

APPENDIX 3 – MODEL CONTRACT

CONTRACT NO. (Model)

between the

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO)

Located at

Vienna International Centre, P O Box 300, A-1400 Vienna, Austria
Telephone: 26026, Telefax: 26026/<FAX NUMBER>

and the

<name of the contractor>

Located at

.....
Telephone:.... Fax:.....

for the provision of services relating to the

.....

Project No.:
Purchase Order No.:

UNIDO
PSM/OSS/PRS

1. Contractor's Responsibilities

In accordance with the terms and conditions stated herein and in the Annexes hereto the <contractor's name>, hereinafter referred to as "the Contractor", shall provide for the full and proper performance of its obligations under this Contract, all the services described in the Terms of Reference dated <date> and in the Contractor's Proposal dated <date>. A copy of the Terms of Reference is attached hereto as Annex B and made a part hereof. All work required under this Contract shall be completed no later than <date>.

It is understood that in the event of a conflict between the provisions in the Terms of Reference, in the Contractor's Proposal and in the present Contract and its other Annexes, the provisions in the Contractor's Proposal shall be subject to those in the Terms of Reference or in the Contract and its other Annexes, and the provisions in the Terms of Reference shall be subject to those in the Contract and its other Annexes.

2. Contract Price and Payment

UNIDO shall pay the Contractor for the full and proper performance of all obligations hereunder the sum of <currency and amount in words and in figure>. This sum shall cover all expenses incurred by the Contractor including, but not limited to, salaries, indemnities, social charges, overheads, travel, technical assistance and supervision costs. The Contractor shall not do any work which may result in any charges to UNIDO over and above the sum of <currency and amount in words and in figure> without prior written consent of UNIDO and a formal amendment to this Contract.

3. Entry into Effect of the Contract

This Contract shall be deemed to be effective from the date of its signature by both Parties.

4. Reports

The Contractor shall submit to UNIDO, Vienna, in accordance with Annex C hereto entitled "Instructions to Contractors for the Dispatch of Reports", in (<no of hard copies> hard copies and <no of electronic copies> on CD-ROM in MS Word or PDF format, the following reports, in the English language. (<this paragraph is completed depending on the reporting requirements of the contract>).

5. Progress Payments

Payments on account of the Contract price set forth in paragraph 2 hereinbefore shall be made, by electronic transfer, on the basis of the Contractor's invoices sent to UNIDO, Vienna, as follows:

CURRENCY

- a) upon UNIDO's receipt and acceptance of the Interim Report referred to in sub-paragraph 4 hereinbefore the sum of(*)
- b) upon UNIDO's receipt and acceptance of the Final Reports referred to in sub-paragraph 4 hereinbefore the sum of

Total:

(*) number of progress payments may differ depending on reporting requirements.

UNIDO is exempt from all direct taxes, duties and charges except charges for public utility services (see also paragraph 23 of the UNIDO General Conditions of Contract, Annex A). Accordingly, the Contractor must not include in his invoice any amounts representing such taxes, duties and charges without prior consultation with UNIDO.

The making of any payment hereunder by UNIDO shall not be construed as an unconditional acceptance by UNIDO of the work accomplished by the Contractor up to the time of such payment.

6. Submission of Invoices

The Contractor shall submit to the Procurement Services Unit/OSS/PSM <Attention: procurement officer>, UNIDO, P.O. Box 300, A-1400 Vienna, Austria, his invoice in one (1) original and two (2) copies reflecting the Project and Contract numbers as well as banking instructions, i.e. name and address of the bank, Account No., Sort Code No., IBAN or BIC, SWIFT, etc.

7. Contract Amendment

No modification or, 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 the authorized representatives of the Contractor and UNIDO.

8. Transmission of Reports, Invoices and Notices

All reports, invoice and notices submitted or given hereunder shall include the Project and the Contract number and be addressed to the Procurement Services Unit/OSS/PSM <Attention: Procurement Officer>, UNIDO, P.O. Box 300, A-1400 Vienna, Austria.

9. 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, 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 bona fide 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. Default by the Contractor

In case the Contractor fails to fulfill 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 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.

11. General Conditions

The Parties hereto agree to be bound by the UNIDO General Conditions of Contract, a copy of which is attached hereto as Annex A and made a part hereof.

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

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

By:
code

By:
<name of the authorized official> / <unit/branch/division>
UNIDO
P.O. Box 300 - A-1400 Vienna
Austria

Date:

Date:

Enclosures: Annex A:UNIDO General Conditions of Contract Annex B: Terms of Reference dated <date>

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Annex A

GENERAL CONDITIONS OF CONTRACT

Article 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.

Article 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 connection 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.

Article 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.

Article 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.

Article 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 total of this Contract under the provisions of paragraph 12 "Termination" hereafter.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 17 - Conflict of Interest

No employee of the Contractor assigned to perform work under this Contract shall engage, directly or indirectly, either in his own name or through the agency of another person, in any business, profession or occupation in the country of the Government; nor shall he make loans to or investments in any business, profession, or occupation in the said country.

Article 18 – Obligations

In connection 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 fulfill 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 connection with its business or otherwise. The Contractor is required to exercise utmost discretion in all matters relating to this Contract. Unless required in connection 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.

Article 19 - Title Rights

- (a) The United Nations or UNIDO, as the case may be, shall be entitled to all property rights including but not UNIDO -RFQ Set Services

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.

Article 20 - Facilities, Privileges and Immunities of Contractor and Contractor's Personnel

UNIDO agrees to use its best efforts to obtain for the Contractor and his personnel (except Government nationals employed locally), to the extent granted by the Government to UNIDO staff members, such facilities, privileges and immunities as the Government has agreed to grant to contractors and to their personnel performing services for the United Nations Development Programme within the country. Such facilities, privileges and immunities shall include exemption from or reimbursement of the cost of any taxes, duties, fees or levies which may be imposed in the country on salaries or wages earned by the Contractor's foreign personnel in connection with the execution of the work under this Contract and on any equipment, materials and supplies which the Contractor may bring into the country in connection with the work under this Contract or which, after having been brought into the country, may be subsequently withdrawn there from. A copy of the relevant provisions concerning facilities, privileges and immunities which UNIDO shall seek to obtain, is attached to and made a part of this Contract (Annex B).

Article 21 - Waiver of Facilities, Privileges and Immunities

Any provision, whether in an Agreement, Plan of Operation or any other instrument, to which the recipient Government is a party and by which the recipient Government confers benefits upon the Contractor and his personnel in the form of facilities, privileges, immunities, or exemptions by reason of his performance of services for UNIDO under this Contract may be waived by the UNIDO where, in its opinion, the facility, privilege or immunity would impede the course of justice and can be waived without prejudice to the successful completion of the work under this Contract or to the interest of the United Nations Development Programme or UNIDO.

Article 22 - 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.

Article 23 - 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.

Article 24 - 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.

Article 25 – 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.

