

APPENDIX C

GENERAL CONDITIONS OF CONTRACT

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General Conditions of Contract

A. CONTRACT AND INTERPRETATION

1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated below.

(a) *contract elements*

- (i) “Contract” means the agreement entered into between the Purchaser and the Supplier, together with the Contract Documents. The agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- (ii) “Contract Documents” means the following documents:
 - (a) The General Conditions of Contract (GCC)
 - (b) The Special Conditions of Contract (SCC)
 - (c) The Technical Requirements (Including Implementation Schedule)
 - (d) The Supplier’s Bid and the Price Schedules Forms (FORMS 13, 14, 15 and 16) including any amendments to these Documents.
- (iii) “Implementation Schedule” means the Implementation Schedule Chapter of the Technical Requirements.
- (iv) “Contract Price ” means the Total Bid Price specified in the Supplier’s Bid Form.
- (v) “Bidding Documents” refers to the collection of documents issued by the Purchaser to instruct and inform potential suppliers of the processes for bidding, selection of the winning bid, and Contract formation, as well as the contractual conditions governing the relationship between the Purchaser and the Supplier.

(b) *entities*

- (i) “ The Purchaser ” or “the Bank” means the entity, the African Development Bank, purchasing the Information System.
- (ii) “Project Manager” means the person appointed by the Purchaser in the manner provided in GCC Clause 18.1 (Project Manager) and named as such in the SCC to perform the duties delegated by the Purchaser.
- (iii) “Supplier” means the person(s) whose bid to perform the Contract has been accepted and is named as such in the Contract Agreement and includes the legal successors or permitted assigns of the Supplier.

- (iv) “Supplier’s Representative” means any person nominated by the Supplier and named as such in the Contract Agreement and approved by the Purchaser in the manner provided in GCC Clause 18.2 (Supplier’s Representative) to perform the duties delegated by the Supplier.
 - (v) “Subcontractor,” means any person to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Supplier and includes its legal successors or permitted assigns.
 - (vi) “Purchaser’s Group” means the Purchaser, a subsidiary undertaking or holding company for the time being of the Purchaser, or a subsidiary or subsidiary undertaking for the time being of a holding company of the Purchaser.
- (c) *subject*
- (i) “Information System,” also called “the System,” means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier’s Equipment), together with the Services to be carried out by the Supplier under the Contract.
 - (ii) “Subsystem” means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
 - (iii) “Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install.
 - (iv) “Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier’s Equipment.
 - (v) “Services” means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.
 - (vi) “The Project Plan” means the document to be developed by the Supplier and approved by the Purchaser, pursuant to GCC Clause 19 and the SCC, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier’s bid. For the sake of clarity, “the Agreed and Finalized Project Plan” refers to the version of the Project

Plan approved by the Purchaser, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.

- (vii) “Software” means part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations.
- (viii) “System Software” means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.
- (ix) “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General- Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- (x) “Application Software” means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.
- (xi) “Standard Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- (xii) “Custom Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- (xiii) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- (xiv) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Purchaser under the Contract.

- (xv) “Standard Materials” means all Materials not specified as Custom Materials.
 - (xvi) “Custom Materials” means Materials developed by the Supplier at the Purchaser’s expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
 - (xvii) “Intellectual Property Rights” means any and all copyright, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
 - (xviii) “Supplier’s Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.
- (d) *activities*
- (i) “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the *Incoterms* specified in the Contract.
 - (ii) “Installation” means that the System or a Subsystem was specified in the Contract is ready for Commissioning as provided in GCC Clause 26.
 - (iii) “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in the General Conditions of Contract (hereafter GCC) Clause 24.
 - (iv) “Commissioning” means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 24.1, for the purpose of carrying out Operational Acceptance Test(s).
 - (v) “Operational Acceptance Tests” means the tests specified in the Technical Requirements and Agreed and Finalized Project Plan to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed and Finalized Project Plan, in accordance with the provisions of GCC Clause 24.2.

- (vi) “Operational Acceptance” means the acceptance by the Purchaser of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 24.3.
- (e) *place and time*
- (i) “Purchaser’s Country” is the host country of the Bank.
 - (ii) “Supplier’s Country” is the country in which the Supplier is legally organized, as named in the Contract Agreement.
 - (iii) “Project Site(s)” means the place(s) specified in the SCC for the supply and installation of the System.
 - (iv) “Eligible Country” means the Bank’s member countries eligible for participation in procurements financed by the African Development Bank. The Bank maintains a list of members countries which Bidders, Goods, and Services are eligible to participate in procurement financed by the Bank.
 - (v) “Effective Date” means the date of fulfillment of the following:
 - (vi) The Contract has been duly signed for on behalf of the Purchaser and Supplier.
 - (vii) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Purchaser and Supplier in relation to the System, as specified in the SCC.
 - (viii) “Defect Liability Period” (also referred to as the “**Warranty Period**”) means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Subsystem[s]) and other related services.
 - (ix) “The Post-Warranty Services Period” means the number of years defined in the SCC (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/or technical support services for the system, either under this Contract or under separate contract(s)).
 - (x) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available.

2. Interpretation

2.1 Language

2.1 Unless otherwise agree, all Contract Documents, all correspondence, and communications to be given shall be written in the language specified in the Special Conditions of Contract (hereafter **SCC**), and the Contract shall be construed and interpreted in accordance with that language.

2.2 Independent Supplier

The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.

All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.

2.3 Incoterms

The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by the current edition of Incoterms published by the International Chamber of Commerce, Paris, France

2.4 Joint Venture or Consortium

If the Supplier is a Joint Venture or consortium of two or more persons, all such firms shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the Joint Venture or consortium. The composition or constitution of the Joint Venture or consortium shall not be altered without the prior consent of the Purchaser.

3. Notices

Unless otherwise stated in the Contract, all notices to be give under the Contract shall be in writing and shall be sent by personnel delivery, special express courier, facsimile to the address of the relevant party as specified in the SCC, with the following provisions.

Any notice sent by facsimile shall be confirmed within three (3) days after dispatch by notice sent by special courier, or delivered personally, except as otherwise specified in the Contract

4. Governing Law

4.1 The Contract shall be governed by and interpreted in accordance with the laws of the country specified in the **SCC**.

5. Settlement of Disputes

5.1 *Amicable settlement*

5.1.1 If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, within fourteen (14) days after one party has notified the other in writing of the dispute or difference, then the dispute can be referred to arbitration.

5.2 *Arbitration*

5.2.1 The interested party must give notice to the other party of its intention to commence arbitration, as provided below, as to the matter in dispute.

5.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 5.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.

5.2.3 Arbitration proceedings shall be conducted: (i) in accordance with the UNCITRAL arbitration rules, (ii) in the place specified in the **SCC**, and (iii) in the language in which this Contract has been executed.

5.2.4 Decisions that, according to: (i) UNCITRAL arbitration rules, need to be made by an appointing authority, shall be made by (ii) the Appointing Authority as specified in the **SCC**.

5.3 Notwithstanding any reference to arbitration in this clause,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;
- (b) the Purchaser shall pay the Supplier any monies due to the Supplier;
- (c) the submission of any dispute between the parties shall not be construed as constituting a waiver, renunciation, or other modification of any right, immunity, privilege or exemption accorded to the Bank under the Agreement Establishing the African Development Bank, the Agreement Establishing the Temporary Relocation Agency of the African Development Bank and the African Development Fund in Tunisia, or any applicable law.

B. SUBJECT MATTER OF CONTRACT

6. Scope of the System

- 6.1 Unless otherwise expressly limited in the **SCC** or Technical Requirements, the Supplier's obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed and Finalized Project Plan.
- 6.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and / or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and / or items and Materials were expressly mentioned in the Contract.
- 6.3 The Supplier's obligations (if any) to provide Goods and Services identified in the Related Services Price Schedule and Maintenance Cost Schedule Forms of the Supplier's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as specified in the **SCC**, including the relevant terms, characteristics, and timings.

7. Time for Commencement and Operational Acceptance

- 7.1 The Supplier shall commence work on the System within the period specified in the **SCC**, and without prejudice to GCC Clause 25.2, the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan.
- 7.2 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time specified in the **SCC** and in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Supplier shall be entitled

8. Supplier's Responsibilities

- 8.1 The Supplier shall conduct all contracted activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

- 8.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Purchaser and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 8.3 The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Clause 16.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GCC Clause 29.2.
- 8.4 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the Purchaser's Country that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Purchaser under GCC Clause 9.3 and that are necessary for the performance of the Contract.
- 8.5 The Supplier shall comply with all laws in force in the Purchaser's Country. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 9.1.
- 8.6 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 8.7 The Supplier shall permit the Bank to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Bank, if so required by the Bank.

9. Purchaser's Responsibilities

- 9.1 The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser to the Supplier, except when otherwise expressly stated in the Contract.
- 9.2 The Purchaser shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 16.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section.

- 9.3 If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.
- 9.4 The Purchaser will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.
- 9.5 The Purchaser assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 24.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Supplier's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.

C. PAYMENT

10. Contract Price

- 10.1 The Contract Price shall be as specified in the signed Bid Form (Form 17)
- 10.2 The Contract Price shall be a firm lump sum not subject to any alteration, except:
- (a) in the event of a Change in the System;
 - (b) in accordance with the price adjustment formula (if any) specified in the **SCC**.
- 10.3 The Contract Price of individual Supply Items or of Sub-systems delivered, installed, and made operational adheres to the following terms:
- (a) Foreign Goods. Goods supplied from outside the host country are priced on a DDU basis. The named place of destination and other specific requirements for the contract of carriage shall be as specified in **SCC**
 - (b) Domestic Goods.
 - (i) Goods offered from within the host country shall be priced free of customs duties and all taxes levied by the host country. The place of delivery is as specified in **SCC**.
- 10.4 Services required by the Contract (such as inland transport and cargo insurance for domestic goods; software development; system installation, customization, integration, commissioning, and testing; training; technical support; and other services necessary for proper installation and operation of the Information System), shall be priced free of all taxes levied by the host country

- 10.5 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

11. Terms of Payment

- 11.1 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 19.1.1 and upon fulfillment of other obligations stipulated in the Contract.

The Contract Price shall be paid as specified in the **SCC**.

- 11.2 No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the System or any Subsystem(s).
- 11.3 Not applicable.
- 11.4 All payments shall be made in the currency(ies) specified in the Contract, pursuant to GCC Clause 10.
- 11.5 Unless otherwise specified in the SCC, payment of the Contract Price for Goods and Services supplied from outside the Purchaser's Country shall be made to the Supplier through a confirmed irrevocable sight letter of credit to be issued by the Bank, the terms and conditions of which will be agreed prior to issuance. It is agreed that the letter of credit will be subject to the latest revision of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce, Paris.

12. Securities

12.1 Issuance of Securities

The Supplier shall provide the securities specified below in favor of the Purchaser at the times and in the amount, manner, and form specified below.

12.2 Advance Payment Security

- 12.2.1 The Supplier may, if it wishes and provided the performance security has been submitted and other Contract conditions fulfilled, receive an advance payment of no more than ten (10) percent of the Contract Price against delivery of an Advance Payment Security as specified in the **SCC**.
- 12.2.2 The security shall be in the form provided in the Bidding Documents (FORM 12) or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the System executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The security shall be returned to the Supplier immediately after its expiration.

12.3 *Performance Security*

12.3.1 The Supplier shall, within fifteen (15) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency specified in the **SCC**.

12.3.2 The security shall be in the form of a bank guarantee or standby irrevocable sight letter of credit, in favor of the Bank, issued by an eligible banking institution acceptable to the Bank. The letter of credit shall be confirmed in the Bank's host country by a reputable bank, acceptable to the Bank. The format of the security shall be substantially in accordance with the sample form of Performance Security (FORM 11) included in these Bidding Documents.

13.3.3 The security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Supplier no later than thirty (30) days after its expiration.

13.3.4 The security shall be reduced:

- (a) pro rata by the portion of the Contract Price payable for any Subsystem(s) that has achieved Operational Acceptance, if permitted by the Contract, on the date of such Operational Acceptance;
- (b) by the amount specified in the **SCC**, to reflect Operational Acceptance of the entire System, on the date of such Operational Acceptance, and provide for reduced coverage during the Warranty Period and Post Warranty period.

13. Taxes and Duties

13.1 Except for the tax exemptions and privileges the Purchaser and/or its operations is entitled to, or as otherwise specifically provided in the Contract, the Supplier shall bear and pay all taxes, duties, levies, and charges assessed on the Supplier, its Subcontractors, or their employees by all municipal, state, or national government authorities, both within and outside the Purchaser's Country, in connection with the Goods and Services supplied under the Contract.

13.1 Notwithstanding GCC Clause 13.1 above, the Purchaser shall bear and promptly pay all customs clearance costs, sales or other indirect taxes imposed by law in the Purchaser's Country on the Goods supplied under the Contract.

D. INTELLECTUAL PROPERTY

14. Software License Agreements and Confidential Information

14.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Purchaser, the Supplier hereby grants to the Purchaser license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

(a) be:

- (i) valid throughout the territory of the Purchaser's Country and in any other country where the Purchaser maintains an office or rent facilities for its operations (or such other territory as specified in the SCC)
- (ii) subject to additional restrictions (if any) as specified in the SCC.

(b) permit the Software to be:

- (i) reproduce for safekeeping or backup purposes;
- (ii) customized, adapted, or combined with other computer software for use by the Purchaser, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract;
- (iii) disclosed to, and reproduced for use by, support service suppliers and their subcontractors, (and the Purchaser may sublicense such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract;
- (iv) disclosed to, and reproduced for use by, the Purchaser or by the Purchaser's Group and by such other persons as are specified in the SCC (and the Purchaser may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract.

14.2 The Purchaser and the Supplier ("the Receiving Party") shall each keep confidential and shall not, without the prior written consent of the other party to this Contract ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information")., whether such information has been furnished or generated or discovered prior to, during, or following termination of the Contract. The provisions of this Clause 14.2 shall survive the termination, for whatever reason, of the five-year contractual relationships or any longer period as may be specified in the SCC.

E. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

15. Representatives

15.1 Project Manager

The Project Manager is named in the SCC. The Purchaser may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of such change to the Supplier without delay.

15.2 *Supplier's Representative*

15.2.1 The Supplier's Representative is named in the **SCC**.

15.2.2 Subject to the extensions and/or limitations specified in the **SCC** (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract. The Supplier's Representative shall give to the Project Manager all the Supplier's notices, instructions, information, and all other communications under the Contract.

16. **Project Plan**

16.1 In close cooperation with the Purchaser and based on the Preliminary Project Plan included in the Supplier's bid, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as specified in the **SCC** and/or **Technical Requirements**.

16.2 The Supplier shall formally present to the Purchaser the Project Plan in accordance with the procedure specified in the **SCC**.

16.4 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.

16.5 The Progress and other reports specified in the **SCC** shall be prepared by the Supplier and submitted to the Purchaser in the format and frequency specified in the Technical Requirements or agreed.

17. **Subcontracting**

17.1 If applicable, a List of Approved Subcontractors attached to the Contract shall specify critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Purchaser.

18. **Design and Engineering**

18.1 *Technical Specifications and Drawings*

18.1.1 The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice. The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.

18.1.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on

behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.

18.3 *Approval/Review of Technical Documents by Project Manager*

18.3.1 The Supplier shall prepare and furnish to the Project Manager the documents as specified in the **SCC** for the Project Manager's approval or review. Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents.

18.3.6 The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.

19. Procurement, Delivery, and Transport

19.1 Unless otherwise specified in the **SCC**, the Supplier will provide the Purchaser with shipping and other documents, as specified below:

1) *For Goods supplied from outside the Purchaser's Country:*

Upon shipment, the Supplier shall notify the Purchaser by facsimile or electronic mail, with the full details of the shipment. The Supplier shall, within 24 hours after shipment, transmit by facsimile or electronic mail copy of the airway bill or clean on board Bill of lading and a copy of the invoice to the Purchaser. The full set of original documents will be handled as per the terms and conditions of the letter of credit specified in GCC 11.5.

19.2 *Customs Clearance*

(a) The Purchaser shall bear responsibility for customs clearance of goods into the host country in accordance with the *Incoterms* used for pricing of foreign goods.

20. Product Upgrades

20.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to offer to the Purchaser the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices.

20.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Purchaser any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Supplier in the Purchaser's Country.

20.2 During performance of the Contract, the Supplier shall offer to the Purchaser all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the

Supplier to other clients of the Supplier, and no later than three (3) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the Supplier in the Recurrent Costs Form in its bid.

20.3 During the Warranty Period unless otherwise specified in the SCC, **the Supplier shall provide and install at no additional cost (i.e. labor, software and incidental costs) to the Purchaser all new versions, releases, and updates for all Software that are used in the System**, within thirty (30) days of their availability from the Supplier, and no later than three (3) months after they are released in the country of origin of the Software. The Purchaser shall allow the introduction of all new versions, releases or updates of the Software provided that the new version, release, or update does not adversely affect current System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects current System operation or performance, or requires extensive reworking of the System, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update.

21. Implementation, Installation and Other Services

21.1 The Supplier shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.

21.2 Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other purchasers in the Purchaser's Country for similar services.

22. Inspections and Tests

The Purchaser or an Agent duly authorized by the purchaser shall have the right to inspect and/or test at its own cost, any components of the System, as specified in the Technical Requirements, to confirm their good working order and/or conformity to the Contract at supplier's facilities prior to shipment, at the point of delivery and/or at the Project Site.

23. Installation of the System

23.1 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements the SCC and the Agreed and Finalized Project Plan, the Supplier shall so notify the Purchaser in writing.

23.2 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 23.1, either issue an Installation Certificate or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the Supplier of.

24. Commissioning and Operational Acceptance

24.1 Commissioning

24.1.1 commissioning of the System (or Subsystem if specified in the Contract) shall be commenced by the Supplier:

- (a) immediately after the Installation Certificate is issued by the Project Manager or as otherwise specified in the Technical Requirement or the Agreed and Finalized Project Plan.

24.2 Operational Acceptance Tests

24.2.1 The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Purchaser, but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or Subsystem[s] if specified in the Contract), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Supplier's bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during Commissioning will be conducted as specified in the **SCC**, the Technical Requirements and/or the Agreed and Finalized Project Plan.

At the Purchaser's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

24.3 Operational Acceptance

24.3.1 Subject to GCC Clause 24.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when

- (a) the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or
- (b) the Purchaser has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Purchaser and document such use.

24.3.2 At any time after any of the events set out in GCC Clause 24.3.1 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.

24.3.3 After consultation with the Purchaser, and within fourteen (14) days after receipt of the Supplier's notice, the Project Manager shall:

- (a) issue an Operational Acceptance Certificate; or
- (b) notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- (c) issue the Operational Acceptance Certificate, if the situation covered by GCC Paragraph 24.3.1 (b) arises.

- 24.3.4 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Purchaser, and the Purchaser, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Purchaser of its request for Operational Acceptance Certification, in accordance with GCC Clause 24.3.3. The Purchaser shall then issue to the Supplier the Operational Acceptance Certification, in accordance with GCC Paragraph 24.3.3 (a) or notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 24.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.
- 24.3.5 If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 24.2, then either:
- (a) the Purchaser may consider terminating the Contract, pursuant to GCC Clause 29.2.2;
- 24.3.6 If within fourteen (14) days after receipt of the Supplier's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the Supplier's said notice.

24.4 *Partial Acceptance*

- 24.4.1 If specified in the Contract, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 24.4.2.
- 24.4.2 The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 24.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as a whole (if specified in the Contract) once all major components and Subsystems have been supplied, installed, tested, and commissioned.
- 24.4.3 In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or Supplier.

F. GUARANTEES AND LIABILITIES

25. Operational Acceptance, Time Guarantee, Defect Liability and Maintenance Commitment

- 25.1 The Supplier guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, if specified in the Contract) within the time periods specified in the **Implementation Schedule** in the Technical Requirements Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 7.2, or within such extended time to which the Supplier shall be entitled.
- 25.2 If the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems if specified in the Contract) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Technical Requirement or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted, the Supplier shall pay to the Purchaser liquidated damages at the rate specified in the **SCC** as a percentage of the Contract Price
- 25.3 Unless otherwise specified in the **SCC**, liquidated damages payable under this GCC Clause 25.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Technical Requirements and/or Agreed and Finalized Project Plan. This Clause 25.3 shall not limit, however, any other rights or remedies the Purchaser may have under the Contract for other delays.
- 25.4 The Supplier warrants that the services and goods supplied under this Contract shall be free from defect in the design, engineering, materials and workmanship that prevent the System and/or any of its components from fulfilling the Technical requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. He also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.

25.4.1 Maintenance: Supplier commits to ensure the following activities over the Warranty and Post Warranty Periods

- 1 Hardware Maintenance:** Supplier shall provide both preventive and corrective maintenance services as per the terms of the Maintenance Contract and Service Level Agreement, which are an integral part of this Contract. **Manufacturer's hardware warranty normally covers repair and spare parts replacement and shall be provided at no additional cost (i.e. labor, spare parts and incidental expenses) to the Purchaser except for any cost directly linked to special requirements of the Maintenance Contract and the Service Level Agreement not covered by manufacturer's warranty.**
- 2 Software Maintenance:** Maintenance shall conform to the terms of the Maintenance Contract, Service Level Agreement and other provisions stipulated elsewhere in this Contract. **Suppliers should note, with respect to**

this section, that any cost quoted during the Warranty Period should relate to activities different from those referred to in GCC 20.4.

3 Technical Support: Supplier shall provide all support related services stipulated in the maintenance contract and service level agreement and elsewhere in this Contract.

25.5 In addition, the Supplier warrants that: (i) all Goods components to be incorporated into the System from part of the Supplier's and/or Subcontractor's current product lines, (ii) they have been previously released to the market, and (iii) those specific items identified in the SCC (if any) have been in the market for at least the minimum periods specified in the SCC.

25.6 The Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time **specified in the SCC.**

25.7 If during the Warranty and Post Warranty Periods any defect, as described in GCC Clause 25.4 and/or the corresponding SCC, should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defective parts, hardware and software; and at its sole cost, repair, replace, or otherwise make good such defect as well as any damage to the System caused by such defect. Supplier shall also replace, as part of its maintenance duty under this warranty, parts which have become non-performing as a result of normal wear and tear.

25.8 The Purchaser shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence.

25.9 The Supplier may, with the consent of the Purchaser, remove at its cost any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site.

25.10 The Supplier commits to fully comply with the terms and conditions of the Maintenance Contract and Service Level Agreement. The terms of the Maintenance Contract and Service Level Agreement (also referred to as SLA) shall apply during the three (3) year Warranty Period called for in this Bid. The Service Level Agreement shall also apply during the Post Warranty Period as an integral part of the two (2) year Maintenance Contract which shall automatically take effect on the last day of the Warranty Period.

25.11 The Post Warranty Period shall commence automatically on the Day the Warranty Period expires. The start of the Post Warranty period coincides with the entry in force of the Maintenance Contract, which shall extend for the length of time **specified in the SCC.**

26. Functional Guarantees

26.1 The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Purchaser's

requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 24 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.

G. RISK DISTRIBUTION

27. Insurances

27.1 The Supplier shall at its own expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

as applicable, 110 percent of the price of the Information Technologies and other Goods in the currency of the contract, covering the Goods from physical loss or damage during shipment through receipt at the Project Site. The insurance should cover ALL RISKS including War, strikes, civil commotion etc...

(b) Installation “All Risks” Insurance

as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under “all risks” insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.

(c) Third-Party Liability Insurance

On terms as specified in the SCC, covering bodily injury or death suffered by third parties (including the Purchaser’s personnel) and loss of or damage to property, such as the Bank’s property including the Information System and any subsystem that have been accepted by the Purchaser, the building housing the Bank’s site and all equipment and appurtenances thereto, occurring in connection with the supply and installation of the Information System.

27.2 The Purchaser shall be named as loss-payee under all insurance policies taken out by the Supplier pursuant to GCC Clause 27.1, except for the Third-Party Liability, and the Supplier’s Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 27.1 except for Cargo Insurance during Transport of goods to be supplied under the contract.. All insurers’ rights of subrogation against such loss-payee and co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

27.1 The Supplier shall deliver to the Purchaser certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect during the performance of this Contract.

28. Force Majeure

28.1 “Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

(a) war, rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts etc...

28.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

28.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance.

29. Termination

29.1 Termination for Purchaser’s Convenience

29.1.1 The Purchaser may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 29.1.

29.1.2 Upon receipt of the notice of termination under GCC Clause 29.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination:

(a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;

(b) remove all Supplier’s equipment from the site, repatriate the Supplier’s and its Subcontractor’s personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;

(c) in addition, the Supplier shall:

(i) deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;

(ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the system, as at the date of termination, and as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;

(iii) deliver to the Purchaser all non proprietary drawings, specifications, and other documents prepared by the Supplier

or its Subcontractors as of the date of termination in connection with the System.

29.1.3 In the event of termination of the Contract under GCC Clause 29.1.1, the Purchaser shall pay to the Supplier the following amounts:

- (a) the Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
- (b) the costs reasonably incurred by the Supplier in the removing of the Supplier's personnel and Equipment from the site.
- (c) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 29.1.2 (a); and
- (d) the costs of satisfying all obligations, commitments and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Paragraphs 29.1.3 (a) through (d) above.

29.2 *Termination for Supplier's Default*

29.2.1 The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Supplier, referring to this GCC Clause 29.2:

- (a) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;
- (b) if the Supplier assigns or transfers the Contract or any right or interest without authorization; or
- (c) if the Supplier, in the judgment of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

For the purposes of this Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution, and includes, inter alia, bribery and extortion or coercion which involve threats of injury to person, property or reputation; and

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders or between bidders and Borrower (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels.

29.2.2 If the Supplier:

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the System promptly;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- (d) refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan at rates of progress that give reasonable assurance to the Purchaser that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended;

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 29.2.

29.2.3 Upon receipt of the notice of termination under GCC Clauses 29.2.1 or 29.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Paragraph 29.2.3 (d) below;
- (c) deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;
- (d) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;
- (e) deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

- 29.2.4 The Purchaser may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.
- 29.2.5 Subject to GCC Clause 29.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 29.2.3 (a). Any sums due the Purchaser from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.
- 29.2.6 If the Purchaser completes the System, the cost of completing the System by the Purchaser shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 29.2.5, plus the reasonable costs incurred by the Purchaser in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 29.2.5, the Supplier shall pay the balance to the Purchaser, and if such excess is less than the sums due the Supplier under GCC Clause 29.2.5, the Purchaser shall pay the balance to the Supplier. The Purchaser and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

29.3 *Termination by Supplier*

29.3.1 If:

- (a) the Purchaser has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the SCC, or commits a substantial breach of the Contract, the Supplier may give a notice to the Purchaser that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within thirty (30) days after receipt of the Supplier's notice; or
- (b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System;

then the Supplier may give a notice to the Purchaser of such events, and if the Purchaser has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Purchaser referring to this GCC Clause 29.3.1, forthwith terminate the Contract.

29.3.2 If the Contract is terminated under GCC Clauses 29.3.1 then the Supplier shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to Clause 29.3.3 (d) (ii);
- (c) remove all Supplier's Equipment and personnel from the site.
- (d) In addition, the Supplier, subject to the payment specified in GCC Clause 29.3.3, shall:
 - (i) deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;
 - (iii) to the extent legally possible, deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

29.3.3 If the Contract is terminated under GCC Clauses 29.3.1, the Purchaser shall pay to the Supplier all payments specified in GCC Clause 29.1.3.

29.4 In this GCC Clause 29, the expression "portion of the System executed" shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

29.5 In this GCC Clause 29, in calculating any monies due from the Purchaser to the Supplier, account shall be taken of any sum previously paid by the Purchaser to the Supplier under the Contract, including any advance payment paid pursuant to the SCC.

30. Assignment

- 30.1 Supplier shall, without the express prior written consent of the Bank, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or thereunder, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under this Contract.

APPENDIX B

SPECIAL CONDITIONS OF CONTRACT (SCC)

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Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the GCC. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

A. CONTRACT AND INTERPRETATION

1. Interpretation (GCC Clause 2)

GCC 2.1.1 The language of the Contract, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract not otherwise specified in the Technical Requirements shall be: **English / French**

2. Notices (GCC Clause 3)

GCC 3.1 *Notices shall be delivered to the above named person by Personal Delivery, Fax or Express courier:*

Division Manager
Corporate Procurement Division (CGSP.2)
African Development Bank
15 Avenue du Ghana
BP 323,
1002 TUNIS BELVEDERE
TUNISIA
Fax: (216) 71 83 52 49

3. Governing Law (GCC Clause 4)

GCC 4.1 The Contract shall be interpreted in accordance with the laws of: England excluding its conflicts of law provisions.

4. Settlement of Disputes (GCC Clause 5)

- GCC 5.2.3 (ii) Arbitration proceedings shall be conducted in London.. under the auspices of the London International Court of Arbitration.
- GCC 5.2.4 (i) The rules of procedure for Arbitration are as specified above in connection with GCC Clause 5.2.3 (i).
- GCC 5.2.4 (ii) The London International Court of Arbitration shall serve as the Appointing Authority under the UNCITRAL arbitration rules.

B. SUBJECT MATTER OF CONTRACT

5. Scope of the System (GCC Clause 6)

- GCC 6.3 The Supplier's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost Forms (Form 15 and Form 16) in the Supplier's Bid.

The Supplier agrees to supply spare parts required for the operation and maintenance of the System, as stated below, for **5 years** beginning with the date of Operational Acceptance. Moreover, the price of such spare parts shall be those specified in the spare parts price schedule submitted by the Supplier as part of its bid. These prices shall cover the purchase price for such spare parts, hardware, the repair and replacement tasks, any freight charges and other costs and expenses (including the Supplier's fees).

The Bank may modify or change any Machine Type/Model or features of any Machine Type/Model in the configuration provided by the Supplier in the Supplier's offer (and the Supplier may consequently modify/revise the price list) within the range of +/- 10% of the original amount quoted.

Non Exhaustive List of spare parts needs: refer to Forms 15 and 16.

6. Time for Commencement and Operational Acceptance (GCC Clause 7)

- GCC 7.1 The Supplier shall commence work on the System within: **15 days from the date of signature of the Contract by both parties.**
- GCC 7.2 Operational Acceptance will occur on or before: As specified in the Agreed and finalized Project Plan.

C. PAYMENT

7. Contract Price (GCC Clause 10)

- GCC 10.1 The Contract price shall be the price indicated on the Bid Form.
- GCC 10.2 (b) Adjustments to the Contract Price shall be as follows: Prices quoted by the Bidder shall be: “**fixed** ” for goods and services supplied during the implementation and the Warranty Period; and for goods during the Post Warranty Period.

An adjustment may be contemplated for labor cost during the post warranty period.

Bidders may propose a relevant Index applicable to IT labor cost in their respective country and for local labor cost component.

- GCC 10.3 (a) (a) Foreign Goods
The named place of destination shall be
**The African Development Bank
Temporary Relocation Agency (TRA)
Angle des Trois Rues: Avenue du Ghana, Rue Pierre de
Coubertin et Rue Hedi Nourira
Tunis Tunisia**

Contract of carriage shall be as per Incoterms used.

- GCC 10.3 (b) Goods delivered from within the host Country:
**African Development Bank
Temporary Relocation Agency (TRA)
Corporate Procurement Division**

8. Terms of Payment (GCC Clause 11)

GCC 11.1

Subject to the provisions of GCC Clause 11 (Terms of Payment), the Purchaser shall pay the Contract Price to the Supplier in the manner specified below. Except as otherwise noted, all payments shall be made for the portion of the Contract Price corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted at unit prices and in the currency specified in the Bid FORM. (FORM 17).

(a) **Advance Payment**

Ten percent (10%) of the entire Contract Price, exclusive of all Recurrent Costs (i.e. Post Warranty period Cost), shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 12.2. **The amount paid under this facility shall be fully recovered from the next payment(s) made by the Bank under this Contract.**

(b) **Information Technologies, Materials, and other Goods and Software(To be settled by Letter of credit as per GCC 11.5) :**

** 1-Fifty (50) percent of the Total Cost of Goods shall be paid after inspection of goods at supplier's facilities by a duly authorized Agent (refer to GCC 22.1) AND as per the terms and conditions of the letter of credit issued by the Purchaser.

** 2-Fifty (50) percent of the Total Cost of Goods shall be paid after successful delivery and receipt of the goods at The African Development Bank Temporary Relocation Agency, Tunis Tunisia.

(c) **Installation**

1- *** **Sixty (60) percent of installation cost** shall be paid on completion of installation work (refer to line items 1.1 the Implementation Schedule Table –and after issuance by the Bank of an Installation Certificate.

2- - *** Forty (40) percent of installation cost shall be paid on completion of Operational Acceptance Test (Refer to SCC 17 section GCC 24.2.1).

a) Section 6 Technical Requirements subsection E – Implementation Schedule, Line item 1.2 of the Implementation Schedule Table -; and

b) Section 6 Technical Requirements subsection D – Testing and Quality Assurance Requirements, 3.3 Operational Acceptance Tests.

(d) **Training**

One hundred (100%) percent of training cost will be paid after full completion of the training program and after issuance of a written confirmation by Project Manager that full transfer of knowledge has been effected and that bank staff is adequately trained to run the system.

GCC 11.5 No other specification

9. Securities (GCC Clause 12)

GCC 12.2 The Supplier shall provide, prior to an advance payment under the signed contract, an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC Clause 11 above.

GCC 12.3.1 Performance Security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the Purchaser for an amount equal to 10% of the Contract Price excluding any Recurrent Costs associated with the Post Warranty period.

GCC 12.3.4 (b) During the Warranty Period and Post Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to 2.5% of the Contract Price exclusive of the Recurrent Costs associated with the Post Warranty period.

D. INTELLECTUAL PROPERTY

10. Software License Agreements and Confidential Information (GCC Clause 14)

GCC 14.1 (a) *As stated in GCC*
(iii)

GCC 14.1 (a) (ii) Use of the software shall be subject to the following additional restrictions: *none*.

GCC 14.1 (b) In addition to the persons specified in GCC Clause 14.1 (b) (iii), the
(iv) Software may be disclosed to, and reproduced for use by, the African Development Bank's staff working in its regional offices or other facilities in member countries.

GCC 14.2 As stated in GCC 14.2.

E. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

11. Representatives (GCC Clause 15)

GCC 15.1	To be determined.
GCC 15.2.1	To be determined
GCC 15.2.2	To be specified

12. Project Plan (GCC Clause 19)

GCC 16.1	<p>Chapters in the Project Plan shall address the following subject:</p> <ul style="list-style-type: none">(a) <i>Project Organization and Management Plan;</i>(b) <i>Delivery and Installation Plan</i>(c) <i>Training Plan</i>(d) <i>Pre-commissioning and Operational Acceptance Testing Plan</i>(e) <i>Warranty Service Plan</i>(f) <i>Task, Time, and Resource Schedules</i>(g) <i>Post-Warranty Service Plan (if applicable)</i>(h) <i>Technical Support Plan (if applicable)</i>
GCC 16.2	<p>Within seven (7) days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Purchaser. The Purchaser shall, within seven (7) days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the . Technical Requirements and/or the SCC (in this Clause 16.2, “non-conformities” below). The Supplier shall, within <i>five (5)</i> days of receipt of such notification, correct the Project Plan and resubmit to the Purchaser who shall in turn notify the Supplier of remaining non-conformities if any.</p>

GCC 16.5

The Supplier or Local Agent (must be appointed and notified to the Purchaser with details of terms of reference) shall submit to the Purchaser the following reports:

- (a) *Weekly progress reports, summarizing:*
 - (i) *results accomplished during the prior period;*
 - (ii) *cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan;*
 - (iii) *corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;*
 - (iv) *other issues and outstanding problems; proposed actions to be taken;*
 - (v) *resources that the Supplier expects to be provided by the Purchaser and/or actions to be taken by the Purchaser in the next reporting period;*
 - (vi) *other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.*

The following reports may be requested

- (*) *inspection and quality assurance reports*
- (*) *training participants test results*
- (*) *weekly log of service calls and problem resolutions*

13. Subcontracting (GCC Clause 17)

GCC 17

No Special Conditions of Contract applicable to GCC Clause 17.

14. Design and Engineering (GCC Clause 18)

GCC 18.3.1

The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager's approval before proceeding with work on the System or any Subsystem covered by the documents.

- 1. detailed site surveys;*
- 2. Other documents to be determined by the Project manager before commencement of work.*

15. Procurement, Delivery, and Transport (GCC Clause 19)

GCC 19.1.1 *As specified in the GCC*

16. Product Upgrades (GCC Clause 20)

GCC 20.4 *As specified in the GCC*

17. Commissioning and Operational Acceptance (GCC Clause 24)

GCC 24.2.1 As specified in the Technical Requirements and/or Agreed and Finalized Project Plan

F. GUARANTEES AND LIABILITIES

18. Operational Acceptance and Time Guarantee (GCC Clause 25)

GCC 25.2 Liquidated damages shall be assessed at 0.50% per week. The maximum liquidated damages are 10% of the Contract Price, or relevant part of the Contract Price if the liquidated damages apply to a Subsystem.

GCC 25.3 Liquidated damages shall be assessed only with respect to achieving Operational Acceptance.

GCC 25.6 The Warranty Period (N) shall begin from the date of Operational Acceptance of the System or subsystem and extend **12 months**.

GCC 25.11 The Post Warranty Period (M) shall begin automatically on the last day of the Warranty Period and extend **36 months**.

G. RISK DISTRIBUTION

19. Insurances (GCC Clause 27)

GCC 27.1 (c) The Supplier shall obtain Third-Party Liability Insurance in the amount of *USD1,000,000* without any deductible for loss of or damage to property and unlimited for bodily injury. The insured Parties shall be only the Supplier, the Bank and the Subcontractors. The Insurance shall cover the period from *beginning at the date of commencement of the contract and ending at the date the Contract expires. At any time prior to or after the commencement of work, the Bank may require the supplier to produce evidence that a proper and valid insurance policy has been taken.*