

**TITLE: ACQUISITION, IMPLEMENTATION, AND MAINTENANCE
OF A GLOBAL SECURE WEB GATEWAYS SOLUTION FOR THE
BANK IT INFRASTRUCTUR**

CONTRACT N.ADB/CTR/CGSP/2011/0191

BETWEEN

AFRICAN DEVELOPMENT BANK

AND

.....

Date..... month..... 2011

THIS CONTRACT (together with all the Annexes and Appendices attached hereto and forming an integral part hereof), (hereinafter called the “Contract”) is entered into by and between the **AFRICAN DEVELOPMENT BANK** (hereinafter referred to as the “Bank”), an International Financial Institution having its Headquarters on Avenue Joseph Anoma, 01 BP 1387, ABIDJAN 01, COTE D’IVOIRE, and operating from its Temporary Relocation Agency (TRA) in Tunis, 15 Avenue du Ghana, Angle des rues Pierre Coubertin et Hedi Nouira, BP 323, 1002 Tunis Belvedere, TUNISIA, of the one part,

AND (hereinafter referred to as the “Supplier”), a company duly incorporated and existing under the laws of the Republic of Registration No., having its registered office address located at, of the other part.

Parties mean the Bank and the Supplier collectively, and **Party** means any one of them, as the context may indicate.

PREAMBLE

WHEREAS the Bank identified a need, and launched the International Competition for the Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure Ref.:ADB/RFP/CGSP/2011/0191 and the letter of invitation to submit proposals Ref: CGSP.2/LTR/RL/NI/2011/.../.... (which form an integral part of this Contract);

WHEREAS the Bank has selected the Supplier to Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure as provided under this Contract (the “Services”);

AND WHEREAS the Supplier, having participated in the competition and submitted its proposal in response to the invitation to submit proposals, has represented and affirmed to the Bank that it has the required qualifications, professional skills, experience, personnel, technical resources and capability to provide the required equipment and perform the required services, and has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I
Commencement Date and Duration of The Contract

1.1 The Supplier shall commence the Services after this Contract has been signed by both parties. Performance and payments for the services shall be effected in accordance with the Bank’s Request for Proposals (RFP) documents (International Competition for the acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure, Ref.:ADB/RFP/CGSP/2011/0191) and upon submission by the Supplier of:

- (a) Invoice,
- (b) the required work product; and

- (c) Certification by the Bank’s representative that the Services have been satisfactorily performed in accordance with the terms of this Contract.

1.2 This Contract is foryear(s) effective from its signature by both parties (the date of the last such signature being the “Commencement Date”). The Contract may, subject to satisfactory performance by the Supplier and due compliance with all the material terms and conditions, be renewed automatically subject to performance for further periods of one year each, up to a maximum of consecutive years, in accordance with the Bank’s RFP documents as amended, and on such terms and conditions as the parties may mutually agree, including modification and supply of more devices and services and adjustment of the contract price.

ARTICLE II

The Services, Order of Precedence of Contract Documents, and Undertakings

2.1 The Services to be performed by the Supplier under this Contract are those described in the Terms of Reference (TOR) of the RFP documents. The initial part of the contract covers Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure. Maintenance is covered separately by a Maintenance Contract executed between the parties. The Bank’s obligation to pay Annual Maintenance Fees under the Maintenance Contract shall come into effect after the commissioning of the solution.

2.2 The following documents shall constitute the Contract between the Bank and the Supplier, and each shall be read and construed as an integral part of the Contract:

- (a) This contract;
- (b) The Bank’s Request for Proposals (RFP) documents, Ref.:ADB/RFP/CGSP/2011/0191): Appendix A;
- (c) Special Conditions of the Contract: Appendix B;
- (d) General Conditions of the Contract: Appendix C;
- (e) The Final Project Plan: Appendix D;
- (f) Maintenance Contract: Appendix E;
- (g) Service Level Agreement: Appendix F.
- (h) The Supplier’s total bid - Technical and Financial/Pricing proposals(including clarifications, as accepted by the Bank, with its forms and annexes: Appendix G; and
- (i) The Payment Schedule: Appendix H. (to be agreed upon with the contractor)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed above.

- 2.3** The Supplier understand and expressly agrees that the Services under this Contract shall be performed in Phases and that the implementation of each and every subsequent phase shall be contingent on the acceptance by the Bank of the Services performed under the preceding phase as being wholly satisfactory to the Bank.
- 2.4** The Services shall be carried out by the personnel of the Supplier agreed to with the Bank prior to the effectiveness of this Contract and for the periods of time indicated herein. No substitution for any such personnel and of the billing rates proposed by the Supplier for the replacement personnel shall be made without the Bank's prior written authorization such authorisation not to be unreasonably withheld.
- 2.5** Minor adjustments with respect to the time allocated for personnel, may be made by the Supplier if required to comply with the provisions of this Article, upon written advance notice to the Bank. For the purposes of this Section, minor adjustments mean such changes in working schedule as will not alter the time allocated for any one individual by more than twenty per cent (20%) or one week, whichever is longer; provided, however, that the aggregate of such adjustments does not cause payments under this Contract to exceed the maximum amount stated in Section 3.1 hereof. Other adjustments shall be made only after the written approval of the Bank has been obtained.

ARTICLE III
Costs and Payments

- 3.1** The Bank shall pay the Supplier for the Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure as further specified in detail in the Payment Schedule: Appendix H.
- 3.2** The Bank shall not be obligated to make any payment under this Contract except to the extent provided in paragraph 1.1 of this Contract.

ARTICLE IV
Duties of the Supplier

- 4.1** 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, and 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.
- 4.2** 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 Bank 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 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.

- 4.3** The Supplier shall be responsible for timely provision in accordance with the mutually agreed Implementation Plan of all resources, information, and decision making under its control which are necessary to reach the mutually agreed Final Project Plan within the time schedule specified. Failure to provide such resources, information, and decision-making may constitute grounds for termination of this Contract.
- 4.4** 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 Bank's country that are necessary for its performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported equipment of the Supplier. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Bank under Clause 5.3 and that are necessary for the performance of the Contract.
- 4.5** The Supplier shall comply with all laws in force in the country in which the Bank is situated and that are applicable to the Supplier. Subject to the foregoing, 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 Bank 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 Section 4.1, that are levied against the Bank by a governmental authority with the right to do so or that are finally upheld against the Bank by an adjudicating authority with competent jurisdiction.
- 4.6** The Supplier shall, in all dealings with its labour and the labour of its subcontractors currently employed 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 labour.

ARTICLE V

Duties of the Bank

- 5.1** The Bank shall ensure the accuracy of all information and/or data to be supplied by the Bank to the Supplier, except when otherwise expressly stated in the Contract.
- 5.2** The Bank shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach the mutually agreed Final Project Plan within the time schedule specified in the Implementation Schedule in the Technical Requirements Section of the RFP.
- 5.3** If requested by the Supplier, the Bank 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 its subcontractors or the personnel of the Supplier or its subcontractors, as the case may be, to obtain.

- 5.4 The Bank 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, the Agreed and Finalized Project Plan, or other parts of the Contract.
- 5.5 The Bank assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with the Final Project Plan, 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.

ARTICLE VI

Ownership of Reports, Equipment, Representations and Warranties

- 6.1 All rights, title and interest, including ownership of copyright in all documents and reports describing the System configuration, all regular maintenance reports provided, and such training Materials specifically created for the Bank by the Supplier pursuant to this Contract, (the "Deliverables") shall be property of the Bank. The Deliverables shall be sorted and indexed by the Supplier prior to transmittal to the Bank, and the Supplier shall be permitted to retain copies thereof; provided, however, that such material shall not be used by the Supplier for purposes unrelated to this Contract, without the prior written authorization of the Bank. The Supplier shall retain ownership of its pre-existing intellectual property rights in all pre-existing products and materials, ideas, concepts, analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Supplier in connection with the performance of the Services under this Contract (the "Supplier's Tools"), it being understood that none of the Supplier's Tools shall contain the Bank's Confidential Information. In the event that any of the Deliverables includes any of the Supplier's Tools, the Supplier hereby grants the Bank a non-exclusive worldwide royalty-free license to use and copy the Supplier's Tools solely as part of the Deliverables.
- 6.2 If a third party asserts a claim against the Bank that any hardware, software, equipment, deliverable, material or other product ("Product") that the Supplier provides to the Bank under this Contract infringes that third party's patent, trade mark, copyright or other intellectual property rights, the Supplier will defend the Bank against that claim at the Supplier's expense and pay all costs, damages, and attorney's fees awarded against the Bank or that are included in a settlement approved in advance by the Supplier, provided that Bank:
- (a) - promptly notifies the Supplier in writing of the claim, and
 - (b) - allows the Supplier to control, and reasonably cooperates with the Supplier in, the defense and any related settlement negotiations.

If such a claim is made, the Bank shall inform the Supplier for the Supplier to either (i) obtain a license to enable the Bank to continue to use the Product concerned, in accordance with the terms of this Contract, (ii) modify the infringing Product to avoid infringement, or (iii) replace the Product, without additional charges to the Bank, with one that is compatible, functionally equivalent and non-infringing. If the Supplier determines that none of the foregoing alternatives is reasonably available, then on the

Supplier's written request, the Bank shall return the Product to the Supplier and discontinue its use. The Supplier shall then give the Bank a refund of the cost of the Product.

- 6.3** The Supplier hereby acknowledges that all computer hardware, software and other equipment supplied in accordance with the terms of this Contract and paid for out of the funds disbursed by the Bank pursuant to the provisions of this Contract is property of the Bank. The risk in such property shall pass to the Bank only upon the hardware, software and other equipment being accepted by the Bank as having been supplied in accordance with the terms of this Contract and in a condition fit to meet the Bank's needs as specified in this Contract. The Bank shall only be liable to pay the Supplier for the products, software, materials and other equipment after they have been delivered to, and accepted by, the Bank pursuant to the terms of this Contract. The Supplier shall take all steps required under the laws of Tunisia and all other relevant jurisdictions where the hardware, software or other equipment may be licensed, to pass good and effective title to the Bank in compliance with such applicable laws, rules and regulations.
- 6.4** The Supplier represents and warrants that it has full power and authority to grant the rights granted by this Contract to the Bank, without exception, with respect to the hardware, software and equipment supplied under this contract without further consent of any other person. The Supplier further represents and warrants that neither the supply, nor purchase, nor license to, and use by, the Bank of any hardware, software, equipment and documentation provided by the Supplier under this Contract will in any way constitute an infringement or other violation of any copyright, trademark, patent, or other intellectual or proprietary or other rights of any third party.
- 6.5** The Supplier shall not at any time without written authorization from the Bank, communicate to any person or entity any Confidential Information disclosed to it for the purpose of, or obtained in the course of, performing its obligations under this Contract. All Confidential Information shall be treated as confidential by the Supplier and the Supplier's Associates and remain the property of the Bank. The Supplier and the Supplier's Associates shall not be entitled to use or copy such Confidential Information for any purpose not related to this Contract. For purposes of this paragraph, "Confidential Information" refers to all documents, statistics, reports, data or other information whether in written, oral or other tangible form provided, or made available to, or created, obtained, compiled or prepared in respect of, in connection with or by virtue of this Contract, which by nature is capable of being reasonably regarded as confidential. The Supplier shall exercise sufficient control over any Confidential Information in order to preserve the confidential nature thereof, and to safeguard the Confidential Information from theft and/or access by unauthorized personnel and third parties and to ensure that Confidential Information is not used in an unauthorized manner.
- 6.6** The obligations of the Supplier under paragraph 6.4 of this Contract will not be deemed to have been breached to the extent that Confidential Information: (a) is disclosed by the Supplier to the Supplier's Associates solely in order to comply with obligations, or exercise rights, under this Contract; or (b) is in the public domain other than due to a breach of paragraph 6.4; or (c) is independently and legally developed or acquired by the Supplier without the obligation of confidentiality; or (d) is legally required to be disclosed by operation of law or judicial process, provided the Bank has been given prompt prior

notice of any such request for disclosure to allow the Bank a reasonable opportunity to obtain a protective order. Where the Supplier discloses Confidential Information to another person or entity pursuant to paragraph 6.4 above, the Supplier will (a) notify the receiving person that the information is Confidential Information and (b) not provide the Confidential Information unless the receiving person agrees to comply with the terms and conditions set forth in paragraph 6.4 above. In every instance, the Supplier shall notify the Bank (a) prior to making any such disclosure and (b) promptly of any breach of its confidentiality obligations when it has learnt of such a breach.

- 6.7** The Supplier agrees that during the term of this Contract and for 5 years thereafter the Supplier and any entity affiliated with the Supplier, as well as any personnel or affiliate of the Supplier engaged in carrying out the Services under this Contract, shall not disclose or use any Confidential Information of the Bank on behalf, or for the benefit of any third party.
- 6.8** The Supplier warrants that the products used for the Services are and will continue to be Year 2000 Compliant. All date processing will include Four Digit Year Format and recognize and correctly process dates for a leap year. All date sorting by the products used for the Services that includes a “year category” shall be done based on the Four Digit Year Format code.
- 6.9** The Supplier warrants that the hardware, software and equipment 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 way the performance, reliability, or extensibility of the System and/or Subsystems.
- 6.10** In addition, the Supplier warrants that: all hardware components to be incorporated into the System (i) form part of the Supplier’s and/or subcontractor’s current product lines, (ii) have been previously released to the market, and (iii) those specific items identified in the RFP have been in the market for at least the minimum periods specified in the RFP. 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 36 months as specified in the RFP.
- 6.11** If during the Warranty Period any defect, should be found in the design, engineering, materials, and workmanship of the hardware, software and other equipment supplied by the Supplier, the Supplier shall promptly, in consultation and agreement with the Bank 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. The 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.

ARTICLE VII

Records and Reports

- 7.1** The Supplier shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs and

the basis thereof. The Supplier shall, on reasonable request, provide to the Bank or its designated representative the accounting information of the Supplier in relation to this Contract for a period of up to one year from the expiration or termination of this Contract.

- 7.2** The Supplier shall furnish to the Bank such information related to the Services as the Bank may reasonably request from time to time.
- 7.3** The Supplier shall submit to the Bank the warranty and maintenance agreements for hardware, equipment and software supplied under this contract as specified in the Final Project Plan in the language(s), numbers of copies and within the time periods, if any, set forth in the RFP and the Final Project Plan.

ARTICLE VIII **Assignment**

Except with the prior written consent of the Bank, the Supplier shall not in whole or in part, assign, transfer or otherwise dispose of, its rights or obligations under the present Contract.

ARTICLE IX **Insurance**

- 9.1** The Supplier shall take out and maintain full coverage insurance against loss of or damage to equipment purchased in whole or in part with funds provided under this Contract and against loss of or damage to their property, including papers and documents necessary for the Services.
- 9.2** The Supplier shall take out and maintain full coverage insurance against claims by third parties resulting from acts performed in carrying out the Services under this Contract, including Workers' Compensation Insurance covering all of the Supplier' personnel employed to perform Services pursuant to this Contract in accordance with any applicable Workers' Compensation statutes including Employers' Liability Coverage.

ARTICLE X **Tax Exemptions and Indemnification of the Bank**

- 10.1** The Supplier recognizes that the Bank is exempt from all taxation, customs duties and other such imposts in its member countries in accordance with Article 57 of the Agreement establishing the African Development Bank. Accordingly, the Supplier shall not claim from the Bank any taxes, levies, license fees or any other such charges in relation to this Contract which are paid or may be payable to the municipal/local Council or any other responsible Authority in relation to this Contract and or the Services provided under this Contract. The Supplier hereby authorizes the Bank to deduct the amount of any tax or other impost included on any invoice presented by the Supplier in connection with this Contract, without any cost to the Bank.
- 10.2** Nothing contained in this Contract shall be construed as establishing or creating any relationship between the Bank and the Supplier other than that of independent contractor. Accordingly, each party shall accept no liability in contract or in tort or any responsibility for the acts, omissions, errors or negligence of the other party. Neither

Party shall be liable to the other Party for any lost profits, indirect, consequential, incidental, punitive and special damages.

- 10.3** The Supplier undertakes to fully indemnify and hold harmless the Bank from and against any action and all losses, liabilities, costs, claims, damages and expenses (“Losses”) which the Bank may incur in relation to, arising out of, or otherwise in respect of any act, omission, error or negligence of the Supplier arising from the Supplier’s performance of its obligations under this Contract, including third party claims. The Supplier shall reimburse the Bank for all costs, charges and expenses which the Bank may pay or incur in connection with investigating, disputing or defending against any such action or Losses.
- 10.4** The provisions set out in this Article shall survive the expiration or termination of this Contract.

ARTICLE XI **Force Majeure**

- 11.1** Neither party to the present Contract shall be responsible for any delay or failure to perform its obligations under the Contract if the delay or failure is attributable to force majeure.
- 11.2** In the event of force majeure which delays performance of the whole or any part of the present Contract for more than thirty (30) days, either party shall have the right, by notice in writing to the other party, to terminate the Contract.
- 11.3** For purposes of this Article, an event of force majeure shall mean an unforeseen and unavoidable event beyond the reasonable control and contemplation of the party invoking the existence of such event.

ARTICLE XII **Authorized Representatives, Notices and Requests**

- 12.1** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract may be taken or executed on behalf of the Supplier by (XXXX- if applicable) authorized representative for the purposes of this contract.... or his duly designated representative.
- 12.2** Any notice or request required or permitted to be given or made in this Contract shall be in writing. Such notice or request shall be deemed to be duly given or made when it has been delivered by hand, registered mail, or facsimile to the party to which it is required to be given or made, at such party’s address specified below or at such other address as the party shall have specified in writing to the party giving such notice or making such request.

For the Bank: 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

For the Supplier: Title.....
Address.....
Fax:

ARTICLE XIII
Suspension and Termination

- 13.1** The Bank shall be entitled by notice to the Supplier to suspend the disbursement of funds hereunder if the Supplier shall have failed to carry out any material obligation of the Supplier under this Contract.
- 13.2** The Bank, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a fifteen (15) days prior written notice of termination and its reasons therefore to the Supplier:
- (a) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, 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 reasonable judgment of the Bank, 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 involves any threat of injury to any 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 Bank, and includes collusive practices among bidders or between bidders and any Bank employee or agent (prior to or after bid submission) designed to establish bid prices at artificial or non-competitive levels.

(d) if the Supplier is in material breach of its obligations under this Contract and has not remedied the same within fifteen (15) days of being given notice of the breach by the Bank.

13.3 The Bank may terminate this Contract at any time upon not less than thirty (30) days' written notice to the Supplier, without limitation to the foregoing. Upon receipt of such notice, the Supplier shall take immediate steps to bring the Services to a close in a prompt and orderly manner, and to reduce expenditures for this purpose to a minimum.

13.4 (a) The Supplier shall promptly notify the Bank in writing of any action or the occurrence of any event beyond the reasonable control of the Supplier which makes it impossible for the Supplier to carry out its obligations under this contract. Upon confirmation in writing by the Bank of the existence of any such situation or event or upon failure of the Bank to respond to such notice within fifteen (15) days of receipt thereof, the Supplier shall be relieved from all liability for failure to carry out such obligations. In case of disagreement between the parties as to the existence of such situation or event, the matter shall be submitted to arbitration in accordance with provisions of Article XIV of this contract.

(b) Upon such confirmation or failure to respond by the Bank or award by the arbitrators in favour of the existence of such situation or event, the Supplier may terminate this Contract by not less than thirty (30) days' notice thereof in writing to the Bank.

(c) Upon giving such notice of termination to the Bank, the Supplier shall proceed in the same manner as set forth in Section 13.3 of this contract.

13.5 Upon termination of this Contract pursuant to the provisions of Articles 11 and 13 hereof, no payment shall be due to the Supplier except for any hardware, software, equipment, deliverables and Services satisfactorily supplied or performed in accordance with the provisions of this Contract, expenditures reasonably incurred hereunder in good faith prior to the date of such termination or incidental to the prompt and orderly termination of the Services.

13.6 The Supplier may terminate the Contract upon not less than thirty (30) days written prior notice following the Banks material breach of this Contract, which shall include but not be limited to non-payment by the Bank to the Supplier.

ARTICLE XIV

Dispute Resolution; Governing Law and Immunity

14.1 The Bank and the Supplier shall make every effort to resolve any disagreement or dispute arising between them under or in connection with this Contract amicably by direct informal negotiation. The party asserting the existence of a disagreement or dispute shall, promptly upon becoming aware of such disagreement or dispute, notify the other party in writing (such writing being referred to herein as the "Notice of Dispute") specifying the nature of the disagreement or dispute, and shall also provide such other information about the disagreement or dispute as the other party may reasonably require.

- 14.2** If, after thirty (30) days from the commencement of such informal negotiations, the parties have been unable to amicably resolve the dispute or disagreement, either party shall have the right to initiate arbitration proceedings in accordance with the UNCITRAL Arbitration Rules as at present in force. The arbitral tribunal shall consist of one (1) arbitrator selected by agreement of the parties. If the parties are unable to agree on the arbitrator, the London Court of International Arbitration (LCIA) shall act as the appointing authority. The arbitration shall take place in London. The language to be used in the arbitral proceedings shall be English. The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.
- 14.3** The Arbitrator shall abide by the rules of Ethics for international Arbitrators established by the International Bar Association. The authority of the Arbitration Tribunal to grant relief is subject to the terms of this Arbitration clause, the terms of this Contract, and the law governing the Contract. The Arbitration Tribunal shall have no authority to award exemplary, punitive, or special damages or any other damages excluded by this Contract.
- 14.4** This Contract shall be governed and interpreted in accordance with English Law, excluding its conflicts of law provisions.
- 14.5** Nothing in this Contract shall operate or be construed as a waiver, renunciation or other modification of any right, privilege, immunity and exemption accorded to the Bank under the Agreement establishing the African Development Bank, international conventions or any other applicable law.
- 14.6** The provisions of this Article shall survive the termination of this Contract.

ARTICLE XV
Modification or Amendment

- 15.1** Except by mutual agreement in writing between the parties, no change, modification or amendment shall be made to the present Contract.
- 15.2** Notwithstanding the foregoing clause, the Bank may at any time order or require changes in the scope of the Services. If such changes add to, or reduce, the cost of the Services, the Contract Amount shall be adjusted accordingly, following mutual agreement between both parties.

ARTICLE XVI
Guarantees

The Supplier 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 mutually agreed Final Project Plan pursuant to the requirements in the RFP.

ARTICLE XVII
Final Provisions

17.1 The provisions of the Annexes and Appendices attached hereto are complementary to the provisions of this Contract. If there is a conflict between a provision of this Contract and a provision of any one of the Annexes or Appendices hereto, the provisions of this Contract shall take precedence.

17.2 This Contract shall not become binding unless and until executed by the Bank and a Performance Security Bond in a form acceptable to the Bank has been duly executed by the Supplier and has been deposited with the Bank.

IN WITNESS WHEREOF the parties hereto, each acting through its authorized representative, have caused this Contract to be duly executed on the respective dates specified below.

FOR AFRICAN DEVELOPMENT BANK

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
DIVISION MANAGER,
CORPORATE PROCUREMENT DIVISION (CGSP.2)

Date

FOR

Full Name of authorized signatory
Title

Date

APPENDIX E

MAINTENANCE CONTRACT FOR ACQUISITION, IMPLEMENTATION, AND MAINTENANCE OF A GLOBAL SECURE WEB GATEWAYS SOLUTION FOR THE BANK IT INFRASTRUCTURE

THIS CONTRACT is and entered into by and between the **AFRICAN DEVELOPMENT BANK** (hereinafter called the “Bank”), an international financial institution having its headquarters in Abidjan, Avenue Joseph Anoma, 01 B.P. 1387, Abidjan, CÔTE d'IVOIRE and currently operating from its Temporary Relocation Agency in Tunis, 15 Avenue du Ghana, BP 323 – 1002 Tunis Belvédère, TUNISIA, of the one part and **xxxxxx** (hereinafter called the “Supplier”), a company duly incorporated and existing under the laws of the Republic of Supplier whose principal place of business is located at xxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxxxx, of the other part.

Parties mean the Supplier and the Bank collectively, and **Party** means any one of them, as the context may indicate.

WHEREAS the Bank and the Supplier have concluded a Contract for the Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure

AND WHEREAS the Bank and the Supplier have agreed, in accordance with the Invitation for Proposals (IFP) and the said contract, that the Supplier shall provide maintenance support and routine assistance in respect of firmware, software, hardware and infrastructure, as well as provide software and firmware updates and upgrades for operating system for the duration of this contract.

NOW THEREFORE, the parties hereto agree as follows:

1. SCOPE AND TERM OF CONTRACT

- 1.1 The purpose of this Contract is to describe the Supplier's responsibilities in the maintenance of hardware equipment and software at the Bank's premises. The Supplier shall perform the services and carry out its obligations with due diligence, efficiency and economy, in accordance with standards specified in the Service Level Agreement. The Supplier shall observe sound management practices, and employ as appropriate advanced technology and safe methods of work. In respect of this Contract, the Supplier shall always act as a faithful adviser to the Bank and shall at all times support and safeguard the Bank's legitimate interests in any dealings with sub contractors or third parties.
- 1.2 This Maintenance Contract shall remain valid for a period of four (4) years commencing one year from the day of signing the Contract for the Acquisition, implementation, and maintenance of a global secure web gateways solution for the Bank IT infrastructure concluded between the Bank and the Supplier. Upon expiry of its term, this Contract may be renewed for further periods of one year each up to a

maximum of four (4) consecutive years, on such terms and conditions as may be decided by the parties.

- 1.3 The Supplier warrants that it is qualified by the manufacturer, in case of third party products, to supply and provide maintenance services, technical or help desk support, new version upgrade and/or other services related to the Hardware and/or Software installed. The Supplier further warrants that its work will not negatively affect the performance of the system.

2. MAINTENANCE FEES - PAYMENT TERMS

- 2.1 In consideration of the provision of maintenance services hereunder, the Bank agrees to pay to the Supplier an amount not exceeding xx (xx, xx.00) as Annual Maintenance Fee xxxxx years. The Bank shall effect payment at the end of each year. The Bank shall prepare an inventory of devices to be maintained, before commencement of this Contract, and subsequently, within three (3) months to the end of each maintenance year, for the following year. Payment shall be effected by the Bank after receipt of itemized invoice from the Supplier indicating the breakdown of service charges.
- 2.2 The Annual Maintenance Fee shall be paid in four installments, at the end of each billing period (quarterly) on presentation to the Bank of appropriate invoices and supporting documents. Payment shall be made by the Bank within thirty (30) days of receipt of the relevant invoice and related documents including certification by the Bank's authorized representative that the Services have been satisfactorily performed in accordance with the terms of this contract.

3. OBLIGATIONS OF THE SUPPLIER

3.1 SOFTWARE MAINTENANCE AND ENHANCEMENT

3.1.1 SERVICES

- **Support and Routine Assistance**

The Supplier's software support personnel shall be available to assist and consult with the staff of the Bank 24 hours a day, seven days a week. The Supplier and/or Local Representative Agent shall provide necessary support services to answer questions and to assist the Bank in resolving problems related to the use and operation of the Software supplied and installed by the Supplier. The Supplier and/or Local Representative Agent shall be responsible for training Bank's Staff to operate new and/or upgraded Software. **Supplier must appoint a Local Agent and notify the name to the Bank in case it is not physically present in the Bank's host country.**

- **Software Errors and Corrections**

The Supplier agrees to correct errors or defects in the products (hardware and software) sold to the Bank and to supply such corrections to the Bank at no additional charge. The Bank agrees to report promptly to the Supplier any and all errors or defects in the

products, which it may discover. The Supplier shall correct the errors or defects in the products promptly after they are discovered by the Bank or are reported by the Supplier. Corrections to software shall be provided to the Bank on CD-ROM or as a download via the internet, or in the form of specific instructions to be performed by the Bank or the Local Representative Agent of the Supplier through on site intervention or electronic access to the Bank's computers/software system.

- **Enhancement and New Releases of Software and Documentation**

The Supplier shall provide and install, at no additional cost to the Bank all new versions, releases, and updates for all security related software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients and no later than three (3) months after they are released in the country of origin of the Software. New releases of the Software shall be supplied on CD ROM or as a download via the internet. Appropriate documentation and installation instructions with respect to new releases shall also be provided. The Bank agrees, with the effective support of the Supplier's Local Representative Agent, to install each new release of Software as soon as possible.

3.2 HARDWARE MAINTENANCE AND ENHANCEMENT

3.2.1 SERVICES

The Supplier and/or Local Representative Agent shall provide the following maintenance and support services to the Hardware:

- **Support and Routine Assistance**

The Supplier's and/or Local Representative Agent's support staff shall provide telephone support services to answer questions and to assist the Bank, either on the phone or through on-site intervention, in resolving problems related to the use and operation of the Hardware. The Supplier and/or Local Representative Agent shall undertake regular preventive maintenance of the Bank's Hardware Equipment. This task shall include, among other duties, the replacement of defective parts or of parts the performance of which is affected by wear caused by the normal operation of the System, in a way that is likely to adversely affect the smooth operation of the Hardware. The Supplier and/or Local Representative Agent of the Supplier shall hold a stock of spares of those components that in the Supplier's experience are prone to failure. Both the Supplier and/or its Local Representative Agent shall be responsible for training the Bank's personnel to use the Hardware in case of System and/or Hardware upgrade.

4. FORCE MAJEURE

If the performance of this Contract is prevented or interfered with by reason of any circumstances beyond the reasonable control of a party hereto, and which makes a party's performance of its obligations under the Contract impossible or so impracticable as to be considered impossible under the circumstances, such party shall be excused from such performance for the duration of the force majeure, provided that the party so affected a) has taken all reasonable precautions, due care and reasonable

alternative measures in order to carry out the terms and conditions of this Contract, and b) has informed the other party as soon as possible about the occurrence of such an event.

5. CONTRACT AMENDMENTS

No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

6. ASSIGNMENT

The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Bank's prior written consent.

7. SUBCONTRACTS

The Supplier shall notify the Bank in writing of all subcontracts awarded under this Contract. Such notification shall not relieve the Supplier from any liability or obligation under the Contract.

8. DELAYS IN THE SUPPLIER'S PERFORMANCE

All services to be performed under this Maintenance Contract shall be provided by the Supplier in accordance with the time schedule prescribed hereunder. If at any time during performance of this Contract, the Supplier should encounter conditions impeding timely delivery and performance of the Services, the Supplier shall promptly notify the Bank in writing of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Bank shall evaluate the situation and may at its discretion extend the Supplier's time for performance, or terminate the Contract with or without claiming liquidated damages from the Supplier.

9. ENTRY INTO FORCE

This Contract shall be effective on the day following the expiry date of the three year warranty period as specified in Article 1.2 of the main Contract.

IN WITNESS WHEREOF the parties hereto, each acting through its authorized representative, have caused this Contract to be duly executed on the respective dates specified below.

FOR AFRICAN DEVELOPMENT BANK

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
DIVISION MANAGER,
CORPORATE PROCUREMENT DIVISION (CGSP.2)

Date

FOR XXXXXXXXXXXXXXXXXX

Full Name of authorized signatory
Title

Date

APPENDIX F

SERVICE LEVEL AGREEMENT

XXX SOLUTION FOR THE AFRICAN
XXX

1. PURPOSE

The purpose of this Service Level Agreement (SLA) is to specify in detail the level of maintenance and support service expected from the Supplier under the Contract for the supply, installation and commissioning of Maintenance And Support of XXX Solution, of which this SLA is an integral part. This SLA will evolve over time, with additional knowledge of the Bank's requirements, as well as the introduction of new applications and services into the support portfolio provided by the Supplier.

2. SCOPE OF THE SLA

2.1 Services Provided

The following services shall be provided:

- 2.1.1. **Preventive maintenance** - All software and hardware shall undergo regular maintenance works with a view to undertaking corrective preventive maintenance actions. The frequency and content of such preventive maintenance activities shall be proposed by the Supplier and approved by the Bank within ten (10) days of the signing of this contract. The latter reserves the right to modify the proposal to better reflect its needs. In any event these activities shall include, among others, the identification, analysis and actions aimed at preventing the occurrence of potential problems.
- 2.1.2. **Corrective maintenance** - Defined as activities associated with root-cause analysis and bug-fix isolation and resolution.
- 2.1.3. **Root-cause analysis** - Analysis of the root causes of problems. Problems will be reviewed to determine their root causes, measures will be taken to correct the sources of the problems, and reports will be prepared and distributed in a timely fashion.
- 2.1.4. **Bug fixes** - Defined as the emergency repair of any system operation that does not comply with the current signed and approved system specification. This includes system errors, "hung" or halted screens, or unexpected results within the system that render it unusable for the purpose for which it was designed.
- 2.1.5. **Adaptive maintenance** – The Supplier shall provide adaptive maintenance that is activities relating to upgrades or conversions to an application due to new versions of operating environment, including operating system, application server, or database software.
- 2.1.6. **Advice of Performance** - The Bank's Security unit will inform the Supplier of the resolution of each problem brought to its attention by e-mail.

2.2 Other Services

The following hardware and software application-related services shall also be provided:

- 2.2.1 **Application monitoring** – The Supplier will make every effort to conduct periodic monitoring of the system performance to determine whether there is deterioration and advise the Bank on same.
- 2.2.2 **Transition of new or modified applications** - When a new or modified application is ready to be transitioned into support, planning and coordination of the necessary activities between the Bank's Security unit and the Supplier's support team will be conducted by the Bank's Security unit. Other requirements include:
- Support will commence for new or modified software immediately after deployment.
 - The Supplier shall make available to the Bank the required support resources (human and other) to provide knowledge transfer for a period of 60 days after deployment of new software and/or upgrade.
- 2.2.3 **Status reporting** - monthly status reports will be completed by the Bank's Security unit and submitted to the Supplier for all items covered by the Maintenance Contract. Monthly Status reports will be discussed by the Bank's Security Manager or the Bank's Chief Information Security Officer with the Supplier's Support management to ensure that the Supplier is aware of the support issues and risks faced by the Bank.
- 2.2.4 **Knowledge management** - Recording, storing, and retrieval of information to assist in the resolution of problems will be established by the Supplier and maintained by the Bank.
- 2.2.5 **Software licensing** - Pursuant to the general conditions of the Supply, Installation and Commissioning of Hardware Equipment and Software, the Supplier shall provide all software together with the licensing appropriate to the Bank's operations.
- 2.2.6 **Specific training** – The Supplier shall provide training for the Bank's Staff Members. . The Supplier shall provide advice or education about the solution and its integration in the Bank's IT environment
- 2.2.7 **Upgrades to application software** - When an upgrade to the system is released i.e. operating system drivers, firmware upgrades, and vendor-required upgrades; the Supplier shall provide and install the upgrade at no additional cost to the Bank.

3. PROCESSES AND PROCEDURES RELATED TO THIS CONTRACT

3.1 *Request for Support*

A request for support is defined as a request to fix a defect in existing software application and/or hardware or a malfunction in the security system as a whole. Such requests may be executed by e-mail, fax or phone call. In the latter case the Bank's Security unit must summarize in writing for its file, the conversation held with the

Supplier and/or its Local Agent. The support request sent to the Supplier shall clearly mention the severity level of the problem.

3.2 ***Call Management Process***

The Supplier shall set up within its organization a unit in charge of recording and tracking all problem reports, inquires, or other types of calls received from the Bank.

3.3 ***Performance Evaluation***

3.3.1 ***Evaluation Reporting***

The Bank will provide regular reporting to the Supplier to indicate how the latter is performing vis-a-vis the related target performance (see below). These reports are expected to be produced by the Bank's Security unit and will provide details on the Supplier's performance against SLA targets.

3.3.2 ***Evaluation Criteria***

Reporting against the SLA resolution targets will focus on the time to resolve operating problems. This evaluation will only address the support requests submitted to the Supplier for resolution. The evaluation report will be in the form of a written letter or e-mail as appropriate.

4. **CHARACTERISTICS FOR PROBLEM CATEGORIZATION**

4.1 **Severity Codes**

The following characteristics are used to identify the severity of a problem report:

- Business and financial exposure
- Work outage
- Number of clients affected
- Workaround
- Acceptable resolution time

It is not necessary (nor is it likely) to have perfect match of each characteristic to categorize a problem report at a particular severity level. A given problem must be judged against each of the characteristics to make an overall assessment of which severity level best describes the problem.

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
Business and financial exposure			
The hardware/application failure creates a serious business and financial exposure.	The hardware/application failure creates a serious business and financial exposure.	The hardware/application failure creates a low business and financial exposure.	The hardware/application failure creates a minimal business and financial exposure.
Work Outage			
The hardware/application failure causes the client to be unable to work or perform some significant portion of their job.	The hardware/application failure causes the client to be unable to work or perform some significant portion of their job.	The hardware/application failure causes the client to be unable to perform <i>some small</i> portion of their job, but they are still able to complete most other tasks. May also include questions and requests for information.	The hardware/application failure causes the client to be unable to perform a <i>minor</i> portion of their job, but they are still able to complete most other tasks.
Number of Clients Affected			
The hardware/application failure affects a <i>large</i> number of clients.	The hardware/application failure affects a <i>large</i> number of clients.	The hardware/application failure affects a <i>small</i> number of clients.	The hardware/application failure may only affect one or two clients.
Workaround [This bullet carries the heaviest weighting of the characteristics for Severity 1 and 2.]			
There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).	There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).	There may or may not be an acceptable workaround to the problem.	There is likely an acceptable workaround to the problem.
Response Time			
Within one hour.	Within one hour.	Within eight hours or by next business day.	Within eight hours or by next business day.
Resolution Time			
The maximum acceptable resolution time is 24 continuous hours, after initial response time.	The maximum acceptable resolution time is two business days.	The maximum acceptable resolution time is 3 business days.	The maximum acceptable resolution time is 5 calendar days.

4.2 Levels of Service

The service levels offered by the Supplier to the Bank are described below. The Supplier's goal must be to meet, and even exceed, when possible, the levels of services described below:

Service Level	Severity 1, 2	Severity 3, 4
24/7	<ul style="list-style-type: none"> - The Supplier and/or Local Agent shall provide support 24 hours, seven days a week by phone and on-site intervention by operations and application specialists. - Support requests are taken 24 hours, seven days a week. - Telephone call back within half an hour from receipt of the request by the Supplier and/or Local Agent. - Problem should be resolved within four hours. <p>Guaranteed delivery of hardware replacements within four (4) business days of receiving the request for support.</p>	<ul style="list-style-type: none"> - Requests taken 24 hours, seven days a week. - The Supplier and/or Local Agent shall provide support during normal working hours in the Bank, by phone and/or on-site intervention. - Call back within half an hour during normal working hours at the Supplier or Local agent. - Problems should be resolved within one day. - Guaranteed delivery of hardware replacements within four (7) business days of receiving the request for support.

4.3 Levels of Effort

The level of effort expected of the Supplier shall be exercised in full, either through corrective maintenance activities or through preventative maintenance activities.

5. ROLES AND RESPONSIBILITIES OF THE BANK AND THE SUPPLIER

5.1 The Supplier

The Supplier’s Support Team has the following general responsibilities under the Contract:

- The Supplier shall conduct business in a courteous and professional manner.
- Once a support request has been submitted, the Supplier shall make itself available to work with the Bank’s support resource assigned to the support request.
- The Supplier shall continue to provide the Bank access, software, licensing, training, documentation, and support for all software and hardware supplied.
- The Supplier shall provide all of the necessary and requested documentation, information, and knowledge capital to the Bank prior to the deployment of any new application.

Supplier’s Support Specialists

- The Bank end-users do not contact the Supplier support resources directly to report a problem. All problem calls must be logged through the Bank’s Security unit.
- Conducting all root-cause analysis and bug fix isolation and resolution activities, and associated documentation for the individual tasks, as assigned by the Bank.
- Acting as a point of contact for all application issues (bugs and enhancements).
- For enhancements, determining the potential high-level effort for all changes, and based on that, either passing it on to a developer or completing it themselves.
- Identifying all tasks associated with each support request and deriving estimates for the completion of each task.

- Responsible for currency of application metadata (i.e., URLs, server info, backup schedules, etc.- all this info to be stored in Support Applications Repository).
- Responsible for responding to support requests.
- Conducting testing (system/integration/acceptance testing activities should be performed).
- Conducting coding and testing to resolve application problems.
- Participating in the acceptance testing and implementation activities.
- Providing knowledge transfer to the Bank's Security unit staff.
- Preparing weekly and monthly status reports.

5.2 **The Bank**

The Bank has the following general responsibilities under the Contract:

- The Bank shall conduct business in the context of this Contract in a courteous and professional manner with the Supplier.
- The Bank shall log all information from the Supplier required to establish contact information, document the nature of a problem and the Supplier's hardware/network environment (as applicable).
- The Bank shall attempt to resolve problems over the phone on first call.
- The Bank shall escalate support request to next level of severity upon approach of established resolution targets.
- The Bank's Security unit shall assign severity codes based on its analysis of the situation.

There are several roles deployed within the Bank that are integral to the provision of support services to the Bank. These roles include the following:

Bank's Security Unit

Transition Officer

The Bank Transition Officer works as a point of contact for all activities relating to the transition of a new or modified application from the Supplier to the Bank's Security unit and the decommissioning of supported applications. Reporting to the person in charge of the Bank's Security unit, he/she is responsible for planning, coordinating, and overseeing the transition of a new application into support. His/her duties include:

- Liaising with the Supplier's support team head.
- Ensuring all required documentation, information, and knowledge capital has been prepared, as per transition checklist, and turned over prior to the start of support for a new application.
- Managing all activities relating to transition:
 - Identifying resource requirements, including Level of effort and technical skills.
 - Identifying all access requirements and tools required.
 - Meeting with the Supplier's team or Local Agent to set up timetable and develop transition plan.
 - Developing training plan for the Bank's Security unit.

- Negotiating resource assignments with the person in charge of the Security unit or the Chief Information Security Officer.
- Creating and ensuring currency of Support Applications Repository.

Security unit Manager / Chief Information Security Officer

The Bank’s Security Manager or the Bank’s Chief Information Security Officer will provide the overall direction of the activities of the support specialists, participate directly in the production of the associated deliverables, and will negotiate with the Supplier’s support manager regarding the classification of enhancements and the scheduling of tasks. His/her duties will include:

- Ensuring SLA targets are met (coordinating all activities to ensure all tasks are performed in a consistent manner and on schedule).
- Ensuring all work is performed according to the agreed-upon work methods and standards.
- Participating directly in the production of the associated deliverables.
- Assigning severity codes to support requests and liaising with the Supplier’s team to negotiate the scheduling of tasks, and coordinate the activities of the Supplier’s support team.

IN WITNESS WHEREOF the parties hereto, each acting through its authorized representative, have caused this Contract to be duly executed on the respective dates specified below.

FOR AFRICAN DEVELOPMENT BANK

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
**DIVISION MANAGER,
CORPORATE PROCUREMENT DIVISION (CGSP.2)**

Date

FOR

**Full Name of authorized signatory
Title**

Date

