

**APPENDIX 3**

**UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION  
VIENNA INTERNATIONAL CENTRE**

P.O. Box 300, A-1400 Vienna, Austria  
Telephone 01 26026 5159 Fax 01 26026 6815

CONTRACT No. 30000xxxxx/CZ/mp

between

THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO)

and

XXXXXXXXXXXXXXXXXXXXX

located at

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

1. Subject to the General Conditions attached hereto as Annex A, which are part hereof, and any special conditions stated hereinafter, XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as the "Contractor") agrees to provide to UNIDO services relating to:

**Delivery and installation of one (1) FYAY 100 x 2 x 0.6  
between Wagramer Strasse 5 (Übergabebauwerk) and VIC (G0176)**

according to UNIDO Request for Quotation no. 1100114286/CZ/mp (RFx No. 700000xxxxx) dated 07 November 2018

based on the Contractor's offer dated xxxxxxxxxxxxxx including but not limited to the following:

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at the total all-inclusive maximum cost not exceeding Euro  
xxxxxxxxxxxxxxxxxxxxxx (€ xxxxxxxxxxxx) (+ VAT).

The work under this Contract shall be coordinated by the Contractor with Mr. xxxxxxxxxxxxxxxxxxxx, E-mail: xxxxxxxxxxxxxxxxxxxx, Tel.: +43-1-26026 Ext. xxxx, acting as the UNIDO focal point. The Contractor will work in frequent communication with and contact the aforementioned UNIDO official.

2. UNIDO shall pay the Contractor for the full and proper performance of all obligations hereunder the maximum sum of Euro xxxxxxxxxxxxxxxxxxxxxxxxxxxxx (€ xxxxxxxxx) (+ VAT). The Contractor shall not do any work which may result in any charges to UNIDO over and above the maximum sum of Euro xxxxxxxxxxxxxxxxxxxxxxxxxxxxx (€ xxxxxxxxx) (+ VAT) without a formal written amendment to this Contract signed by the Contractor and the Chief, Procurement Services Division, Department of Operational Support Services, Directorate of Corporate Management and Operations, UNIDO, or its representative.
3. The Contract price set forth in paragraph 1 is fixed and firm and not subject to escalation.
4. The Contractor warrants that the Work shall meet the specifications and requirements set forth in the Specifications of Work and Supply (Annex B).
5. The Contractor warrants that the equipment, components, tools and spare parts supplied by it, its 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 its 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 (final invoice), 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.
6.
  - 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 6. 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 its 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 its obligations other than specifically to correct the Work.
7. 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 its obligations under the Contract.
8. If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide certificate of insurance to UNIDO in accordance with paragraph 7 above, then and in any such case UNIDO may, at its option, hold the Contractor in default in accordance with paragraph 9 herein below, 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.

9. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor.
10. UNIDO may terminate this Contract in whole or in part and at any time, upon thirty (30) days' notice of termination to the Contractor. 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. 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.
11. In case the Contractor fails to fulfill its 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), 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 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.

12. Payment will be made by electronic bank transfer after completion and acceptance of the work and upon submission of invoices and documentary evidence. The invoices shall contain detailed banking instructions, including name and address of the bank, account no., and sort code no. for payment by electronic transfer. 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 UNIDO of the Contractor's invoice.

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 its 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 UNIDO or of reasonable evidence indicating the probable basis on which damage claims may be presented by 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.

13. Detailed invoices indicating contract and purchase order numbers, and all other documents which may be produced under this Contract shall be sent, in one (1) original and one (1) copy, to: Ms. C. Ziniel, Procurement Officer, Procurement Services Division, Department of Operational Support Services, Directorate of Corporate Management and Operations, P.O. Box 300, A-1400 Vienna.

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

UNITED NATIONS INDUSTRIAL  
DEVELOPMENT ORGANIZATION  
P.O. Box 300  
A-1400 Vienna  
Austria

Signature .....

Signature .....

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
Procurement Services Division  
Department of Operational Support Services  
Directorate of Corporate Management and  
Operations

Date .....

Date .....

Annex A – UNIDO General Terms and Conditions

Annex B – Specifications of Work and Supply and BMS General Conditions

# 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