

CONTRACT NO.

between

**THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
(UNIDO)**

and

< NAME OF THE CONTRACTOR >

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

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Annex B : Packing and Marking of Shipments

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Annex D : Specification of Work and Supply (including BMS General Conditions)

UNIDO Contract No:

CONTRACT

between

THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

and

< NAME OF THE CONTRACTOR >

for the

PROVISION OF SERVICES, EQUIPMENT AND SUPPLIES

related to the

< NAME OF THE PROJECT >

THIS CONTRACT is made between the UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (hereinafter referred to as "UNIDO"), having its headquarters located at Wagramerstrasse 5, A-1220 Vienna, Austria, and < NAME OF THE CONTRACTOR > (hereinafter referred to as "the Contractor"), having its principal office located at < ADDRESS OF THE CONTRACTOR >.

WHEREAS, UNIDO intends to carry out < BRIEF WORK TITLE >" (hereinafter referred to as "the Work") in the < NAME OF THE WORK SITE >, hereinafter referred to as "the Work Site";

WHEREAS, in this connexion, UNIDO desires to engage the Contractor to provide technical services, equipment and supplies required to execute the Work;

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 provide such technical services, equipment and supplies required to execute the Work;

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

1.00 AIM OF THE CONTRACT

1.01 Synopsis

The aim of the Contract is to < BRIEF WORK DESCRIPTION > at the Work Site.

2.00 RESPONSIBILITIES OF THE CONTRACTOR

2.01 Statement of Work and Supply

Given the aim of this Contract, the Contractor shall render, on the terms and conditions set forth herein, all the services and facilities necessary to carry out the Contract and, in particular, the work as detailed in the UNIDO Terms of Reference dated <DATE>, a copy of which is attached hereto as Annex D. In carrying out the work hereunder, the Contractor shall conform to the methodology, approach and work plan set forth in the Proposal dated <DATE> which the Contractor submitted to UNIDO in response to UNIDO's Proposal Request No. P. of <DATE>.

The Contractor's said Proposal, although not attached hereto, is made a part hereof by way of reference.

Contractor's general responsibility includes all items necessary for the proper execution and completion of the Work. The Work not expressly covered in the Contract will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

The Contractor shall carefully study the Contract and its Annexes as well as the Work Site conditions. 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 so notify UNIDO, 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 any correction.

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
- (3) Terms of Reference (Annex D)
- (4) Contractor's Proposal

2.02 Commencement and Completion of the Work

- a) The Contractor shall commence the Work under the Contract < DATE AND MONTH >.
- b) The Contractor shall complete the Work under the Contract no later than <DATE AND MONTH>.

- c) The Contractor recognizes that in this Contract time is of the essence and that UNIDO will suffer damages if the Contractor does not substantially complete the Work at the time set forth in paragraph 2.02 hereinabove and in the Terms of Reference (Annex D).

[Paragraph 2.03 is applicable in case the Terms of Reference include provision of equipment, supplies and technical documentation.]

2.03 Packing, Shipping and Insurance of the equipment, supplies and technical documentation

- a) The Contractor shall pack and mark the equipment, supplies and the technical Documentation before shipment in accordance with Annex B hereto.
- b) Way Bills evidencing the shipment of the equipment, supplies and/or technical documentation shall show refer to the United Nations Industrial Development Organization, UNIDO Project and Contract Numbers.
- c) The Contractor shall deliver the equipment, supplies and/or technical documentation to the Work Site at his own cost and bear all the risks related to such delivery until the opening of the packing crates (in the presence of UNIDO's and the Contractor's representative(s)).
- d) The Contractor shall, regarding Customs clearance (if applicable) of the equipment, supplies and/or technical documentation, liaise with the Procurement Services Unit, OSS, UNIDO for assistance in obtaining such clearance.
- e) The Contractor shall be responsible for costs, fees and charges in respect of the export/import and transit of the equipment, supplies and technical documentation, but not for customs duties, which is the responsibility of UNIDO. 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.
- f) Storage of the equipment, supplies and technical documentation on arrival at the Work Site is the responsibility of the Contractor.
- g) In the event of loss of or damage to any of the equipment, supplies and/or technical documentation during shipment or during transit 2.03 c), or in the event of the equipment, supplies and/or technical documentation being found, upon the opening of the packing crates at the Work Site (in the presence of UNIDO's and 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, at his own expense, such equipment, supplies and/or technical

documentation, by whatever means of transport or personnel services as are most suitable and reasonable in the circumstance.]

2.04 Review of the Work Site Conditions

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

- (i) the condition of all structures and obstructions thereon, both natural and man-made;
- (ii) the nature, location, and character of the general area in which the Work Site is located, including available labour and equipment;
- (iii) the quantity and quality of all materials, supplies, tools, equipment, labour, and professional services necessary to complete the Work in the manner required by the Contract Documents; and
- (iv) all pertinent national laws, rules, ordinances, and regulations.

No claim on the part of the Contractor arising from the non-fulfilment of the above shall be entertained.

2.05 Contractor's Personnel

The Contractor shall be responsible for the professional and technical competence of its personnel assigned for the implementation of the work under the Contract. The Contractor shall select for this purpose, sufficiently qualified and experienced personnel who shall effectively perform the Work.

2.06 Permits, Fees and Notices

- 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, which are customarily secured after execution of the Contract and 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.

2.07 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 of UNIDO, or by any its employee, or by any separate contractor employed by UNIDO, or by changes ordered in the Work, 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 the Amendment to the Contract for such reasonable time as UNIDO may determine.
- b) Any claim for extension of the time for completion of the Work shall be made in writing to UNIDO not more than seven days (7) 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.

2.08 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 Work Site and all other persons who may be affected thereby;
 - (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Work Site, under the care, custody or control of the Contractor or any of his subcontractor(s); and
 - (iii) other property at the Work 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 UNIDO'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 or loss to any property referred to in sub-paragraph 2.08 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 2.08 b), except damage or loss attributable to the acts or omissions of UNIDO or anyone directly or indirectly employed by him, or by anyone for whose acts UNIDO 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 paragraph 10 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 Work Site during the execution of the Work.
- 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, at his discretion, to prevent threatened damage, injury or loss.

2.09 Warranty

The Contractor warrants that, the Work shall meet the specifications and requirements set forth in the Terms of Reference (Annex D).

2.10 Acceptance of the Work

- a) Conformity of the Work with the requirements of paragraph 2.09 shall be established by the inspection conducted jointly by the Contractor and UNIDO as per requirements of the Terms of Reference.
- b) The results of the inspection, together with a statement indicating whether or not the Work was proven to meet the requirements of paragraph 2.09 and sub-paragraph a) above, shall be certified by the authorized representatives of the Contractor and UNIDO in the Certificate of Acceptance of the Work.

2.11 Failure to meet Contract Specifications and Requirements - Remedial Measures/ Compensation

- a) If the inspection under paragraph 2.10 reveals that the Work does not meet the requirements referred to paragraph 2.09, 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 work performed by him and shall, either by repair or replacement, correct, modify or change any faulty materials, parts and equipment supplied by him to the extent necessary for the purpose of achieving the above warranty. After execution of these corrections, modifications, changes, repairs and/or replacements, which shall be carried out by the Contractor without delay, a new inspection shall be carried out in conformity with paragraph 2.10.

- b) If any failure under paragraphs 2.10 or 2.11 a) to meet the stipulations of paragraph 2.09 cannot be rectified by remedial measures within the period (including extended period) agreed by UNIDO and the Contractor, UNIDO may hold the Contractor in default under paragraph 7.05.

2.12 Mechanical Warranty

The Contractor warrants that the equipment, components, tools and spare parts 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, components, tools or spare parts which within a period of five (5) years from the date of their acceptance in the inspection referred to in paragraph 2.10 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.

2.13 Correction of Defective Work

- a) If, within five (5) years after the date of the Certificate of 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 2.13 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 five years after the date of the Certificate of 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 other than specifically to correct the Work.

2.14 Patent Rights

- a) The Contractor declares that he does not know of any protective rights of third parties which might be infringed by this Contract. Should, contrary to the Contractor's expectation, claims be

raised against UNIDO charging them with infringement of patents, the Contractor shall hold harmless UNIDO and shall indemnify it 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 shall give the Contractor due notice in writing of any charge of infringement brought against UNIDO 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.

2.15 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.

2.16 Standards of Work

The Contractor accepts the relationship of trust and confidence established between himself and UNIDO by this Contract. The Contractor shall furnish the highest skill and judgment and cooperate with UNIDO and all UNIDO's consultants and agents in best furthering the interests of UNIDO. 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.

2.17 Reporting

The Contractor shall submit reports as required in the Terms of Reference (Annex D).

3.00 CONTRACT PRICE AND TERMS OF PAYMENT

3.01 Contract Price

UNIDO shall pay the Contractor, for the full and proper performance of his obligations under this Contract, the sum of < THE SUM IN WORDS > (< FIGURE >).

This sum shall cover all expenses incurred by the Contractor including, but not limited to the cost of the equipment and supplies rendered the Work Site, the complete engineering and technical services and technical documentation, 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.

3.02 Contract Ceiling

The Contractor shall not do any work, provide any materials or equipment, or perform any services which may result in any charges to UNIDO over and above the said sum of < THE SUM IN WORDS > (<FIGURE >) without the prior written consent of UNIDO and a formal amendment to this Contract.

3.03 Exclusion of Escalation

The Contract price set forth in paragraph 3.01 is fixed and firm and not subject to escalation.

3.04 Currency of Payment

The total Contract price of < THE SUM IN WORDS > (< FIGURE >) shall be paid in this currency.

3.05 Payment

The whole of the Contract price set forth in paragraph 3.01 shall normally be paid after acceptance of the Work under the Contract by UNIDO. Partial payments may be allowed only upon additional agreement between UNIDO and the Contractor. In case the Contractor elects to propose a discount (SCONTO) for accelerated payment, the payment period shall be counted from the date of receipt by the UNIDO of the Contractor's invoice.

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.

3.06 Bank Bond

The Contractor shall, within one (1) week from the signing of the Contract, submit to UNIDO a performance bond issued by a bank or insurance company approved by UNIDO, for the sum of < SUM IN WORDS> (< FIGURE >) which shall secure proper and faithful performance by the Contractor of his obligations under the Contract. The performance bond shall be in the form set out in Annex C attached hereto and shall be valid for a period of five (5) years.

3.07 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 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 the Contract;
- 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 the UNIDO or of reasonable evidence indicating the probable basis on which damage claims may be presented by the UNIDO;
- f) 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.

3.08 Submission of Invoices

Each payment shall be made on the basis of an invoice submitted by the Contractor submitted in one original and two (2) copies and reflecting banking instructions, i.e. name and address of the bank, Account No., Sort Code No. for payment by electronic transfer.

3.09 Mode of Payment

All payments under this Contract shall be made by the UNIDO by electronic bank transfer to the following bank account of the Contractor:

Account of < NAME OF THE CONTRACTOR >

Account number <XXXXXX>

Bank name <XXXXXXX>

Address of Bank <XXXXXXX>.

4.00 PENALTIES

- 4.01** In case the Contractor, for reasons attributable to him, does not comply with the dates/time limits regarding performance and delivery stipulated in the Terms of Reference (Annex D), the Contractor is obliged to pay as compensation for any delay one quarter (0.25) percent of the Contract Price for each day of delay but not more than a maximum of five (5) percent of the Contract Price. The penalties shall be deducted by UNIDO from the sums due to be paid to the Contractor in accordance with paragraph 3.05 of the Contract.

5.00 CONTRACTOR'S CLAIMS AND REMEDIES

- 5.01** 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, including but not limited to damages related to overhead, loss of productivity, delay, total costs and inefficiency. Contractor's sole remedy in such event shall be an extension of the time for completion of the Work under the Contract, provided the Contractor otherwise meets the requirements and conditions set forth in paragraph 2.02.

6.00 INSURANCE

6.01 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.

6.02 Responsibility for Amounts not Recovered

Any amounts not insured or not recovered from the insurers shall be borne by the Contractor.

7.00 GENERAL PROVISIONS

7.01 Entry into Effect of the Contract

This Contract shall become effective upon the signing hereof by both Parties.

7.02 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.

7.03 Notices

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

7.04 Transmission of Notices, Invoices, Reports and other Documents

Unless otherwise stipulated in this Contract, instructions, manuals, reports, invoices, notices and shipping documents required to be submitted by the Contractor shall be addressed to the Chief, Procurement Services Unit, Operational Support Services Branch, UNIDO, P.O. Box 300, A-1400 Vienna, Austria.

7.05 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 fourteen (14) 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 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, be solely responsible for any reasonable costs of completion, including such costs which are incurred by UNIDO over and above the originally agreed Contract price stipulated hereinbefore.

7.06 Temporary Suspension of Work

The 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.

7.07 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 by UNIDO.

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

**UNITED NATIONS INDUSTRIAL
DEVELOPMENT ORGANIZATION**

By.....

By.....

Procurement Services Unit
Operational Support Services Branch
P.O.Box 300
A-1400 Vienna
Austria

Date.....

Date.....

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Annex A

GENERAL TERMS AND CONDITIONS

(Headquarters Contracts)

1. Confidential Nature of Documents

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of UNIDO, shall be treated as confidential and shall be delivered only to UNIDO's authorized officials on completion of the work under this Contract; their contents shall not be made known by the Contractor, without the written consent of UNIDO, to any person other than the personnel of the Contractor performing services under this Contract. The obligations of this paragraph do not lapse upon satisfactory completion of the work under this Contract or termination of this Contract, including termination by UNIDO.

2. Independent Contractor.

The Contractor shall have the legal status of an independent contractor. Any person assigned by the Contractor to perform services under this Contract shall remain in the employment of the Contractor. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of UNIDO or the United Nations. Without restricting the generality of the foregoing, UNIDO shall not be liable for any claims and demands, loss, costs, damages, actions, suit or other proceedings, brought or prosecuted, in any manner based upon, occasioned by or attributable to the employment relationship between any person assigned by the Contractor to perform services under this Contract and the Contractor. Unless otherwise provided for in this Contract, UNIDO shall not be liable for claims of any kind in connexion with the performance of such services. The Contractor and his employees shall conform to all applicable laws, regulations and ordinances promulgated by legally constituted authorities of the Government.

3. The Contractor's Responsibility for Employees

The Contractor shall supervise and be fully responsible for the work performed by and the professional and technical competence of his employees and shall select, for work under this Contract, reliable individuals who will perform effectively in the implementation of the Contract, comply with the laws of the Government, respect the local customs and conform to a high standard of moral and ethical conduct.

4. **Assignment of Personnel**
The Contractor shall not assign any personnel other than those referred to in this Contract for the performance of work in the field without the prior written approval of UNIDO. Prior to assigning any other personnel for the performance of work in the field, the Contractor shall submit to UNIDO for its consideration, the curriculum vitae of any person the Contractor proposes to assign for such service.

5. **Removal of Personnel**
Upon written request by UNIDO, the Contractor shall withdraw from the field any personnel provided under this Contract and shall replace such personnel by other acceptable to UNIDO, if UNIDO so requests. All costs and additional expenses resulting from the replacement, for whatever reason, of any of the Contractor's personnel shall be for the account of the Contractor. Such withdrawal shall not be considered as termination in part or in toto of this Contract under the provisions of paragraph 12 "Termination" hereafter.

6. **Assignment**
The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof or of any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of UNIDO.

7. **Sub-Contracting**
In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of UNIDO for all sub-contractors. UNIDO's approval of a sub-contractor shall not relieve the Contractor of any of his obligations under this Contract, and the terms of any sub-contract shall be subject to and in conformity with the provisions of this Contract.

8. **UNIDO Privileges and Immunities**
Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of UNIDO.

9. **Non-employment of UNIDO Staff Members**
The Contractor shall not, while this Contract is in effect, employ or consider the employment of UNIDO staff members without the prior written approval of UNIDO.

10. **Language, Weights and Measures**
Unless otherwise specified in the Contract, the English language shall be used by the Contractor in all written communications to UNIDO with respect to the services to be rendered and all documents procured or prepared by the Contractor pertaining to the work. The metric system of weights and measures shall be used by the Contractor and estimates of quantities involved shall be made and recorded in metric units, except when otherwise specified in the Contract.

11. Force Majeure

Force Majeure as used herein shall mean acts of God, laws or regulations, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar event of equivalent force not caused by nor within the control of either party and which neither party is able to overcome. As soon as possible after the occurrence of any event constituting Force Majeure, and if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract, the Contractor shall give notice and full particulars thereof in writing to UNIDO. In this event, the following provisions shall apply:

- (a) The obligations and responsibilities of the Contractor under this Contract shall be suspended to the extent of its inability to perform them and for as long as such inability continues. During such suspension and in respect of work suspended, the Contractor shall be entitled only to reimbursement by UNIDO, against appropriate vouchers, of the essential costs of maintenance of any of the Contractor's equipment and of per diem of the Contractor's personnel rendered idle by such suspension.
- (b) The Contractor shall, within fifteen (15) days of the occurrence of the Force Majeure, submit a statement to UNIDO of estimated expenditures for the duration of the period of suspension.
- (c) The term of this Contract shall be extended for a period equal to the period of suspension taking, however, into account any special conditions which may cause the time for completion of the work to be different from the period of suspension.
- (d) If the Contractor is rendered permanently unable, wholly or in part, by reason of Force Majeure, to perform its obligations and meet its responsibilities under this Contract, UNIDO shall have the right to terminate this Contract on the same terms and conditions as are provided for in paragraph 12, "Termination" except that the period of notice may be seven (7) days instead of thirty (30) days.
- (e) For the purpose of the preceding sub-paragraph (d), UNIDO may consider the Contractor permanently unable to perform in case of any period of suspension in excess of ninety (90) days. Any such period of ninety (90) days or less shall be deemed temporary inability to perform.

12. Termination

UNIDO may terminate this Contract in whole or in part and at any time, upon thirty (30) days' notice of termination to the Contractor. The initiation of arbitral proceedings in accordance with paragraph 16, "Arbitration", below shall not be deemed a termination of this Contract. In the event such termination is not caused by the Contractor's negligence or fault, UNIDO shall be liable to the Contractor for payment in respect of work already

accomplished, for the cost of repatriation of the Contractor's personnel, for necessary terminal expenses of the Contractor, and for the cost of such urgent work as is essential and as the Contractor is asked by UNIDO to complete. The Contractor shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of UNIDO's notice of termination.

13. **Bankruptcy**

Should the Contractor be adjudged bankrupt or be liquidated or become insolvent, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, UNIDO may, without prejudice to any other right or remedy it may have under the terms of this Contract, terminate this Contract forthwith by giving the Contractor written notice of such termination. The Contractor shall immediately inform UNIDO of the occurrence of any of the above events.

14. **Insurance and Liabilities to Third Parties**

- (a) The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (b) The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- (c) The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- (d) Except for the workmen's compensation insurance, the insurance policies under this Article shall:
 - (i) Name UNIDO as additional insured;
 - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against UNIDO;
 - (iii) Provide that UNIDO shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

- (e) The Contractor shall, upon request, provide UNIDO with satisfactory evidence of the insurance required under this Article.
- (f) Any amounts not insured or not recovered from the insurers shall be borne by the Contractor.
- (g) If the Contractor fails to effect and keep in force any of the insurances required under the Contract, then and in any such case UNIDO may, at its option, hold the Contractor in default in accordance with the Contract, or effect and keep in force any such insurances 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.

15. Indemnification

The Contractor shall indemnify, hold and save harmless and defend at its own expense UNIDO, its officers, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses, arising out of acts, omissions, negligence or misconduct of the Contractor or its officers, agents, servants, representatives, employees, or sub-contractors in the performance of this Contract. This requirement shall extend to claims or liabilities in the nature of workmen's compensation and to claims or liabilities arising out of the use of patented inventions or devices. The obligations under this paragraph do not lapse upon termination of this Contract.

16. Settlement of Disputes

(a) Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

(b) Arbitration

Unless, any such dispute, controversy or claim between the Parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, including its provisions on applicable law. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final

adjudication of any such dispute. It is understood, however, that the provisions of this paragraph shall not constitute nor imply the waiver by UNIDO of its privileges and immunities.

17. **Obligations**

In connexion with the performance of its services under this Contract, the Contractor shall neither seek nor accept instructions from any authority external to UNIDO. The Contractor shall refrain from any action which may adversely affect UNIDO and shall fulfil its commitments with full regard for the interests of UNIDO. Unless authorized in writing by UNIDO, the Contractor shall not advertise or otherwise make public the fact that it is performing or has performed services for UNIDO. Also, the Contractor shall not, in any manner whatsoever, use the name, emblem or official seal of the United Nations or of UNIDO or any abbreviation of the name of the United Nations in connexion with its business or otherwise. The Contractor is required to exercise utmost discretion in all matters relating to this Contract. Unless required in connexion with the performance of its work under this Contract or where specifically authorized by UNIDO, the Contractor shall not communicate at any time to any person, government or authority external to UNIDO any information which has not been made public and which is known to it by reason of its association with UNIDO. The Contractor shall not, at any time, use such information to private advantage. These obligations do not lapse upon satisfactory completion of the work under this Contract or termination of this Contract, including termination by UNIDO.

18. **Title Rights**

(a) The United Nations or UNIDO, as the case may be, shall be entitled to all property rights including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or results from the services provided to the United Nations or UNIDO by the Contractor under this Contract. At the request of UNIDO, the Contractor shall take all necessary steps, prepare and process all necessary documents and assist in securing such property rights and transferring them to the United Nations and UNIDO in compliance with the requirements of the applicable law.

(b) Title to any equipment and supplies which may be furnished by UNIDO shall rest with the United Nations or UNIDO as the case may be and any such equipment and supplies shall be returned to UNIDO at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment and supplies, when returned to UNIDO, shall be in the same condition as when delivered by UNIDO to the Contractor, subject to normal wear and tear.

19. **Encumbrances/liens**

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNIDO against any monies due or to become due

for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

20. Tax Exemption

- (a) In accordance with Section 7 of the Convention on the Privileges and Immunities of the United Nations and Section 9 of the Convention on the Privileges and Immunities of Specialized Agencies which are applicable to UNIDO by virtue of Article 21 of its Constitution, UNIDO is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize UNIDO's exemption from such taxes, duties or charges, the Contractor shall immediately consult with UNIDO to determine a mutually acceptable procedure.
- (b) Accordingly, the Contractor authorizes UNIDO to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNIDO before the payment thereof and UNIDO has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide UNIDO with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

21. Child labor

- (a) The Contractor represents and warrants that neither him, nor any of his suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
- (b) Any breach of this representation and warranty shall entitle UNIDO to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNIDO.

22. Mines

- (a) The Contractor represents and warrants that neither him, nor any of his suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

- (b) Any breach of this representation and warranty shall entitle UNIDO to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNIDO.

UNIDO
VIENNA

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Annex B

PACKING AND MARKING

- a) **Packing of Equipment**
The Goods shall be securely protected and packed in accordance with the best established practices so as to protect from damage during transit from the point(s) of manufacture and until arrival at the Plant site under conditions which may involve multiple handlings, transport by ship, rail and road, re-shipment, storage, exposure to heat, moisture, rain and possibility of pilferage. All packing shall allow for easy removal and checking at site.
- b) **Equipment Cleaning, Sand-blasting and Painting**
The Goods shall be properly cleaned and/or sand-blasted and, where applicable, applied with one coat of rust inhibitor and a flat shop coat of paint except for shop finished equipment which shall be supplied finish painted.
- c) **Lifting Tackles, Skids and other Equipment Lifting and Protection Measures**
Heavy equipment shall be provided with suitable lifting tackle(s) and be mounted on and bolted to skids which shall be of sufficient strength to support, and prevent distortion to it. All openings of pipes and large valves must be protected by wooden covers or plugs and machined threads must be covered by caps to protect them against damage in transit.
- d) **Special Packing instructions**
All equipment and parts susceptible to corrosion by exposure to moisture and all electrical equipment shall be thoroughly protected against damage during transit and storage. Machine-finished surfaces shall be coated with approved anti-rust compound and all unfinished surfaces of machinery are to be given one coat of rust protective paint. In addition to normal packing, all electrical equipment shall be wrapped in polyethylene and polypropylene plastic sheets, and all openings in electrical equipment shall be sealed with water-proof tapes. A protective grease proof paper shall be inserted between the brushes and armatures of motors and generators.
- e) **Items to be packed separately**
The Contractor shall deliver the following equipment in individual separate packages with appropriate markings:
- Commissioning spares;
 - Special welding rods and fluxes, if required for the equipment being supplied by him;
 - Specialized erection tools and tackles, instrument and appliances, if required for the equipment being supplied by him;
 - Spare parts and accessories.
- f) **Packing of Fragile Items**

Fragile items shall be wrapped in crepe cellulose wadding or some equally efficient cushioning material and packed in substantial wooded boxes.

g) **Responsibility for Damages Due to Faulty Packing**

Notwithstanding anything stated in this Annex, the Contractor shall be entirely responsible for loss, damage or deterioration to the Goods occasioned by faulty, defective or insecure packing or due to improper or insufficient protective measures up to C.I.F. (port of destination).

h) **Tagging**

Each piece of equipment or parts thereof shall, when shipped or railed or otherwise despatched, be tagged with the corresponding part numbers.

i) **Markings**

- **Markings on Package Side 1**

The following shipping marks shall be clearly stenciled with good quality non-fading paint on one side of the containers (boxes, crates, packages, etc.), in characters at least 150 mm high where the size of the containers permits.

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
UNIDO _____ PLANT PACKAGE NO.
Project No.
UNIDO Contract No.

There shall be no duplication of package numbers.

- **Markings on Package Top and Bottom**

On the top and end the following symbol shall be marked:

Project No. _____ UNIDO _____ PLANT
UNIDO Contract No. _____ PACKAGE NO.

- **Markings on Package Side 3**

On one end the following information shall be marked:

Project No. _____ UNIDO _____ PLANT
UNIDO Contract No. _____

GROSS WEIGHT _____ (KILOGRAMS)

NET WEIGHT _____ (KILOGRAMS)

LENGTH _____ (METRES)

WIDTH _____ (METRES)

HEIGHT _____ (METRES)

MADE IN

(Country of Origin)

- **Markings on Package Side 4**

On the side opposite the above, the name of the Contractor, UNIDO Contract number and other identifying data shall be clearly marked.

- **Special Marking Requirements for Bundles and Metal Bases**

In the case of bundles or metal bases, the proper markings, as hereinbefore designated shall be placed on metal tags which are to be securely attached to the bundle or base as conspicuously as possible.

- **Package Topside Indication**

If necessary, packages must be marked on all four sides with arrows pointing to the top.

- **Markings for Fragile Items**

Fragile material shall be marked on all sides with appropriate cautionary symbols.

- **Markings for Unbalanced Weights**

When required due to length of unbalanced weight, the containers or pieces of equipment shall show the location of cables or hooks and the centre of balance.

PERFORMANCE BANK GUARANTEE

To : United Nations Industrial Development Organization (UNIDO)
Procurement Services Unit, Operational Support Services Branch
Wagramer Strasse 5, A-1400 Vienna, Austria

WHEREAS,, (hereinafter referred to as "the Contractor"), having its principal office located at, has undertaken, in pursuance of Contract No. dated to provide technical services and supplies necessary for the, (hereinafter referred to as "the Work"), at the Vienna International Centre;

WHEREAS it has been stipulated by UNIDO in the said Contract that the Contractor shall furnish UNIDO with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Euro (EUR), 5 % (five percent) from the final Contract price within the period of five (5) years from the date of acceptance of the Work by UNIDO, such sum being payable in the types and proportions of currency in which the Contract price is payable, and we undertake to pay to UNIDO, upon UNIDO's first written demand and without cavil or argument, any sum or sums within the limits of Euro (EUR), 5 % (five percent) of the final Contract price as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of UNIDO's demanding the said debt from the Contractor before presenting us with this demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the work to be performed thereunder or of any of the Contract documents which may be made between UNIDO and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee is effective from the date of its issue and shall remain in full force and effect within the period of five (5) years from the date of acceptance of the work by UNIDO.

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank
Address
Date