

**Annex IV – Draft Form of Contract****UNOPS/JMOC/JPN/CON/XXX, Contract for the Stage Two Construction Works “New Jericho Prison Facility” at JERICHO, West Bank, occupied Palestinian territories.****Ref.: UNOPS 63590, Jericho Prison (JPN) Project**

The United Nations Office for Project Services (hereinafter referred to as "UNOPS" and also the "Employer"), wishes to engage the service of \_\_\_\_\_ duly incorporated under the laws in force in the Occupied Palestinian Territories (hereinafter referred to as the "Contractor") in order to perform the Construction of the Stage Two Construction Works “New Jericho Prison Facility” in JERICHO, West Bank, occupied Palestinian territory (hereinafter referred to as the "Works"), in accordance with the following Contract:

**1. Contract Documents:**

- 1.1 This Contract is subject to the UNOPS General Conditions for Construction Works, Rev 02, April 1995, attached hereto as (Annex V). The provisions of such Annex shall control the interpretation of this Contract and in no way shall be deemed to have been derogated by the contents of this letter and any other Annexes, unless otherwise expressly stated under section 4 of this letter, entitled "Special Conditions".
- 1.2 The Contractor and UNOPS also agree to be bound by the provisions contained in the following documents, which shall take precedence over one another in case of conflict in the following order:
  - a) This letter;
  - b) The Technical Specifications and Drawings reference UNOPS/JMOC/JPN/ITB/09/002 dated 23<sup>rd</sup> Dec 2009, attached hereto as (Annex II-B and Annex II-C).
  - c) The Bill of Quantities, attached hereto as (Annex II-A).
  - d) The Contractor's Tender dated \_\_\_\_\_ not attached hereto but known to and in the possession of both parties.
- 1.3 All the above shall form the Contract between the Contractor and UNOPS, superseding the contents of any other negotiations and/or agreements, whether oral or in writing, pertaining to the subject of this Contract.

Contractor Name:

Title:

Company Name:

Location:

City, Country:

**Annex IV – Draft Form of Contract****2. Obligations of the Contractor:**

- 2.1 The Contractor shall take possession of the site and commence work within 7 calendar days from the date on which he shall have signed the contract and received notice to commence the works from the Engineer. The Contractor shall perform and substantially complete the works within Fourteen (13) calendar months, after he takes possession of the site, in accordance with the Contract. The Contractor shall provide all material, supplies, labor and other services necessary to that end.
- 2.2 The Contractor shall submit to the Engineer the Programme of Work referred to in Clause 13 of the General Conditions within seven calendar days of signing the contract, for the approval of the Engineer. The Work Program shall be submitted in the form of a critical path method, Gantt chart, supplemented with the number of personnel and equipment. The submitted and agreed Work Program will specify the dates for Practical Completion of the sections of work detailed in accordance with paragraph 4.8 below. These dates will be fixed as the milestones for the application of Liquidated Damages in accordance with paragraph 4.8 below. For the course of the contract, a work plan is to be maintained and submitted at every scheduled Coordination Meeting, detailing the progress of the works.
- 2.3 The Contractor represents and warrants the accuracy of any information or data provided to UNOPS for the purpose of entering into this Contract, as well as the quality of the Works foreseen under this Contract in accordance with the highest industrial and professional standards.

**3. Price and payment:**

- 3.1 In full consideration of the complete and satisfactory performance of the Works under this Contract, UNOPS shall pay the Contractor a fixed contract price of **ILS XXXX New Israeli Shekels**.
- 3.2 The price of this Contract is subject to adjustment only through Variations and Price Fluctuations as detailed under this Contract. The Contract Price is not subject to any adjustment or revision because of actual costs, actual quantities of work and materials utilized by the Contractor in the performance of the Contract.
- 3.3 Where advance payment has been approved, the Contractor shall submit an invoice for advance payment (not to exceed 20% of total contract value, or up to \$50,000 US, whichever is the lesser (in Shekels)) upon signature of this Contract by both parties; invoices for the work performed as provided for in paragraph 3.4 below; and a final invoice within 30 days from the issuance of the Certificate of Substantial Completion by the Employer.
- 3.4 The Contractor shall submit separate invoices by the 15<sup>th</sup> of each calendar month, specifying the amount that the Contractor considers due the previous calendar month, together with the calculations in accordance with paragraph 4.1 below. UNOPS shall effect payment of the invoices after receipt of the certificate of payment issued by the Engineer, approving the amount contained in the invoice. The Engineer may make corrections to that amount, in which case UNOPS may affect payment for the amount so corrected. The Engineer may also withhold invoices if the work is not performed at any time in accordance with the terms of the Contract or if the necessary insurance policies or performance security are not valid and/or in order. The Engineer shall process the invoices submitted by the Contractor within 15 days of their receipt.

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- 3.5 Payments effected by UNOPS to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNOPS of the Contractor's performance of the Works.
- 3.6 Payment of the final invoice shall be effected by UNOPS after issuance of the Certificate of Substantial Completion by the Engineer.

**4. Special conditions**

- 4.1 The amount that the Contractor considers due for work performed in each calendar month specified in each invoice submitted by the Contractor shall be subject to adjustment as follows:
- (a) UNOPS and the Contractor agree that the following index in the same currency as the currency of this Contract (hereinafter referred to as “Index”) shall be used when calculating the adjustments under this paragraph 4.1: the price index issued by the Palestinian Central Bureau of Statistics (“PSCBS”) for Inputs in Construction Projects. In calculating the adjustment under this paragraph 4.1, no index except for the aforementioned Index may be used. Should the Index cease publishing reference values for a calendar month or months or be otherwise unavailable, no adjustments shall be made for invoices submitted for that month or months, and no retroactive adjustments shall be made should the Index for that month or months become available after the submission by the Contractor of the relevant invoice(s). No adjustments whatsoever will be considered after the issuance of the Certificate of Final Completion by the Engineer.

- (b) Adjustments shall be calculated using the following formula:

$$TAA = TA + AA$$

$$AA = TA * (X \% + Y \% ) / 100$$

Where:

- (i) “TAA” is the total adjusted amount that the Contractor considers due for work performed in a calendar month in accordance with the Bill of Quantities
- (ii) “TA” is the total amount the Contractor considers due for work performed in a calendar month in accordance with the Bill of Quantities;
- (iii) “AA” is the amount of the adjustment;
- (iv) “X%” is the sum of Index percentage changes published by the Index for the preceding calendar months, beginning with the month of expiration of bid prices specified in the ITB and ending with the calendar month for which the invoice is submitted; and
- (iv) “Y%” is either equal to 3% if X is a negative value; or equal to (-3%) if X is a positive value.

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(c) Notwithstanding anything to the contrary in (b) above,

$$\text{If } (-3\%) < X\% < 3\%, \text{ then } X\% + Y\% = 0$$

Where the definitions are as in sub-paragraphs (b) (iv) and (v) above.

(d) It shall be the responsibility of the Contractor to submit to the Engineer the calculations in accordance with the formula above with each invoice submitted by the Contractor for works performed in a calendar month. The Engineer has full authority to revise said calculation in the event of arithmetical errors, incorrect use of the Index, or if the calculation is otherwise not in accordance with this Contract.

(e) The Contractor is required to submit to the Engineer an invoice for payment by the 15<sup>th</sup> of every calendar month, starting from the expiration of the bid validity period, for works performed in the preceding calendar month. If the Contractor fails to submit the invoice within the time prescribed by the Contract, the Engineer may perform a measurement of works completed for the relevant calendar month which will be used to determine the adjustment value for that period and the total amount due to the Contractor for that period. Such measurement conducted by the Engineer will be considered the agreed measurement between both parties and may not be disputed by the Contractor.

4.2 Notwithstanding anything to the contrary, the total value of adjustments under this paragraph 4.1 may not under any circumstances exceed the amount specified in the contingency line item of the Bill of Quantities. Should the amount specified in the contingency line item of the Bill of Quantities be fully utilized at any time prior to the submission by the Contractor of its final invoice, no further positive adjustments whatsoever shall be made without a written amendment to the Contract increasing the contingency line item and the total Contract amount in accordance with paragraph 7.1 below. The Contractor acknowledges and agrees that any such amendment is (i) at the discretion of the UNOPS, and (ii) is subject to the relevant funding source providing the necessary additional funds to UNOPS.

4.3 The advance payment to be made upon signature of the contract by both parties is contingent upon receipt and acceptance by UNOPS of a bank guarantee for the full amount of the advance payment issued by a bank and in a form acceptable to UNOPS and valid until Substantial Completion of the Works, and is also contingent upon receipt and acceptance by UNOPS of the required performance guarantee referred to in paragraph 4.6.

4.4 The amounts of the payments referred to under section 3.1 above shall be subject to a deduction of 10% (ten percent) of the amount accepted for payment until the cumulative amount of the deductions so effected shall equal the amount of the advance payment, at which point the advance payment guarantee shall be returned by UNOPS to the Contractor. Should the cumulative amount of the deductions so made be lower than the amount of the advance payment after the date of Substantial Completion of the Works, UNOPS may deduct the amount equal to the difference between the advance payment and the cumulative deductions from the payments due after Substantial Completion or may recover such amount from the bank guarantee referred to in paragraph 4.5.

4.5 A retention (hereinafter referred to as “retention money”) amounting to 10% (ten percent) of the amounts due, determined in accordance with the procedure set out in paragraph 3.4 above, shall

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be made by the Engineer in certifying the Contractor’s first and subsequent invoices for payment. Upon the issue of the Certificate of Substantial Completion with respect to the whole of the Works, one-half of the retention money shall be certified by the Engineer for payment to the Contractor. The Contractor may substitute the remaining retention money with an unconditional on-demand bank guarantee in a form, and from a source, acceptable to UNOPS. Upon the issuance of the Defects Liability Certificate for the Works, the other half of the retention money shall be certified by the Engineer for payment to the Contractor (or return of the bank guarantee, which replaced the retention money).

- 4.6 The Contractor shall be responsible for the maintenance of the said works for a period of **one year defects liability period**, effective from the day of issuance of the Certificate of Substantial Completion of the Works by UNOPS Engineer.
- 4.7 Any damage by the Contractor on the executed works during the defect liability period should be repaired by the Contractor and at his own expense and during a week after receiving a notice in writing from the UNOPS; and if the contractor does not repair these damages during the above specified period, then UNOPS does these repairs at the expense of the Contractor which shall be deducted from due against the Maintenance Guarantee.
- 4.8 The performance guarantee referred to in Clause 10 of the General Conditions shall be submitted by the Contractor within business 7 days of the signature of the Contract by both parties for an amount of 10% (ten percent) of the total estimated price of the Contract. The performance guarantee shall be valid until the date of payment by UNOPS of the final invoice.
- 4.9 The liability insurance referred to in Clause 23 of the General Conditions shall be taken out by the Contractor for an amount of 15% (fifteen percent) of the total estimated price of the Contract per occurrence, with number of occurrences unlimited.
- 4.10 Liquidated damages for delays will be implemented according to the below milestones. The liquidated damages shall be 0.1 percent for each milestone total value per calendar day of the delay, up to a maximum of 10% of the total price of the milestone. Payment of liquidated damages shall not affect the Contractor’s liabilities.

*Work Section	Percentage of total work value	*Duration after Possession of Site
Main Prison Building Structure ( concrete frame, walls, roof slabs)	As per agreed BoQ Items	Week 29
Contract Works Completion	Full Contract Value	Week 56

- 4.11 The Contractor shall pay additional liquidated damages to the UNOPS for the additional fees required to be paid for the construction supervision and management at the rate per day which will be determined by UNOPS or the authorized representative for each day that the Completion Date is later than the Intended Completion Date. The UNOPS or the authorized representative may deduct liquidated damages from payments due to the Contractor.

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- 4.12 UNOPS reserves the right to increase or decrease the quantity of works specified in the Bill of Quantities, regardless of the percentage of change in quantities, without any change in unit price or other terms.
- 4.13 In accordance with clause 56 of the General Conditions, UNOPS is exempt from taxation and inter alia no Value Added Tax (“VAT”) shall be paid by UNOPS to the Contractor. Accordingly, all invoices submitted by the Contractor shall be net of VAT. The Contractor shall acquire the necessary tax clearances from the Palestinian Ministry of Finance
- 4.14 Notwithstanding anything to the contrary, in view of the prevailing situation of unrest in the Occupied Palestinian Territories, UNOPS will not be held liable for any contractual claims arising out of or in connection with the consequences of the prevailing situation, including closures, strikes, curfew, and acts of war. This includes any claims for overhead expenses due to idle works, changes in the market cost of materials and/or equipment and related transportation or other costs. Accordingly, the Contractor will only be entitled for the costs of executed works and supplied material and/or equipment, all based on the unit prices in the Bill of Quantities attached hereto, and shall be entitled to apply for an extension of the time for completion of the Works specified in the Contract in the case of closures, curfew, and acts of war. UNOPS shall, upon such application, determine the period of any such extension of time.
- 4.15 This Contract is subject to the UNOPS Site Health and Safety Rules, attached hereto as Annex II-D. The Contractor will carry out his works with due regard for the safety of all personnel on site, employed by him or otherwise. The UNOPS Site Health and Safety Rules are there to reinforce good practice in Construction Safety; they do not substitute nor dissolve any Contractor of their obligation or responsibility under the relevant laws of governance in place in the oPt. Neither do they replace any obligations the Contractor is subject to in these Conditions of Contract. The Contractor is deemed to have allowed for all expenses related to the compliance of the “UNOPS” Site Health and Safety Rules in his Tender Price.
- 4.16 The Contractor shall provide offices, furniture, supplies (including drinking water supply, electricity, drainage and heating) and other facilities for his supervision staff, employees and sub contractors. The contractor should also provide the services needed for their operation and maintenance throughout the execution of the project. The Contractor shall provide these facilities within 7 days from the date of signing the contract.
- 4.17 The Contractor shall provide the Site at his own expense with water and electricity. Where main supplies are not available on Site, he shall provide a generator with suitable capacity, and water tanks of suitable sizes including the required petrol, diesel or gas for operation of his site offices.
- 4.18 The contractor shall, at his own expense provide all necessary measuring and inspection devices such as tapes in different lengths, EDM, theodolite, level and moulds for concrete and slump tests. These devices shall be available on-site throughout the execution of the Contract and shall be under the control of the designate contractors supervising engineer and will be made available to the UNOPS’ Engineering staff upon request at any time.

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- 4.19 The Contractor shall at his own expense protect the boundaries of his site works and any excavations, by installing a temporary fence suitable to prevent access by unauthorized personnel to his working area.
- 4.20 If the Contractor fails to provide any of the above-mentioned items, then UNOPS will provide at the expense of the Contractor and the cost will be deducted from payments due to the Contractor.
- 4.21 The Contractor is deemed to have allowed for all the above expenses in his Tender Price.
- 4.22 The Contractor will provide as a minimum, the following full time staff on the project for the duration of his works: Project Manager, Lead Foreman, Engineer and Surveyor. Future replacement of Staff specified in the Contractors tender will require the approval of the UNOPS Project Manager.
- 4.23 The Contractor shall get approval for the planned absence of the Project Manager. If the lead Project Manager is absent without the UNOPS Project Manager's consent, then UNOPS will deduct the amount of 100 USD per day, for the total period of the absence, from monies due to the Contractor. For absence in part the deduction will be done proportionally.
- 4.24 The Contractor shall submit a schedule of all material samples to be used in the execution of the Works within 14 calendar days of signing the contract, the said samples should be provided for inspection one month before the use of such material in the Works.
- 4.25 The Contractor will not be exempted from payment of testing costs, except from payment of concrete testing costs which will be carried out by UNOPS.
- 4.26 The Contractor shall abide by all regulations concerning use of locally manufactured products. If and when the Contractor proposes an alternative material suitable for its required use, then he shall notify the Engineer in writing of its specifications, before its import, for approval.
- 4.27 The Contractor shall within 7 days from signing the contract, provide the Engineer with detailed information regarding the suppliers of the following materials supported by samples, catalogues, certificates of origin and testing and approval certificates: Ready mixed concrete.
- 4.28 Handing over documents: Upon completion and handing over of the project by the Contractor to UNOPS, the contractor must submit the following documentation to UNOPS:
- (i) Three copies of all maintenance manuals and instructions for operation of any equipment or mechanical and electrical apparatus, in Arabic or English text.
  - (ii) Three copies of the As-Built Drawings (including the original copy) in addition to Compaq Disk (CD) containing these drawings.
  - (iii) List of spare parts for each equipment or apparatus, other than those spare parts that he is required to supply in accordance with the Contract, these parts which are supposed to have been supplied by the Contractor prior to the issue of the Taking over Certificate.
  - (iv) Final report showing all works activities and details for all stages, using a set of photographs that shall be signed by the Contractor and approved by the Engineer. Also, the final report should include all of the workmen who were employed during the execution of the project.

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- 4.29 Contractor's Supervisor during defects liability period: In case there is no Supervisor from the contractor, under contract during the defects liability period, UNOPS shall assume all functions of the Engineer referred to in the general terms and conditions of contract and debit the cost from the retention and / or maintenance guarantee.
- 4.30 Removal of Materials & Equipment: If the Contractor fails to remove equipment, plant, materials or Temporary Works from the Site within a reasonable period after the Completion of the Works or Termination of Contract, in accordance with the instructions of the Engineer, then UNOPS may remove either by sale or returning them to their original owners, If hired, at the expense of the contractor, then the settlement of account shall be made with the Contractor, and if any amount is due to him, he shall be paid such sum. However, if the result of such settlement did not cover the cost of removal, then such amounts shall be deducted from payments due to the Contractor.”
- 4.31 General Obligations of the Contractor:
- a) He shall attempt to decrease noise and environmental pollution as much as possible.
  - b) He shall not use the site for purposes other than the execution of the Works.
  - c) He shall drain floodwater and excess water by pumping to prevent damage to any third party.
- 4.32 The tender documents are complementary to each other, in case of any discrepancies; the higher standard will be adopted, all according to the directions of the Engineer, and all without any financial or time variations for the Contractor.
- 4.33 In the event that an item mentioned in the Bill of Quantities falls short in the description of one or more of its components, but such components were deemed necessary for that item to serve the purpose it was intended to, then the Contractor is compelled under this agreement to execute such item complete with all its components that would guarantee its functionality, and to do so with no additional cost and with no extra time allowance.
- 5. Submission of invoices:**
- 5.1 One original and one copy of every invoice shall be submitted by mail by the Contractor for each payment under the Contract to the Engineer's address specified in clause 8.2. The Contractor shall submit along with each invoice a valid Tax Clearance Certificate issued by the Ministry of Finance and the updated MS Project Programme accurately reflecting the current progress of the project.
- 5.2 Invoices submitted by fax shall not be accepted by UNOPS.
- 6. Time and manner of payment:**
- 6.1 Invoices shall be paid within thirty (30) days of the date of their receipt and acceptance by UNOPS.



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6.2 All payments shall be made by UNOPS to the following Bank account of the Contractor:

Name of the Bank:

Account Number:

Swift Code:

Address of the Bank

**7. Modifications:**

7.1 Any modification to this Contract shall require an amendment in writing between both parties duly signed by the authorized representatives of the Contractor and UNOPS.

**8. Notifications:**

8.1 For the purpose of notifications under the Contract, the addresses of UNOPS and the Contractor are as follows:

*For UNOPS:*

Antonia Marie DeMeo  
Director a.i.  
UNOPS Jerusalem Operations Centre (JMOC)  
Wadi Joz, 8 Nour Ad-Din Street  
P.O. Box 55157  
Jerusalem  
Ref: UNOPS/JMOC/PPSP/G/CON/003  
Fax: +972 2 268 1586

*For the Contractor:*

Name:  
Title:  
Address:  
Tel.:  
Fax:  
E mail:

8.2 UNOPS would confirm the address of the Engineer for the purposes of communication with the Engineer under the Contract are as follows:

Nicholas Young  
Project Manager

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UNOPS Jerusalem Operations Centre (JMOC)  
Wadi Joz, 8 Nour Ad-Din Street  
P.O. Box 55157  
Jerusalem  
Ref: UNOPS/JMOC/JPN/CON/XXX  
Fax: +972 2 268 1586

If the above terms and conditions meet with your agreement as typed in this letter and in the Contract Documents, please initial every page of this letter and its attachments and return to this office one original of this Contract, duly signed and dated.

Yours sincerely,

Antonia Marie DeMeo  
Director a.i.  
UNOPS JMOC

For Contractor:

Agreed and Accepted by:

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_