out or arranged by the Contractor. If called for by UNIDO, samples and specimens shall become UNIDO's property. The Contractor shall notify UNIDO of the progress of the manufacture of the Equipment so that such inspections or tests can be carried out as may be required to ascertain that the materials and/or workmanship are in conformity with the requirements of this Contract.

d) UNIDO shall, by giving notice to the Contractor setting out any objections which it may have in respect of any Equipment inspected and/or tested, have the right to reject any such Equipment which is not in accordance with the relevant specifications. In this event, the Contractor shall make good such defective Equipment at his own cost and expense.

3.04 **Spare Parts for the Equipment Commissioning and Operation; Special Maintenance Tools; Consumable Materials**

a) **Commissioning Spares**

The Contractor shall supply with the Equipment a sufficient quantity of spares for operation of the Equipment within the period of commissioning of the Plant.
b) **Normal Wear and Maintenance Spare Parts**

(i) The Contractor shall supply with the Equipment a quantity of normal wear and maintenance spare parts for two years of operation as per the requirements of the Terms of Reference (Annex G).

(ii) The Contractor shall, before shipment of the Equipment, submit the drawings of wear and spare parts of the Contractor's proprietary equipment and the descriptions/catalogues of wear and spare parts not manufactured by him.

(iii) The Contractor also undertakes that normal wear and spare parts, if required, shall continue to be available to the Project Counterpart during the life of the Equipment at reasonable prices and terms.

c) **Special Maintenance Tools**

The Contractor shall submit, before shipment of the Equipment, an itemized list of special operation and maintenance tools which may be required for the operation and maintenance of the Equipment. The Contractor also undertakes that operation and maintenance tools as may be required for the operation and maintenance of the Equipment shall be available to the Project Counterpart during the life of the Equipment at reasonable prices and terms.

d) **Consumables**

The Contractor shall inform UNIDO of the specifications, including equivalent brand names, and quantities of all consumable materials, such as lubricants, flushing oils, hydraulic fluids and chemicals which, based on his experience, are required as initial filling during commissioning and Performance Tests and for normal yearly operation. This information shall be provided in time to enable the Project Counterpart to plan timely procurement of these materials. UNIDO may, at its option, ask the Contractor to supply such materials as are required for the Equipment commissioning and Performance Tests and the Contractor shall undertake to supply the same at reasonable prices and terms.

3.05 **Packing, Shipping and Insurance of the Equipment and Technical Documentation**

a) The Contractor shall pack and mark the Equipment and the Technical Documentation before shipment in accordance with Annex D hereto.
b) Bills of Lading/Way Bills evidencing the shipment of the Equipment and/or Technical Documentation shall quote the shipping markings, designation of contents and dimensions in metric units, itemized net weight of the contents and total gross weight of each package and shall show as consignee the Resident Representative of the United Nations Development Programme, (or UNIDO Representative, where applicable and specifically indicated by UNIDO) in <name of the country>.

c) The Contractor shall, in respect of each dispatch/shipment of the Equipment and/or Technical Documentation, submit the following Shipping Documents:

(i) clean on-board ocean bill of lading/way bill under sub-paragraph 3.05 b) above;
(ii) insurance policy covering DAP the Plant Site (INCOTERMS 2010) referred to under sub-paragraph 3.05 e) below;
(iii) certificate of origin;
(iv) commercial invoice and
(v) packing list.

Two (2) sets of shipping documents (including one original set) shall be submitted to UNIDO, Vienna, and two (2) sets (including one original set) to the said Resident Representative of the United Nations Development Programme (or UNIDO Representative, where applicable and specifically indicated by UNIDO) at least three (3) weeks in advance of the arrival of the Equipment at the point of entry into the Project Area.

d) The Contractor shall insure the Equipment and Technical Documentation during their shipment and transit to the Plant Site and thereafter until the packing crates are opened in the presence of the Contractor's representative(s), against all risks of loss or damage from any cause. Such insurance shall be with a reputable insurance company acceptable to UNIDO and shall be in the names of the Contractor and UNIDO in their respective rights and interests. Any insurance moneys payable shall be paid to UNIDO who shall apply the same according to this Contract and the Parties' respective rights hereunder. The insurance shall cover the full price of the Equipment and Technical Documentation Delivery Duty Unpaid the Plant Site plus ten percent (10%) and shall be in the currency of the Contract Price.

e) The Contractor shall, regarding customs clearance of the Equipment and/or Technical
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Documentation in the Project Area, liaise with the said UNDP Representative (or UNIDO Representative, where applicable and specifically indicated by UNIDO), who is responsible, in conjunction with the Government, for obtaining such clearance. The Contractor shall be responsible for payment of all demurrage, storage and other charges resulting from the delay in customs clearance of the Equipment at the Project Area, caused by the Contractor’s failure to comply with the requirements of sub-paragraph 3.05 c) concerning timely submission and completeness of the shipping documents.

f) The Contractor shall be responsible for costs, fees and charges in respect of the export and transit of the Equipment and Technical Documentation, but not for customs duties, taxes or license fees in the Project Area, which are the responsibility of the Project Counterpart. The Contractor shall also obtain, at his own risk and expense, any export license or other governmental authorization(s) necessary for the export of the Equipment and Technical Documentation.

g) Storage of the Equipment and Technical Documentation on arrival at the Plant Site is the responsibility of the Project Counterpart in accordance with paragraph 4.01 herein below and paragraph <paragraph number> of the Terms of Reference (Annex G).

h) In the event of loss of or damage to any of the Equipment and/or Technical Documentation during shipment or during transit or storage, or in the event of the Equipment and/or Technical Documentation being found, upon the opening of the packing crates at the Plant Site (in the presence of the Contractor’s representative(s)), to be otherwise defective, unusable or ineffective for the purpose for which it(they) was(were) supplied, the Contractor shall promptly replace or repair such Equipment and/or Technical Documentation, by whatever means of transport or personnel services as are most suitable and reasonable in the circumstance. In the case of loss or damage which is covered by the insurance under sub-paragraph (e) above, the amount paid by the insurance company shall be made available by UNIDO towards the cost of replacement and/or repair.

3.06 Review of the Plant Site Conditions

The Contractor shall visit the Plant Site and ascertain all conditions and information pertaining to his Work prior to executing the Contract. By executing the Contract, the Contractor represents that he has examined the Plant Site, determined its physical characteristics and correlated his personal observations with the requirements of the Contract, including but not limited to:
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3.07 Contractor’s Technical Personnel

a) The Contractor shall, through the Key Technical Personnel to be provided under sub-paragraph 3.01 c), be responsible for supervising the construction and erection of the Plant pursuant to the Contract, including installation of the Equipment, testing and commissioning of the Plant, as well as its initial operation after its start-up for the Initial Period and On-the-Job Training of the staff/workers of the Project Counterpart and other local personnel.

b) Names and Project Function of the Contractor’s Key Technical Personnel

The Key Technical Personnel to be provided by the Contractor shall be as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Project Function</th>
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c) Replacement of the Contractor’s Key Technical Personnel

The Contractor’s Key Technical Personnel named in sub-paragraph 3.07 b) hereinbefore are considered essential for the work to be performed under this Contract, accordingly:

(i) prior to replacing any of such personnel, the Contractor shall notify UNIDO reasonably in advance and shall submit detailed justifications together with the
curriculum vitae of the proposed substitute(s) to permit evaluation by UNIDO of the impact which such replacement(s) would have on the Work programme;

(ii) no Key Technical Personnel replacement shall be made by the Contractor without the prior written consent of UNIDO in accordance with Clause 4 of the UNIDO General Conditions of Contract (Annex A hereof).

d) **Duration of Stay of Contractor's Technical Personnel**
The Contractor's Technical Personnel shall arrive at the Plant Site at the appropriate time or times for the installation and commissioning work. They shall be at the Plant Site for such period(s) as shall be required in order to achieve the warranted performance of the Plant and thereby avoid the application of the stipulations of sub-paragraph 3.10 b) hereof. Any extension of the time for achieving the performance warranty under paragraph 3.08 beyond six (6) months shall require UNIDO's acceptance.

e) **Work Programme**
The timings and work programme for the stay of the Contractor's Technical Personnel at the Plant Site shall be as agreed upon between UNIDO, the Project Counterpart and the Contractor.

f) **On-the-Job-Training**
During their stay at the Plant Site, the Contractor's Technical Personnel shall provide On-the-Job Training for Project Counterpart's personnel and other local personnel in the maintenance, repair and operation of the Plant. The programme for this On-the-Job Training shall be as agreed upon between UNIDO, the Project Counterpart and the Contractor.

### 3.08 Performance Warranty
The Contractor warrants that, after satisfactory completion of the Work, the Plant shall meet the specifications and requirements set forth in the Terms of Reference (Annex G), in the Contractor's Proposal and in the Technical Documentation.

### 3.09 Performance Tests
a) Conformity of the Plant with the stipulations of paragraph 3.08 shall be established by Performance Tests conducted under the supervision and control of the Contractor in accordance with the stipulations of the programme of the Performance Tests which shall
be agreed upon by UNIDO, the Project Counterpart and the Contractor no later than three (3) months prior to the installation of the Equipment at the Plant Site.

b) The Project Counterpart shall be responsible for providing for the purpose of the said Performance Tests, the necessary raw and auxiliary materials, utilities, manpower and other requisites as required by paragraph 4.01 and in paragraph <number> of the Terms of Reference.

c) In case the technical parameters referred to in paragraph 3.08 are not achieved, then the Performance Tests may, subject to sub-paragraph 3.10 b), be continued for the additional time needed to achieve the parameters required.

d) Conformity of the Plant with the requirements of paragraph 3.08 shall be established by measurements conducted jointly by the Contractor, UNIDO and the Project Counterpart at agreed appropriate stages of the Performance Tests as will be defined in the programme of the Performance Tests referred to in sub-paragraph a) hereinabove.

e) The results of the trials and test runs successfully conducted under this paragraph, together with a statement indicating whether or not the Plant was proven in the Performance Tests to have achieved the requirements of paragraph 3.08 and sub-paragraph a) above, shall be certified by the authorized representatives of the Contractor, UNIDO and the Project Counterpart in the Certificate of Acceptance of the Plant (hereinafter referred to as “the Certificate of Acceptance of the Plant”). The Certificate of Acceptance of the Plant shall be appended to the Final Report under sub-paragraph 3.24 e).

3.10 Failure to achieve Performance Warranty – Remedial Measures / Compensation

a) If the performance warranted under paragraph 3.08 is not reached in the Performance Tests conducted under paragraph 3.09, then (unless the failure is due to factors outside the responsibility of the Contractor) the Contractor shall, at his own cost and expense, correct, modify or change any faulty engineering performed by him and shall, either by repair or replacement, correct, modify or change any faulty Equipment supplied by him to the extent necessary for the purpose of achieving the above warranted performance. After execution of these corrections, modifications, changes, repairs and/or replacements, which shall be carried out by the Contractor without delay, a new set of Performance Tests shall be carried out in conformity with paragraph 3.09.
b) If any failure under paragraph 3.09 or 3.10 a) to meet the stipulations of paragraph 3.08 cannot be rectified by remedial measures and eliminated in further Performance Tests within the period (including extended period) of the Contractor's technical assistance under sub-paragraph 3.07 d) then, unless an extension of time is agreed under sub-paragraph 3.07 d), UNIDO may hold the Contractor in default under paragraph 10.11.

3.11 **Mechanical Warranty**

The Contractor warrants that the Equipment supplied by him, his subcontractor(s) and/or suppliers under this Contract shall be new and free from defects in workmanship, materials and design. The Contractor shall repair or replace at his own expense and as soon as practicable any of the Equipment which within a period of twelve (12) months after Acceptance of the Work referred to in sub-paragraph 3.09(e) hereinabove, prove to be defective as mentioned above or as a result of any erroneous or inadequate engineering drawings, technical specifications and/or operating instructions of the Contractor.

Damage caused by improper operation contrary to the Contractor's instructions or by negligence or lack of proper maintenance on the part of the Project Counterpart shall not be covered by this warranty. The warranty shall be deemed modified to the extent of any modifications to the Equipment and/or its working conditions made without authorization by the Contractor. This obligation shall survive termination of the Contract.

3.12 **Correction of Defective Work**

a) If, within a period of twelve (12) months from after Acceptance of the Work, or under the terms of an applicable special warranty required by the Contract, any of the Work is found to be defective or non-conforming to the Contract, the Contractor shall correct it as soon as practicable after receipt of written notice from UNIDO to do so. This obligation shall survive Acceptance of the Work under the Contract and termination of the Contract.

b) Nothing contained in this paragraph 3.12 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract. The establishment of the time period of one year after the date of the Acceptance of the Work or other dates or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract relates only to the specific obligations of the Contractor to correct the Work, and has no relationship to
the time within which his obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations.

3.13 **Modifications to the Equipment**

The Contractor reserves the right, during the design, installation, start-up and testing of the Plant, to modify, in consultation with UNIDO and the Project Counterpart, the Equipment to ensure the fulfilment of the Contractor's obligations.

3.14 **Delays and Extension of Time**

a) If the Contractor is delayed at any time in the progress of the Work by any act or omission or changes ordered in the Work by UNIDO or the Project Counterpart, or by any employee of either, or by any separate contractor employed by the Project Counterpart, or any causes beyond the Contractor's reasonable control, or by any other cause which UNIDO determines may justify the delay, then the time for completion of the Work shall be extended by an Amendment to the Contract for such reasonable time as UNIDO may determine. This sub-paragraph does not apply to Force Majeure causes, which are covered by Clause 11 of the UNIDO General Conditions of Contract (Annex A hereof).

b) Any claim for extension of the time for completion under sub-paragraph 3.14(a) shall be made in writing to UNIDO not more than twenty days (20) after the commencement of the delay; otherwise said claim shall be deemed to be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work at the same time he serves notice of the delay.

3.15 **Permits, Fees Notices and Legal Requirements**

a) Unless otherwise provided in the Contract, the Contractor shall secure and pay for all the permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work after execution of the Contract, which are customarily secured and/or which are legally required at the time Contractor's Proposal is received.

b) The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.
c) If the Contractor observes that the Work required under the Contract is not in accordance with applicable laws, statutes, building codes and regulations, he shall promptly notify UNIDO in writing. This sub-paragraph is subject to paragraph 3.06.

3.16 Protection of Persons and Property

a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

b) The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(i) all employees at the Plant Site and all other persons who may be affected thereby;

(ii) all the Work and all the Equipment to be incorporated therein, whether in storage on or off the Plant Site, under the care, custody or control of the Contractor or any of his subcontractor(s); and

(iii) other property at the Plant Site or adjacent thereto.

c) The Contractor shall give all notices and comply with all applicable law, ordinances, building codes, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

d) The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the Project Counterpart's personnel.

e) When the use or storage of combustible, explosive or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

f) The Contractor shall promptly remedy all damage, injury or loss to any person or property referred to in sub-paragraph 3.16 b) caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for
whose acts any of them may be liable and for which the Contractor is responsible under sub-paragraph 3.16 b), except damage, injury or loss attributable to the acts or omissions of the Project Counterpart or anyone directly or indirectly employed by him, or by anyone for whose acts the Project Counterpart may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Clause 15 of the UNIDO General Conditions of the Contract (Annex A).

g) The Contractor shall designate a responsible member of his Team, whose duty shall be the prevention of accidents at the Plant Site during the execution of the Work. This person shall be the Contractor's Team Leader unless otherwise designated by the Contractor in writing to UNIDO.

h) The Contractor shall not load any systems or Equipment or permit any part of the Work to be loaded, so as to endanger safety of the operation.

i) In any emergency affecting the safety of persons or property, the Contractor shall act reasonably, at his discretion, to prevent threatened damage, injury or loss.

3.17 Patent Rights

a) The Contractor declares that he does not know of any protective rights of third parties which might be infringed by the construction, erection, installation and commissioning of the Plant and its operation. Should, contrary to the Contractor's expectation, claims be raised against UNIDO or the Project Counterpart charging them with infringement of patents, the Contractor shall hold harmless UNIDO and the Project Counterpart and shall indemnify them to the full extent of any damages or awards arising from such claims. This obligation of the Contractor shall continue to be in full force and effect up to the expiration of such patents.

b) UNIDO and/or the Project Counterpart shall give the Contractor due notice in writing of any charge of infringement brought against UNIDO and/or the Project Counterpart and of the filing of any suit for infringement and shall give the Contractor opportunity to defend said suit at his discretion and shall not, without the Contractor's consent in writing, make any admissions or consent to any claim of any third party which might be prejudicial to the Contractor's position.
3.18 **Evaluation and Monitoring of the Services**

The Contractor shall invite representatives of UNIDO and the EU to participate at their own costs in the main monitoring and evaluation missions relating to the services provided under the Contract. The Contractor shall report the results of such mission to UNIDO after 30 days of such a mission.

3.19 **Other Facilities and Services to be provided by the Contractor**

Except as otherwise stipulated in this Contract, the Contractor shall provide all the facilities and services required by his personnel for the execution of this Contract. Expenses of every kind incurred in connexion with such personnel shall be solely for the account of the Contractor. Such expenses shall include, but shall not be limited to, the cost of wages, housing, food, travel, medical attention and personnel insurance.

3.20 **Procurement**

Procurement comprises all actions necessary for the acquisition, by purchase or lease, of property, including goods, products and real property, and/or by contracting for services, including works of all Budget Implementation Tasks under this Contract.

The following general principles must be given due consideration while carrying out procurement:

i) Fairness, integrity and transparency in respect of every procurement transaction;
ii) Best value for money; and
iii) Effective competition (international and/or national).

Where necessary, UNIDO may manage, monitor and supervise some or all procurement activities under the Project. This includes but is not limited to assisting the Contractor in carrying out procurement activities by rendering advice on specifications requirements, potential invitee companies, model bidding and contract documents, technical and commercial evaluation of offers, selection of successful bidders and contract award and contract management.

Upon request and where possible, UNIDO shall assist the Contractor in clearing procured goods and equipment through customs in relevant beneficiary country/ies.

Procurement shall be undertaken only during the period of commencement and completion of the work specified in Article 3.02. The Contractor confirms that he will undertake the following in executing the procurement activities:
Procurement shall be undertaken in a competitive, non-discriminatory and transparent manner including receipt of responsive offers from at least three (3) independent bidders;

The Contractor, with the assistance and guidance of UNIDO, where necessary, shall establish clear and adequately detailed qualification requirements and criteria for evaluation of the bids prior to issuing the tender. The qualification requirements and evaluation criteria shall be made known to the bidders through inclusion in the bidding documents. Contracts shall be awarded to qualified bidders whose bid conforms to the requirements set forth in the bidding documents and offers the lowest cost;

All potential bidders will be notified of the tender simultaneously and provided with the same information and instructions regarding the bidding requirements. The bidding documents shall contain detailed and comprehensive specifications of the goods/works/services to be procured as well as all other relevant terms and conditions of the procurement case;

Adequate response time shall be provided to potential bidders;

The Contractor shall ensure the safe receipt, custody and confidentiality of bids until the deadline for receipt of bids and shall ensure that all bids are opened at the same time under conditions guaranteeing confidentiality;

Bids received shall be evaluated by individual evaluators or an evaluation panel possessing relevant expertise on the subject matter of the procurement case. The evaluators and chair/members of the evaluation panel shall be representatives of the Contractor. The evaluation will be based solely on the pre-established criteria specified in the bidding documents and a fully justified recommendation for the award of the procurement action shall be signed by all evaluators;

The Contractor, following its internal administrative processes, will issue the contract to the recommended bidder and will be solely responsible for payment upon acceptance and receipt of the goods, works or services.

The Contractor shall require the staff involved in the bidding, award, execution or management of contracts to immediately disclose the existence of any financial interest that they may have in any bidder, supplier or vendor of goods, works, or services procured or to be procured under the Project as soon as a potential conflict of interest arises. For the purposes of this provision, a “financial interest” shall be deemed to exist if a member of the immediate or extended family of such staff (parent, spouse, domestic partner, child, sibling, grandparent, step-parent, step-child, step-sibling, aunt/uncle, cousins), including in-laws, and whether resident in the staff’s household or not, as well as any other person residing in the staff’s household, has or may have a financial
interest in a Project, bidder, supplier, or vendor. The Contractor shall promptly inform UNIDO of the existence of such interest.

In order to enable UNIDO to comply with its reporting obligations to the EU, the Contractor shall provide procurement statistical records and documents containing, as a minimum, the following:

- Purchase order/contract number and/or purchase reference number (as may be applicable depending on the type of acquisition document);
- Date of purchase order/contract;
- Full description of each service/goods/item procured;
- Quantity and value of each service/goods/item procured, exclusive of additional charges such as freight and insurance, in currency of purchase;
- Contracted and actual date and place of delivery;
- Applied shipping terms (based on prevailing INCOTERMS);
- Certificate of origin in respect of all goods procured;
- A copy of the purchase order/contract signed between the Contractor and the supplier/contractor, including a detailed specification of all procured items;
- United Nations Standard Products and Services Code (UNSPSC), supplier name and country for each service/goods item procured;
- Type of competition applied (international, national, limited).

The above procurement statistical records shall be submitted by the Contractor as part of the progress reports and on templates to be provided or approved by UNIDO.

3.21 Standards of Work

The Contractor shall furnish the highest skill and judgment and cooperate with UNIDO and the Project Counterpart and all UNIDO's consultants and agents in best furthering the interests of UNIDO and the Project Counterpart. The Contractor shall furnish efficient business administration and superintendence. He shall furnish at all times an adequate supply of workmen and materials, and perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of UNIDO and the Project Counterpart.

3.22 Relationship between the Contractor's Team Leader and UNIDO Representative

The Contractor's Team Leader shall maintain a close and continuing relationship with the UNIDO Representative, or UNDP Resident Representative in case UNIDO is not directly represented in <name of the country> and/or his designated representative(s), and shall co-operate with him
(them) in the performance of the Work hereunder and shall keep him/them currently informed of the progress of the assignment and plans for the performance of the Work. The UNIDO Representative, or UNDP Resident Representative, and/or his designated representative(s) shall have the right to observe at any time the progress of the Work carried out under this Contract and to consult with the Contractor's Team Leader and the other specialists concerning their Work performance.

3.23 **Briefings and Debriefings**

The Contractor's Team leader may be required during implementation of the Contract to visit UNIDO Headquarters in Vienna, Austria for briefings and debriefings. The dates and duration of such visits will be agreed upon by UNIDO and the Contractor.

3.24 **Reports**

The Contractor shall submit to UNIDO, Vienna, in accordance with Annex C hereto entitled "Instructions to Contractors for the Despatch of Reports", the following reports, in the English language.

>the reporting schedule below is only indicative. The actual reporting schedule will be agreed upon in each particular case in line with requirements of the Terms of Reference>

a) **Inception Report**

Progress Report 1, in ( ) copies, , before <date>.

b) **Monthly Reports**

Narrative Monthly Reports, in electronic version, summarizing the status of the Contract work and the progress made. (Such Monthly Reports shall not be required when other Progress Reports are to be submitted according to the stipulations hereinafter).

c) **Progress Report 1**

Progress Report 1, in ( ) copies, , before <date>.

d) **Progress Report 2**

Progress Report 2, in ( ) copies, , before <date>.

e) **Final Report**

A Final Report, enclosing a Certificate of Acceptance of the Work, in ( ) copies,
before <date>.

3.25 **Obligations Regarding Information and Reporting**

The Contractor shall provide UNIDO, Vienna, with full information on the implementation of the Contract. The Contractor shall submit to UNIDO an inception report and a final report in accordance with the provisions herein and as detailed in sub-paragraph 3.26 herein below. These reports shall be prepared in English. Each report shall consist of a narrative part and a financial part to allow monitoring of the implementation of the Contract. The scope of all reports shall cover both the EU contribution as well as activities funded by the Contractor as part of the scope of the present Contract.

Every report, whether inception or final, shall provide a complete account of all relevant aspects of the implementation of the Contract for the period covered. The report shall describe the implementation of the Contract according to the activities envisaged in the Terms of Reference, difficulties encountered and measures taken to overcome problems, eventual changes introduced, as well as the degree of achievement of the results (impact, outcomes or outputs) as measured by the corresponding indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s), the means envisaged and employed. The final report, narrative and financial, shall cover the entire period of the Contract. The content and level of details in all reports shall match that of the Terms of Reference (narrative section) and, by due reference to UNIDO’s objects of expenses, Annex III of the Contractor’s Proposal (financial section) and as outlined below. It should be noted that in line with the requirements of the donor all the Contractor’s expenses related to this Contract shall follow the principle of Sound Financial Management.

At the end of the Contract period, the Contractor shall submit a draft final report. Upon receipt of UNIDO’s recommendations or acceptance of the draft final report, a final report shall be submitted, in two hard copies and in one electronic copy in MS Word format, to UNIDO.

For the final report, the narrative and financial sections shall cover the full period of the Contract. Additionally, the final report shall include details of transfer of equipment and remaining major supplies. Payment of the final report shall be subject to the timely receipt and acceptance of the report by UNIDO and the EU. For the avoidance of doubt, in case of delay in the submission of the final report without an acceptable written explanation, the EU may refuse to pay any outstanding amount and recover any amounts unduly paid.

In addition to the above, the Contractor will be required to submit a brief report after an
evaluation and monitoring mission as specified in sub-paragraph 3.18. Also, UNIDO may request additional information at any time providing the reasons for that request. Such information shall be supplied by the Contractor within 30 days of receipt of the request. The Contractor may submit a reasoned request to extend the 30 day deadline.

3.26 **Content of the Reports**

(a) The content of the inception report (Full Implementation Plan) shall include but not be limited to:

i) Summary and context of the services performed;

ii) Actual results: An updated table based on a logical framework matrix including reporting of results achieved under the Contract (impact, outcomes or outputs) as measured by the corresponding indicators, agreed baselines and targets, and relevant data sources;

iii) Activities carried out during the reporting period, by reference to the agreed work plan;

iv) Three Municipalities for demonstration projects identified, explained and selected;

v) Establishment of the Project Management Unit (PMU) and Project Steering Committee (PSC);

vi) Information on the implementation of the Visibility and Communication Plan (Annex 1 to the Terms of Reference) and any additional measures taken to identify UNIDO and the EU as source of financing;

vii) Information on the implementation costs incurred as well as the legal commitments entered into by the Contractor during the reporting period;

viii) Where applicable, a request for payment;

ix) Work plan for the following period.

The inception report should be submitted no later than 11 months after signature of the Contract by both Parties.

(b) The final report shall cover the entire period of implementation and shall include:

i) All information requested in the above mentioned paragraphs i. – ix

ii) A summary of all receipts, payments received and of the acceptable expenditure or eligible costs incurred;

iii) Where applicable, an overview of any funds unduly paid or incorrectly used which the Contractor could or could not recover itself;

iv) Detailed documentation pertaining to the private sector service providers engagements to perform baseline analyses and develop first plan for appropriate
low cost/high return clean energy measures;

v) Detailed documentation of the established link to relevant Capacity Building Activities in South Africa;

vi) Detailed documentation of the established tailored M&E framework;

vii) Details of transfers of equipment and remaining major supplies pursuant to Article 5.04;

viii) Details of lists of costs not included in the Annex III of the Contractor’s Proposal, together with a confirmation by the Contractor that all such costs shall be covered by the Contractor.

The final report should be submitted no later than 11 months from the Contract start date.

3.27 Clearance of Site on Completion

Upon completion of the Work, the Contractor shall, at his expenses, clear away and remove from the Plant Site all surplus materials, rubbish and temporary works of every kind including the covering up of holes of any nature and leave the whole of the Plant Site and the Work clean and in a workmanlike condition to the satisfaction of UNIDO.

3.28 Supervision of the Execution of the Work by UNIDO’s Site Engineer

(This paragraph will be included when the Project foresees appointment of a Site Engineer)

a) UNIDO may, at its sole discretion, appoint a Site Engineer to supervise the execution of the Work at the Plant Site. The Site Engineer shall in general carry out such duties as are required for the satisfactory execution of the Contract. The Contractor shall cooperate with the Site Engineer in best furthering the interests of UNIDO and the Project Counterpart.

b) The duties of the Organization’s Site Engineer shall be as follows:

(i) Carry out inspection of the delivered Equipment, tests of samples of materials and supplies and verify workmanship, as he may consider necessary at the cost of the Contractor in order to ensure their compliance with the relevant specifications and standards of the Terms of Reference (Annex G);

(ii) Subject to sub-paragraph 3.14(b), propose and submit for appropriate approval to UNIDO’s Substantive Office (hereinafter referred to as “the Substantive Office”), the extensions of the Schedule of Work as set out in the Terms of Reference (Annex G) except if they are caused by circumstances for which, in the opinion of the Site
(iii) Explain, adjust and modify, in case of ambiguities or discrepancies, the specifications of the Terms of Reference (Annex G) and the relevant drawings, provided always that any adjustments and modifications shall receive prior approval by the Substantive Office and shall not result in any additional costs to UNIDO beyond the amount specified in paragraph 5.01 hereunder;

(iv) Whenever necessary, provide on site, a technical solution for the execution of the Work in close collaboration with the Substantive Office;

(v) Check quantities of Work completed and clear or reject, in consultation with the Substantive Office, invoices submitted by the Contractor for such quantities;

(vi) Determine the amount(s) due from the Contractor’s as provided in Clause 6.00 of the Contract and recommend to the Substantive Office their deduction from any of the Contractor’s invoices due for payment;

(vii) Prepare and submit for the approval of the Substantive Office concerned any modification of the Work.

(viii) Submit the Certificate of Acceptance of the Plant to the Substantive Office for signature.

It is understood that any modification of the specifications of the Work or of the approved final designs or drawings or plans related thereto which may result in additional costs to UNIDO, does not commit UNIDO without its prior written approval to increase UNIDO’s financial liability as determined in paragraph 5.02 below.

3.29 Communication and Visibility

During the first five month of the Contract the Contractor shall submit to UNIDO for review and approval a Communication and Visibility Plan in accordance to Annex 1 of the Terms of Reference for implementation thereafter.

Unless UNIDO requests or agrees otherwise, the Contractor shall take all appropriate measures to publicise the fact that the Action has received funding from the EU. Information given to the press and to Final Beneficiaries, as well as all related publicity material, official notices, reports
and publications shall acknowledge that the Action was carried out “with funding by the European Union” and shall display the EU logo (twelve yellow stars on a blue background) in an appropriate way. Publications by the Contractor pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following disclaimer: “This document was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.” Such measures shall be carried out in accordance with the Communication and Visibility Manual published by the European Commission on [https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en) or with any other guidelines agreed between the European Commission and UNIDO.

If during implementation of the Action, equipment or major supplies are purchased using EU funds, the Contractor shall display appropriate acknowledgement on such equipment or major supplies, including the display of the EU logo (twelve yellow stars on a blue background). Where such display could jeopardise UNIDO’s privileges and immunities or the safety of UNIDO’s staff or of the Final Beneficiaries, UNIDO shall propose appropriate alternative arrangements. The acknowledgement and the EU logo shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the identification of the Action as an activity of UNIDO, the ownership of the equipment and major supplies by UNIDO. Proper acknowledgement shall also be given to UNIDO.

The above visibility requirements shall continue to apply for as long as the relevant equipment and remaining major supplies are owned by UNIDO.

The Parties will consult immediately and strive to remedy any detected shortcoming in implementing the visibility requirements set out in this Article. This is without prejudice to measures UNIDO may take in case of substantial breach of an obligation.

### 3.30 Ethics and Integrity

Responsibility for participating in the implementation of the Project imposes a strong obligation upon the Contractor to uphold the highest standards of ethics and to preserve public confidence in the integrity of UNIDO and the United Nations System. UNIDO considers it of utmost importance that the Contractor observes the highest ethical standards.

Accordingly, UNIDO requires that all contractors, as well as all companies, entities and individuals bidding for or participating in a project funded by UNIDO, including bidders,
suppliers, contractors, sub-contractors, and consultants (including their respective officers, directors, employees and agents), adhere to the highest ethical standards, and promptly report to UNIDO any known or suspected acts of fraud or corruption which occur in the course of implementing the Action.

Fraud and corruption include acts of corrupt practice, fraudulent practice, coercive practice and collusive practice. The definitions set out below involve the most common types of fraud and corruption, but are not exhaustive. For this reason, UNIDO shall also take action in the event of any similar deed or complaint involving alleged acts of fraud and corruption, even when these are not specified in the following list. UNIDO shall in all cases proceed on the basis of the procedure described herein.

In pursuance of this procedure, UNIDO defines the terms set forth below:

i) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of another party;

ii) A fraudulent practice is any act or omission, including a misrepresentation, which misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation;

iii) A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence the actions of a party; and

iv) A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

The Contractor shall cooperate with UNIDO and take necessary steps to ensure full compliance with the principles of ethics and integrity referred to above.

If it is thus demonstrated that any company, organization, entity or individual bidding for, participating in or being associated with, a Project has engaged in an act of fraud or corruption, the Contractor shall immediately report to UNIDO any allegation of corrupt, fraudulent, coercive or collusive practices, and shall report on the progress of measures taken by the Contractor to address the allegations.

If it is thus demonstrated that any company, organization, entity or individual bidding for or participating in a Project has engaged in an act of fraud or corruption, UNIDO may:
i) Suspend payment under the Contract if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent, or representative of the Contractor has engaged in an act of fraud or corruption;

ii) Cancel, and/or demand repayment of, the portion or all of payment(s) made, when there is evidence that the Contractor has not taken the adequate remedial measures within a time period which UNIDO considers reasonable, and in accordance with applicable laws and regulations;

iii) Decide that a company, organization, entity or individual is ineligible, either permanently or for a stated period, to be awarded or to participate in contracts financed by UNIDO;

iv) Refer the matter to appropriate law enforcement authorities; and/or

v) Impose other measures which it deems appropriate under the circumstances, including the initiation of recovery procedures in accordance with Article 5.06 representing reimbursement to UNIDO for costs associated with reviews, verifications, investigations and proceedings. Such other measures may be imposed in addition to or in lieu of other sanctions.

In upholding the principles of ethics and integrity, the Contractor shall permit, and shall require bidders, co-executing agencies, suppliers, contractors, sub-contractors, and consultants to permit, UNIDO to inspect their accounts and records and any other documents relating to activities carried out under the Contract and/or to have such accounts and records audited by auditors appointed by UNIDO.

The Contractor shall be required to, and shall impose a provision requiring bidders, co-executing agencies, suppliers, contractors, and sub-contractors to:

i) Maintain all documents and records for the period of time specified in Article 5.05 b) in relation to activities carried out under such contracts;

ii) Agree to furnish any document necessary for the investigation of allegations of fraud or corruption and make available employees or agents of the bidders, suppliers, contractors, and sub-contractors with knowledge of the Project to respond to questions from UNIDO or any investigator, agent, auditor or consultant, properly designated by UNIDO, relating to the review or audit of the documents.

3.31 **Protection of Persons and Property**

a) The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the services to be performed under the
b) The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

   i. all employees and all other persons, particularly at the Plant Sites who may be at risk during the performance of their duties under this Contract;
   ii. all equipment purchased for this Contract, whether in storage at the Contractor’s Home Office or in the Project Area, under the care, custody or control of the Contractor or any of his subcontractor(s).

c) The Contractor shall give all notices and comply with all applicable law, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

d) The Contractor shall maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying its own staff, its subcontractors and persons visiting the Plant Sites with the Contractor, including representatives from the national institutions, governments, UNIDO personnel or personnel representing the donor.

e) When the transport or storage of combustible, explosive or other hazardous materials or equipment is necessary for the execution of the Contract, the Contractor shall exercise utmost care and shall carry out such activities under the supervision of properly qualified personnel.

f) The Contractor shall promptly remedy all damage, injury or loss to any person or property referred to in Article 3.31 caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under subparagraph 3.31 b), except damage, injury or loss attributable to the acts or omissions of the Project Counterpart or anyone directly or indirectly employed by him, or by anyone for whose acts the Project Counterpart may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Clause 15 of the UNIDO General Conditions of the Contract (Annex A).
g) The Contractor shall designate a responsible member of his team, whose duty shall be the prevention of accidents at the Plant Sites during the execution of the services. This person shall be the Contractor’s Team Leader unless otherwise designated by the Contractor in writing to UNIDO prior to the arrival of the Contractor’s Team in the Project Area.

h) The Contractor shall not transport any material or equipment or permit any part thereof to be transported, so as to endanger the safety of persons, property or the successful completion of the Contract.

i) In any emergency affecting the safety of persons or property, the Contractor shall act reasonably, at his discretion, to prevent threatened damage, injury or loss.

4.00 RESPONSIBILITIES OF THE GOVERNMENT/PROJECT COUNTERPART

4.01 Responsibilities of the Government/Project Counterpart

UNIDO has entered into this Contract with the Contractor on the basis of the Government undertaking to provide, at no cost to the Contractor (through the Project Counterpart, where appropriate), the services and facilities as specified in the Terms of Reference (Annex G) as well as the following complementary services and facilities:

*(the scope of responsibilities of the Government/Project Counterpart will be determined based on the provisions of the Project Document)*

4.02 Responsibilities of the UNIDO Representative/UNDP Resident Representative

The UNIDO Representative in the Project Area, or UNDP Resident Representative in case UNIDO is not directly represented in *(the country)*, as the representative of UNIDO, shall:

a) act as Liaison Officer between the Contractor's personnel and officials of the Government in all matters relating to this Contract;

b) cable UNIDO, Procurement Services/ADM, confirming the arrival in, and departure from, the Project Area of the Contractor’s personnel;
e) refer to UNIDO, Procurement Services/ADM, such administrative matters relating to execution of this Contract as may be brought to its attention and which cannot be resolved in the Project Area.

5.0 CONTRACT PRICE AND TERMS OF PAYMENT

5.01 Contract Price
UNIDO shall pay the Contractor, for the full and proper performance of his obligations under this Contract, the sum of <currency> <amount in words> (currency figure).

This sum shall cover all expenses incurred by the Contractor including, but not limited to the cost of the Equipment rendered DAP the Plant Site, the complete engineering and technical services and Technical Documentation, construction and erection costs, the remuneration of the Contractor's personnel and all other compensations, insurance and social charges as well as his overheads, technical assistance and supervision costs. It shall also cover the costs in connexion with the travels of the Contractor's Technical Personnel from their country of residence and/or place of work to the Plant Site and return, and their subsistence in the Project Area. Also included are all costs incurred by the Contractor in connexion with briefing and debriefing visits as provided in paragraph 3.23.

5.02 Contract Ceiling
UNIDO’s financial liability under this Contract is limited to the above-mentioned sum of <currency> <amount in words> (currency figure).

The Contractor shall not do any Work, provide any Equipment, or perform any services which may result in any charges to UNIDO over and above the said sum of Euros (EUR) without the prior written consent of UNIDO and a formal amendment to this Contract.

5.03 Exclusion of Escalation
The Contract price set forth in paragraph 5.01 is fixed and firm and not subject to escalation.

5.04 Currency of Payment
The total Contract price of <currency> <amount in words> (currency figure) shall be paid in this currency.

5.05 Progress Payments
Progress payments on account of the Contract price set forth in paragraph 5.01 shall be made in accordance with the following schedule:

<progress payments will be adjusted to reflect the specifics of the contract deliverables>

a) upon signing of the Contract by both Parties and receipt by UNIDO of the performance bank guarantee mentioned in paragraph 5.06, the sum of.................................

b) upon UNIDO's receipt and acceptance of the Contractor's Progress Report 1 referred to in sub-paragraph 3.24 b) hereinabove, the sum of.................................

c) upon UNIDO's receipt and acceptance of the Contractor’s Progress Report 2 referred to in sub-paragraph 3.24 d) hereinabove, enclosing complete sets of the shipping documents for the delivery of the Equipment under the Contract, the sum of.................................

d) upon UNIDO's receipt and acceptance of the Contractor's Final Report referred to in sub-paragraph 3.24 e) hereinabove, enclosing the Certificate of Acceptance of the Plant, the sum of.................................

Total.................................

The making of any payment hereunder by UNIDO shall not be construed as an unconditional acceptance by UNIDO of the Work accomplished, or the Equipment or Technical Documentation delivered by the Contractor up to the time of such payment.

ALL PAYMENTS UNDER THIS CONTRACT SHALL BE SUBJECT TO THE RECEIPT BY UNIDO OF THE RELEVANT FUNDS FROM THE EUROPEAN COMMUNITY, IN ACCORDANCE WITH THE GRANT AGREEMENT

5.06 Performance Bank Guarantee
The Contractor shall, within one (1) month from the signing of the Contract, submit to UNIDO a performance bank guarantee issued by a bank or insurance company approved by UNIDO, for the initial sum of <currency> <amount in words> (currency figure). This sum will be lowered to <currency> <amount in words> (currency figure) <but not less than 10% of the Contract price> on the date of the acceptance by UNIDO and/or its authorized representative(s) at the Plant Site of the shipping documents to be submitted by the Contractor in accordance with sub-paragraph 5.05(c) under the Contract. The performance bank guarantee shall secure proper and faithful performance by the Contractor of his obligations under the Contract and shall be in the form set out in Annex F attached hereto. The guarantee will become effective on the date that the initial payment made by UNIDO is received into the Contractor's bank account and shall remain in full force and effect until the date calculated as the date of acceptance by UNIDO of the Contractor's Final Report to be submitted in accordance with sub-paragraph 3.22 e) of the Contract plus twelve (12) months.

5.07 Utilization and Recovery
The Contractor shall be responsible for utilizing funds as specified in the Contractor’s Proposal.

Before recovery, UNIDO shall formally notify the Contractor of its intention to recover any undue amount, specifying the amount and the reasons for the recovery and inviting the Contractor to make any observations within 30 days from the date of receipt of the notification. If, after examination of the observations submitted by the Contractor or if the Contractor does not submit any observations, UNIDO decides to pursue the recovery procedure, it may confirm recovery by formally notifying the Contractor. If there is a disagreement between the Contractor and UNIDO on the amount to be repaid, UNIDO may refer the matter to the EU for consideration and decision. Upon decision by the EU, UNIDO may issue a debit note specifying the terms and the date for payment.

If the Contractor does not make the payment by the date specified in the debit note, UNIDO shall recover the amount due either by offsetting it against any amounts owed to the Contractor by UNIDO or by initiating arbitration procedures in accordance with clause 16 of the UNIDO General Conditions of Contract.

Bank charges incurred from the repayment of amounts due to UNIDO shall be borne by the Contractor.

5.08 Withholding of Payments
UNIDO may withhold any payment to the Contractor or, on account of subsequently discovered evidence, nullify the whole or part of any payment approval theretofore given, to such an extent as may be necessary to protect UNIDO, and/or the Government from loss under this Contract on account of:

a) the Contractor's failure to carry out the Work or to make adequate progress on the Work, except for failure arising out of force majeure;

b) the Contractor's failure to remedy defective Work and/or unsatisfactory performance, when such failure has been drawn to his attention by UNIDO;

c) the Contractor's failure to submit the reports required under paragraph 3.24;

d) the Contractor's failure to pay properly to subcontractor(s) and for material, labour and equipment;

e) the existence of damage claims presented by UNIDO or of reasonable evidence indicating the probable basis on which damage claims may be presented by UNIDO;

f) any other breach by the Contractor of the Contract.

The withholding by UNIDO of any interim payment shall not affect the Contractor's obligation to continue performance under this Contract.

No interest shall accrue on payments eventually withheld by UNIDO in application of the stipulations of this paragraph.

5.09 Submission of Invoices

Each payment shall be made by UNIDO on the basis of an invoice submitted by the Contractor. Contractor’s invoice (scanned version of the original) must reflect Contractor’s banking instructions i.e. Name and address of Bank, Account No., Sort Code No., IBAN, SWIFT for payment by electronic transfer. The Contractor shall complete, sign and stamp the Bank Information Form (hereinafter referred to as BIF) attached hereto as Annex H and return the form along with the countersigned Contract. No payment shall be released until receipt by UNIDO of the original BIF.
5.10 **Mode of Payment**

All payments under this Contract shall (subject to receipt of the Contractor's electronic copy of the original invoices) be made by UNIDO by electronic bank transfer to the account(s) of the Contractor.

6.00 **PENALTIES**

6.01 In case the Contractor, for reasons attributable to him, does not comply with the dates/time limits stipulated in paragraph 3.02 of the Contract regarding performance and delivery, the Contractor is obliged to pay as compensation for any delay one quarter (0.25) percent of the Contract Price for each week of delay but not more than a maximum of ten (10) percent of the Contract Price. These amounts shall be deducted by UNIDO from the sums due to be paid to the Contractor in accordance with sub-paragraph 5.05 of the Contract.

7.00 **CONTRACTOR'S CLAIMS AND REMEDIES**

7.01 In no event shall the Contractor make any claim against UNIDO for or be entitled to additional costs or compensation resulting from any delays in the progress or completion of the Work or any portion thereof, whether caused by the acts or omissions of UNIDO or the Project Counterpart, including but not limited to damages related to overhead, loss of productivity, acceleration delay, total costs and inefficiency. Contractor's sole remedy in such event shall be an extension of the time for completion of the Work, provided the Contractor otherwise meets the requirements and conditions set forth in paragraphs 3.02 and 3.14.

8.00 **CONFIDENTIALITY**

8.01 **Confidential and Proprietary Information**

The Contractor acknowledges that all knowledge and information acquired in connection with the performance of his obligations under this Contract, including, but not limited to, any information relating to his operations and procedures (hereinafter referred to “Proprietary Information”), are confidential and proprietary information and he shall receive such confidential and proprietary information and shall not disclose or permit disclosure of any such knowledge or information to any person, firm or corporation, in whatever form, without the prior written consent of UNIDO.

In no case can disclosure put into jeopardy the EU’s and UNIDO’s privileges and immunities or
the safety and security of the staff of the EU, the Contractor and UNIDO or of the Final Beneficiaries of the Action.

The Contractor shall not, without the prior written consent of UNIDO disclose, furnish or use, in any way whatsoever, and shall take all lawful measures available to prevent any other person and/or entity employed by him or within his control from so disclosing, furnishing or using any confidential knowledge or Proprietary Information gained as a result of the Contract to which he becomes privy, regardless of the source of the information. The Contractor shall use his best efforts and take all reasonable steps necessary, including the execution of a confidentiality and non-disclosure agreement by his employees, agents, counterparts and subcontractors to ensure that his employees, agents, counterparts and subcontractors fully comply with this Article.

The Parties shall remain bound by confidentiality for five years after the end date of the Grant Agreement or longer as specified by the communicating Party at the time of communication.

### 8.02 Liability for Disclosure
Either Party shall be liable for any disclosure of confidential or proprietary information in breach of sub-paragraph 8.01 by its directors, officers, agents, counterparts, employees or subcontractors. Either Party acknowledges that any breach or threatened breach of sub-paragraph 8.01 could cause irreparable injury to the other Party within a short period of time entitling the other Party to preliminary injunctive relief against any such action, which relief shall be in addition to and in no way in limitation of any and all other remedies to which the other Party may be entitled.

### 8.03 Exclusions
The restrictions referred to in paragraph 8.01 shall not apply to the information which:

- **a)** presently is in the public domain;
- **b)** hereafter becomes part of the public domain without the other Party's fault;
- **c)** was in the possession of the other Party at the time of disclosure, as shown by written evidence;
- **d)** is disclosed to the other Party at any time hereafter by a third party.

### 8.04 Data Protection
The Contractor shall ensure appropriate protection of personal data. Personal data means any information relating to an identified or identifiable natural person. Any operation involving the processing of personal data, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on the rules and regulations of UNIDO and shall only be done as far as necessary for the performance of the mandate of UNIDO.

9.00 INSURANCE

9.01 Insurance of the Plant

The Contractor shall, without limiting his or UNIDO’s obligations and responsibilities under the Contract, insure with an insurance company acceptable to UNIDO:

a) The Plant, including the Equipment and Technical Documentation to be incorporated in the Plant, at the full replacement cost and

b) for an additional sum of fifteen (15) percent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Plant and of removing debris of whatsoever nature.

c) The insurance referred to in sub-paragraphs 9.01 a) and b) shall be in the joint names of the Contractor and UNIDO and shall cover UNIDO and the Contractor against all loss or damage from whatsoever cause arising from the start of the Work at the Plant Site until the date of the final payment.

9.02 Liability Insurance

The Contractor shall provide and maintain insurance for an appropriate amount against public or third party liabilities for bodily injury or death or property damage arising from any operations carried out by the Contractor in order to comply with his obligations under the Contract.

9.03 Certificates of Insurance

An original and two copies of the certificates of insurance, referred to in sub-paragraph 9.01 a) and b), acceptable to UNIDO shall be filed with UNIDO prior to commencement of the construction and erection of the Plant. The certificates shall be executed by an authorized representative of the insurer. These certificates and the insurance policies required by
paragraph 9.03 may not be canceled or allowed to expire until at least 30 days' prior written notice has been given to UNIDO. Information concerning reduction of coverage shall be promptly furnished by the Contractor to UNIDO.

9.04 **Responsibility for Amounts not Recovered**
Any amounts not insured or not recovered from the insurers shall be borne by the Contractor.

9.05 **Remedies against Contractor’s Failure to Insure**
If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide certificates of insurance to UNIDO in accordance with paragraph 9.03 above, then and in any such case UNIDO may, at its option, hold Contractor in default in accordance with paragraph 10.11 hereinbelow, or effect and keep in force any such certificates and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due to the Contractor, or recover the same as a debt due from the Contractor.

10.00 **GENERAL PROVISIONS**

10.01 **Entry into Effect of the Contract**
This Contract shall become effective after its signature by the Parties.

10.02 **General Conditions of Contract**
The Parties hereto agree to be bound by the UNIDO General Conditions of Contract, which are attached hereto as Annex A.

10.03 **Notices**
Any notice given by either of the Parties hereunder shall be in writing.

10.04 **Transmission of Notices, Invoices, Reports and other Documents**
All reports, invoices and notices submitted or given hereunder shall be addressed to the Procurement Services Division/OSS/CMO (Attention: Mr. A. Ahmed, Procurement Officer), UNIDO at A.AHMED@unido.org, CC: K.PANGANIBAN@unido.org.

10.05 **Applicable Local Legislations and Standards**
The Contractor shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core
labour standards.

10.06 **Conflict of Interest**

The Contractor shall refrain from any action that may give rise to conflict of interests. There is a conflict of interest where the impartial and objective exercise of the functions of any person implementing the Delegation Agreement between UNIDO and the EU is compromised.

10.07 **Ownership Rights to Use Results and Transfer of Equipment**

   a) **Ownership**

   Ownership of equipment procured under the Contract and to the extent legally possible, ownership, title and industrial and intellectual property rights that are a result of the services performed under the Contract, including the reports and other documents relating to it, shall vest in UNIDO.

   b) **Right to Use**

   UNIDO shall grant, and the Contractor hereby agrees to grant, the EU the right to use free of charge those results referred to in Article 10.07 a.), which are subject to industrial or intellectual property rights.

   c) **Transfer**

   The equipment and remaining major supplies purchased with the EU contribution shall be transferred to local authorities or final beneficiaries, at the latest when submitting the final report.

   The documentary proof of those transfers shall not be presented with the final reports but shall be kept for verification for the duration and along with the documents referred to in Article 10.08.

10.08 **Accounts and Archiving**

   a) **Accounting**

   The Contractor shall keep accurate and regular records and accounts of the implementation of the Action. The Contractor shall maintain accurate and up-to-date book-keeping and records of related project receipts/expenditures and records of assets, in accordance with international public sector accounting standards, or alternatively with consistently-applied recognized accounting standards, such as International Financial Reporting Standards (IFRs). Project accounts and records shall be kept separately from other records of the Contractor. Supporting documents shall
be placed in the records adequately demonstrating the basis, propriety, and reasonableness of each project-related transaction, as well as its consistency with the Contract.

The Contractor shall establish effective control and accountability in respect of funds, property and other project assets, safeguard them as if they were his own, and take all reasonable steps to ensure that expenditures are in accordance with the approved budget and work plan.

Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the regulations and rules of UNIDO.

If interest on pre-financing is due, the accounting methods of the Contractor shall make it possible to identify the payments of EU funds and the interest or other benefits yielded by those funds.

b) **Archiving**

For a period of five (5) years from the end date specified in Article 3.02 or up to the date of the limitation period of any claim pursuant to the applicable law governing the Delegation Agreement and any procurement contracts concluded by the Contractor, if the latter last longer, the Contractor shall keep and make available according to Article 10.09 all relevant financial information in its original form (electronic documents can be accepted where the documentation was first received or created by UNIDO in electronic form or the Contractor uses an electronic archiving system that meets reliable standards), or, in exceptional and duly justified cases, certified copies of original documents related to the Delegation Agreement and to any procurement contracts and financial support to third parties under the Delegation Agreement.

10.09 **Access and Financial Checks**

The Contractor undertakes and agrees to take all actions that may be necessary to allow UNIDO to comply with the terms of Article 17, Access and financial checks, of Annex II, General Conditions for PA Grant or Delegation Agreements, of the Delegation Agreement (Annex D). The terms of this Article shall survive the termination or expiration of this Contract.

10.10 **Covenant against Contingent Fees**

The Contractor warrants that:

a) no person or selling agency has been employed or retained by him to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, contingent fee or retainer, except regular employees or bona fide and officially established
commercial or selling agencies maintained by the Contractor for the purpose of securing business;

b) no official or servant or retired employee of UNIDO, the United Nations, of the UNDP and the Participating and Executing Agencies of the UNDP or the Government and/or its co-operating Agency(ies), who is not a regular employee of the Contractor, has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this Contract or the award thereof.

For breach of these warranties, UNIDO shall have the right to deduct from the Contract price, or otherwise recover from the Contractor, the full amount of any such commission, percentage, brokerage, contingent fee or retainer so paid.

10.11 Default by the Contractor

In case the Contractor fails to fulfil his obligations and responsibilities under this Contract, and provided the Contractor has not remedied such failure(s) within thirty (30) days of having been given UNIDO's express written notification of the nature of the failure(s), UNIDO may, at its sole option and without prejudice to any other rights that UNIDO may have under this Contract or otherwise, including its right to withhold payment(s) as hereinbefore provided, hold the Contractor in default under this Contract. When the Contractor is thus in default, UNIDO may, by giving written notice to the Contractor, terminate the Contract as a whole or such part or parts thereof in respect of which the Contractor is in default. Upon such notice, UNIDO shall have the right to seek completion, at the Contractor's expense, of that part or those parts of the Contract with respect to which the Contractor is in default. The Contractor shall, in this case, bear sole responsibility for any reasonable costs of completion, including such costs which are incurred by UNIDO over and above the originally agreed Contract price stipulated hereinbefore.

10.12 Temporary Suspension of Work

UNIDO may, at any time, temporarily stop the work being performed by the Contractor under this Contract by giving notice in writing to the Contractor. All work so stopped shall be resumed by the Contractor on the basis of a revised time schedule and on terms and conditions to be mutually agreed upon between the Parties.

10.13 Protests

If the Contractor considers any work demanded of him by the Government/Project Counterpart to be outside the requirements of this Contract or considers any ruling of the Government/Project
Counterpart to be unfair or contradicting the stipulations of this Contract, he shall immediately upon such work being demanded, or such ruling being made, ask the Chief, Procurement Services/CMO, for his written instructions or decision.

10.14 **Transfer of Rights and Responsibilities from the UNIDO to the Government/Project Counterpart**

The Contractor is aware that the title to the Equipment and Technical Documentation will be transferred by UNIDO to the Government/Project Counterpart in due course and accepts that, from such time, all rights and responsibilities of UNIDO under this Contract shall pass to the Government/Project Counterpart.

10.15 **Contract Amendment**

No modification of, or change in, this Contract, or waiver of any of its provisions, or additional contractual relationship with the Contractor shall be valid unless approved in the form of a written amendment to this Contract, signed by a fully empowered representatives of the Contractor and UNIDO.

10.16 **No contractual relationship between Contractor and Project Counterpart**

Nothing contained in the Contract shall create, unless specifically provided for otherwise, any contractual relationship between the Project Counterpart and the Contractor.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract.

**UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION**

By:……………………………………. By:……………………………………
Name/Title (Print):

Procurement Services Division
Directorate of Corporate Management and Operations
Department of Operational Support Services
Wagrammer Str. 5, A-1220
Vienna
Austria

Date: ……………………………… Date:……………………………………
List of Annexes:

Annex A: UNIDO General Conditions of Contract
Annex B: Facilities, Privileges and Immunities Section
Annex C: Instructions to Contractors for the Dispatch of Reports
Annex D: Packing and Marking of Shipments
Annex E: Drawings, Specifications and Manuals
Annex F: Performance Bank Guarantee
Annex G: UNIDO Terms of Reference
Annex H: Bank Information Form