



# African Development Bank

## Request for Proposals

### **PROVISION OF LICENSE AND SERVICES FOR THE BANK EXISTING WEB SECURITY SYSTEM**

**REF.: ADB/RFP/PSEC/2017/0042**

16 March 2017

**General Services  
and Procurement  
Department**



## SUMMARY DESCRIPTION

### PART I – SELECTION PROCEDURES AND REQUIREMENTS

#### **Section 1: Letter of Invitation (LOI)**

This Section is a letter from the Bank addressed to potential bidders inviting them to submit a proposal for the assignment. The LOI includes references to the selection method and applicable guidelines or policies of the Bank that govern the selection and award process.

#### **Section 2: Instructions to Bidders**

“Instructions to Bidders” contains provisions that are to be used without modifications. This Section provides information to help potential bidders prepare their proposals. Information is also provided on the submission, opening and evaluation of proposals, contract negotiation and award of contract.

#### **Section 3: RFP Data Sheet**

“RFP Data” contains information specific to the current selection and corresponds to the clauses in “Instructions to Bidders” that call for selection-specific information to be added.

#### **Section 4: Terms of Reference (TORs)**

This Section describes the scope of services, objectives, goals, specific tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts.

#### **Section 5: Evaluation Criteria and Methodology**

This Section provides information and evaluation of proposals

#### **Section 6: Technical Proposal Questionnaire**

This Section includes the forms for Technical Proposals that are to be completed by potential bidders and submitted in accordance with the requirements of Section 2.

#### **Section 7: Financial Proposal Questionnaire**

This Section includes the financial forms that are to be completed by potential bidders, including bidders’ costing of their technical proposal, which are to be submitted in accordance with the requirements of Section 2.

#### **Section 8: Eligibility Requirements**

This Section contains information on the Bank’s eligibility criteria and list of member countries.

### PART II – CONDITIONS OF CONTRACT

**Section 9:** This Section includes the General Conditions of the Bank that shall not be modified, and the Special Contract Conditions

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## SECTION I – LETTER OF INVITATION

Dear Sir/Madam,

1. The African Development Bank (the “Bank”) invites proposals for the provision of goods and services as described in this Request for Proposal (RFP). To qualify for award, a bidder shall meet the qualification criteria set out in the **Section 6**.
2. The proposals submitted by bidders shall be received by the Bank on or before the date and time and in the manner specified in **Section 2**. The Bank’s requirement is set out in **Section 4**.
3. The Bank is an ‘AAA’ rated regional multilateral development finance institution, established in 1963, with a mandate to further economic development and social progress of African countries, individually and collectively. 80 member countries including all the 54 African countries and 26 non-African countries in the Americas, Europe and Asia own the Bank.
4. The Bank's principal functions include: (i) using its resources for the financing of investment projects and programs relating to the economic and social development of its Regional Member Countries (RMCs); (ii) the provision of technical assistance for the preparation and execution of development projects and programs; (iii) promoting investment in Africa of public and private capital for development purposes; and (iv) to respond to requests for assistance in coordinating development policies and plans of RMCs. In its operations, the Bank is also required to give special attention to projects and programs that promote regional integration.
5. The Bank began its operations from its headquarters, in Abidjan, Côte d’Ivoire on July 1, 1966. For purposes of its operations the Bank also maintains field offices in certain of its RMCs.
6. The information contained in the RFP is designed to enable bidders complete and submit proposals. Bidders shall read the RFP carefully and ensure proposals comply with the instructions provided in the RFP. Bidders are required to complete and submit the Technical Proposal Questionnaire (**Section 6**) and Financial Proposal Questionnaire (**Section 7**) in accordance with the Instructions to Bidders (**Section 2**), RFP Data Sheet (**Section 3**), Description of Goods/Technical Specification/Terms of Reference (**Section 4**), Eligibility Criteria (**Section 8**) and General and Specific Conditions (**Section 9**). The Bank shall evaluate proposals in accordance with the evaluation criteria and methodology (**Section 5**). The Bank is not bound by any other terms and conditions unless agreed in writing by the Bank.
7. Any eligible bidder interested in doing business with the Bank shall register with the Bank through its website at: [https://eprocurement.afdb.org/sap/bc/webdynpro/sap/zsup\\_reg\\_submit#](https://eprocurement.afdb.org/sap/bc/webdynpro/sap/zsup_reg_submit#)
8. A copy of all documents referred to in the RFP can be found on the Bank’s website: <http://www.afdb.org/fr/about-us/corporate-procurement/procurement-notices/current-solicitations/>
9. We look forward to receiving your proposal and thank you for your interest in doing business with the Bank.

Corporate Procurement Division  
General Services and Procurement Department



## SECTION 2 - INSTRUCTIONS TO BIDDERS

### GENERAL

1. **Eligibility of Bidders, Goods and Services** - Goods and services procured by the Bank shall be produced in a member country of the Bank and supplied by bidders from a member country of the Bank as defined in the Presidential Directive concerning the Rules for Corporate Procurement activities of the Bank. The Bank's eligibility criteria as defined in the Presidential Directive are set out in the RFP.
2. **Procurement Ethics, Integrity, Anti-corruption and Fairness**
  - 2.1. It is the Bank's policy that bidders/suppliers to the Bank observe the highest standard of ethics during the procurement process and execution of such contracts. In pursuance of this policy, the Bank shall reject a proposal if it determines that the bidder, or any of its personnel, agent, consultant, subcontractor or service provider, has, directly or indirectly, engaged in "Corrupt", "Fraudulent", "Collusive", "Coercive" or "Obstructive" practices in competing for the contract in question. These terms are as defined in the General and Specific Conditions. The Bank may also declare the bidder ineligible for participation in future procurement and award of contracts, either indefinitely or for a stated period of time.
  - 2.2. A bidder/supplier who offers any gift of any value to Bank staff will be considered to be influencing the procurement process. The Bank shall reject a proposal if it determines that any such gift has been offered.
  - 2.3. All bidders/suppliers are required to comply with the Code of Conduct for Suppliers in the General and Specific Conditions.
3. **Conflict of Interest** - A bidder shall not have a conflict of interest that would call into question its participation in the procurement process and award of contract. Bidders shall disclose any potential or actual conflict of interest in the disclosure form and during execution of any contract. All bidders found to have a conflict of interest may be disqualified.
4. **Joint Venture**
  - 4.1. Where a joint venture or any other form of partnership (JV) approach is proposed, bidders are required to provide full details of the JV and nature of relationship with other JV members. Bidders forming a JV shall nominate an authorized representative of the JV (duly evidenced by submitting a power of attorney signed by a legally authorized representative of the JV) who shall have the authority to conduct all business for and on behalf of all members and enter into the contract. Each member shall meet the eligibility criteria as defined in the Presidential Directive.
  - 4.2. A JV shall comprise no more than four members. At least one member shall provide 40% of the contract sum and each of the other members shall provide at least 20% of the contract sum.
  - 4.3. All members shall be jointly and severally liable for the performance of any resulting contract.

### CLARIFICATION OF THE PROCUREMENT PROCESS

5. Bidders are solely responsible, at their own cost and risk, for obtaining information that may be necessary for preparing proposals and entering into the contract.
6. **Amendment of RFP** – The Bank reserves the right to modify any content of the RFP without incurring any liability to any bidder. Any such amendment shall be posted on the Bank's website. It is the sole responsibility of bidders to ensure they are aware of any amendment and take the amendment into account in preparing proposals.



## 7. Clarification of RFP

- 7.1. A bidder requiring any clarification on the RFP shall notify the Bank in writing at the details provided in the **RFP Data Sheet** and within the period for clarification in the **RFP Data Sheet**. Written copies of the Bank's response (including the questions raised without identifying the source) shall be posted on the Bank's website.
- 7.2. If a bidder feels that any provision in the RFP will be unacceptable, such issue and any request for change to the RFP shall be raised at the earliest opportunity in writing at the details provided in the **RFP Data Sheet** and in any event no later than the deadline in the **RFP Data Sheet**. **The Bank shall not consider any request to change the General Conditions.**
- 7.3. The Bank shall determine, in its sole discretion, to accept or reject any query or request for change. Any response from the Bank shall be binding on bidders.
- 7.4. A bidder who contacts any member of Bank staff directly or indirectly in relation to the procurement (except staff specified in the **RFP Data Sheet**) shall be disqualified.
- 7.5. The Bank shall not respond to any query or request received after the deadline in the **RFP Data Sheet**.

## 8. Site Visit / Pre-Bid meeting

- 8.1. If provided in the **RFP Data Sheet**, bidders are invited to attend a site visit and pre-bid meeting. The purpose of the meeting will be to clarify issues and answer questions on any matter relating to the Bank's requirements. The cost of the site visit and pre-bid meeting shall be at the bidder's own expense.
- 8.2. Bidders are requested to submit any questions in writing to the address in the **RFP Data Sheet**, to reach the Bank no later than one week before the meeting.
- 8.3. If provided in the **RFP Data Sheet** that attendance at the site visit and pre-bid meeting is mandatory, any bidder wishing to submit a proposal shall attend the site visit and pre-bid meeting. The Bank shall not consider a proposal from a bidder who does not attend a mandatory site visit and pre-bid meeting.
- 8.4. Minutes of the meeting (including the text of the questions raised without identifying the source together with the Bank's response) shall be posted on the Bank's website.

## **PREPARATION OF PROPOSALS**

9. **Cost of Bidding** – Bidders shall bear all costs associated with the preparation and submission of proposals. The Bank shall not be responsible or liable for any costs regardless of the conduct or outcome of the procurement process.
10. **Language of Proposals**
  - 10.1. The proposal and all correspondence and documents relating to the proposal exchanged by the bidder and the Bank shall be written in the language specified in the **RFP Data Sheet**. A proposal submitted in a language not specified in the **RFP Data Sheet** shall be rejected.
  - 10.2. Any printed literature furnished by the bidder written in another language other than the language specified in the **RFP Data Sheet** shall be accompanied by a certified translation in the language in the **RFP Data Sheet** of its pertinent passages in which case, for the purpose of interpretation of the proposal, the translation shall govern.
11. **Subcontractors and service providers** – Bidders shall identify any sub-contractors that will play a significant role in the bidder's performance of the contract. The Bank reserves the right to obtain the same level of information from subcontractors as from bidders.



- 12. Documents comprising the Proposal** - Proposals shall comprise the following documents, completed in full and supported with evidence and information requested:
- Technical Proposal Questionnaire; and
  - Financial Proposal Questionnaire.
- 13. Statement of Conformity, Bid Submission Form and Price Schedule** – Bidders shall sign the Statement of Conformity and Bid Submission Form and complete the price schedule using the forms provided. The forms shall be completed without alterations to its format and content. No other substitutes shall be accepted.
- 14. Publicity Material** - Unless expressly permitted in the RFP, bidders shall not submit brochures, general marketing or promotional material with proposals. Publicity brochures shall not be accepted as answers to questions. Bidders shall respond fully to the questions in the RFP.
- 15. Meeting the Bank's requirements**
- 15.1. Unless otherwise provided, bidders shall meet the Bank's requirements by the deadline for submission of proposals.
- 15.2. Bidders shall respond in sufficient detail and provide evidence and supporting documentation to enable the Bank determine whether the bidder has the required capability, experience, knowledge and expertise to satisfactorily perform the contract.
- 16. Mandatory Requirements** – The RFP may include mandatory requirements. The classification of a requirement as mandatory gives an indication of its significance to the Bank. A proposal that does not meet any mandatory requirement shall be rejected as non-responsive.
- 17. Samples and Inspection**
- 17.1. The Bank may request samples at any time during the procurement process. If requested, bidders shall provide samples free of charge. A bidder who fails to provide the required samples shall be disqualified. The Bank makes no guarantee that the samples will be returned or the condition of samples upon completion of evaluation. Samples shall be returned at the bidders own cost.
- 17.2. If provided in the RFP, the Bank shall conduct an inspection of the goods and services during the procurement process either at the bidder's premises or at the Bank's offices. Such inspection shall not relieve the bidder from any of its obligations under the contract. The Bank shall notify bidders in writing of the details of any inspection. The Bank shall not be responsible for the expenses incurred by the bidder for such inspection.
- 18. Demonstration** – If provided in the RFP, the Bank shall require bidders to provide a live demonstration of the proposed solution. The bidder shall provide the demonstration free of charge and the Bank shall not accept any liability for any damage to or loss of bidders' property in connection with such demonstration.
- 19. Sustainable Procurement** – the Bank is committed to managing its business in an environmentally and socially responsible manner. The Bank would like to work with and encourage suppliers to execute the contract in the same manner. Bidders are encouraged to set out how they intend to incorporate environmental and social considerations if awarded the contract.



20. **Alternative Proposals** - The Bank shall not consider any variation to its requirements (“Alternative Proposal”) unless expressly permitted in the **RFP Data Sheet**. If an Alternative Proposal is permitted, the Alternative Proposal shall be accompanied by a fully compliant proposal, i.e. one that meets the minimum technical requirements. The bidder shall quote the price for the fully compliant proposal and then separately provide the technical specification, methodology and adjustment in price that can be offered if the Alternative Proposal is accepted. The nearest functional equivalent or closest standard shall be offered as an alternative. Only the Alternative Proposal of the successful bidder shall be considered.
21. **Acceptance of the General and Specific Conditions** - It shall be clearly understood that by submitting a proposal in response to the RFP, a bidder shall be deemed to have accepted the General and Specific Conditions. A proposal that does not accept the General and Specific Conditions shall be rejected as non-responsive.
22. **Taxes** - The prices quoted shall be net free and clear of all applicable taxes including withholding tax duties, fees, levies or indirect taxes, such as customs duties, as the Bank, by virtue of its status as an international organization, is exempt from paying any direct or indirect taxes, by virtue of Article 57 of the Agreement establishing the Bank. If the bidder is unable to quote or invoice exclusive of all applicable taxes, such taxes shall be separately set forth on the quote or invoice.
23. **Bid Prices**
- 23.1. The prices submitted by bidders shall, except insofar as it is otherwise provided in the contract, include all labour, supervision, materials, transportation, insurance, profit, general risks, liabilities and obligations set out or implied in the contract.
- 23.2. The Bank shall award the contract based on value for money that takes into account the whole life costing (i.e., life-cycle costs of the goods and services, maintenance, spare parts, warranty, training, disposal, shipment, insurance) of the requirement.
24. **Currency of Proposal** - The prices shall be expressed in the currency in the **RFP Data Sheet**. A bidder shall express all prices in the same currency.
25. **Lots** – If the Bank’s requirement is sub-divided into separate units (“lots”), bidders can submit a proposal for one or multiple lots unless otherwise indicated in the **RFP Data Sheet**.
26. **Period of Validity of Proposals** – Proposals shall remain valid for a period not less than the period stated in the **RFP Data Sheet**. Proposals valid for a shorter period shall be rejected as non-responsive. The Bank may require bidders to extend the period of validity of proposals. If the bidder does not extend the period of validity of proposals, the bidder’s proposal may be rejected. A bidder granting the request shall not be required or permitted to modify its proposal.
27. **Bid Security**
- 27.1. If provided in the **RFP Data Sheet**, the bidder shall furnish, as part of its proposal, the original of either a Bid-Securing Declaration or a bid security in the amount, form and valid for the period in the **RFP Data Sheet**.
- 27.2. The bid security shall be in the form of a certified cheque or a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank. Any proposal not accompanied by a substantially responsive bid security shall be rejected.
- 27.3. The Bank may require bidders to extend the period of validity of a bid security. If the bidder does not extend the validity of the bid security, the bidder’s proposal shall be rejected unless the bidder submits a new bid security acceptable to the Bank before the expiration of the bid security.





- 27.4. The bid security of a joint venture shall be issued in the name of the joint venture submitting the proposal and shall list all members of the joint venture.
- 27.5. The bid security shall be returned to bidders or forfeited in the circumstances specified in the **RFP Data Sheet**.

### **SUBMISSION AND OPENING OF PROPOSALS**

#### **28. Deadline for Submission of Proposals**

- 28.1. The Bank shall receive proposals no later than deadline in the **RFP Data Sheet**. It is the sole responsibility of bidders to ensure timely receipt of proposals by the Bank.
- 28.2. The Bank shall extend the deadline for submission of proposals at any time without incurring any liability to bidders.

29. **Late Proposals** – The Bank shall not consider any proposal received after the deadline for submission of proposals. Any proposal received by the Bank after the deadline for submissions shall be declared late and rejected by the Bank.

30. **Proposals rejected by the Bank** – Proposals rejected by the Bank shall be destroyed or returned to bidders, at its own cost, if so requested.

#### **31. Proposals submitted electronically via AfDB e-Procurement portal**

- 31.1. If provided in the **RFP Data Sheet**, proposals shall be submitted electronically via AfDB e-Procurement portal.
- 31.2. Bidders shall obtain guidance on submitting proposals electronically in the user manual in AfDB e-Procurement portal.
- 31.3. The Bank reserves the right to request the original of any form, document or authorization submitted electronically by any bidder.

#### **32. Proposals submitted by mail, courier or hand-delivery**

- 32.1. If provided in the **RFP Data Sheet**, proposals shall be submitted by mail, courier or hand delivery.
- 32.2. Proposals shall be submitted in a sealed envelope (**with both the technical proposal questionnaire and financial proposal questionnaire in separate sealed envelopes**) and addressed to the Bank at the address in the **RFP Data Sheet**.
- 32.3. Each bidder shall submit proposal in **one original and four copies (any attachment, appendix and annex thereto shall also be submitted in one original and four copies)**: the original proposal shall carry the mention “Original” and each of the four copies the mention “Copy”. The technical proposal (one original and four copies) and the financial proposal (one original and four copies) shall each be placed in two separate sealed envelopes (the “internal envelopes”).
- 32.4. The following mention shall appear on each internal envelope:
- a) the RFP reference;
  - b) the mention “Technical Proposal” or “Financial Proposal” as the case may be; and
  - c) the name and address of the bidder.
- 32.5. The internal envelopes shall be placed together in a large single envelope called “external envelope” which shall be anonymous and **carry the label in the RFP Data Sheet that should be photocopied and placed on the external envelope.**
- 32.6. Any alternative proposal shall be prepared, sealed, marked and dispatched as per the instructions in this paragraph and clearly be identified as “Alternative”.
- 32.7. All pages of the proposal shall be numbered. Each copy of the proposal shall be bound in a single volume where practical. All documentation submitted with the proposal shall be bound in a single volume.



- 32.8. The person or persons signing the proposal shall initial all pages of the proposal where correction has been made.
- 32.9. When delivered by hand, the proposal shall be delivered at the address during the working hours of the Bank from 8.00 hrs. to 12.00 hrs. and from 14.00 hrs. to 18.00 hrs., Monday through Friday except for holidays observed by the Bank. Delivery to any other office of the Bank shall be at the risk of the bidder and shall not constitute timely delivery.
- 33. Modification / Withdrawal of Proposals** – Bidders may modify or withdraw proposals prior to the deadline for submission. Bidders shall not be permitted to modify or withdraw proposals after the deadline for submission.
- 33.1. **Proposals submitted electronically via AfDB e-Procurement portal** - Bidders can obtain guidance on modifying or withdrawing proposals in the user manual.
- 33.2. **Proposals submitted by mail, courier or hand-delivery** - The bidder's modification or withdrawal shall be prepared, sealed, marked and dispatched as per paragraph 32 and accompanied by a written notice duly signed by an authorized representative. Any modification or withdrawal shall clearly be identified as "Modification" or "Withdrawal".
- 34. Bid Opening** – Proposals shall be opened as soon as possible after the deadline for submission. The record of the bid opening shall be made available as soon as possible on the Bank's website.

### **EXAMINATION OF PROPOSALS**

- 35. Confidentiality and Disclosure of Information** - The Bank is committed to make public all information in its possession unless there is a compelling reason for confidentiality in accordance with the policy on Disclosure and Access to Information. Bidders shall notify the Bank if the information provided is confidential and shall not be disclosed to the public. The Bank shall endeavor to maintain confidentiality of confidential information and evaluation of proposals. The Bank reserves the right to disclose information in accordance with the policy on Disclosure and Access to Information.
- 36. Clarification of Proposals**
- 36.1. To assist in the examination and evaluation of proposals and qualification of bidders, the Bank may, at its discretion:
- 36.1.1. Require any bidder to clarify any part of its proposal;
  - 36.1.2. Require any bidder to provide further information or documentation;
  - 36.1.3. Undertake site visit to any bidder; or
  - 36.1.4. Contact referees provided by any bidder.
- 36.2. Any clarification submitted by a bidder that is not in response to a request by the Bank shall not be considered. No change in the price or substance of the proposal shall be sought, offered or permitted. Where a bidder does not provide the information requested the proposal shall be evaluated as presented.
- 37. Determination of Responsiveness**
- 37.1. The Bank's determination of a proposal's responsiveness is to be based on the contents of the proposal itself, as defined in the RFP. A substantially responsive proposal is one that meets the requirements of the RFP without material deviation, reservation or omissions.
- 37.1.1. "Deviation" is a departure from the requirements specified in the RFP;
  - 37.1.2. "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP; and
  - 37.1.3. "Omission" is the failure to submit part or all of the information or documentation required in the RFP.
- 37.2. A material deviation, reservation or omission is one that,
- 37.2.1. If accepted, would:



- 37.2.1.1. Affect in any substantial way the scope, quality or performance of the requirements as specified in the RFP;
  - 37.2.1.2. Limit in any substantial way, inconsistent with the RFP, the Bank's rights or the bidder's obligations under the proposed contract; or
  - 37.2.1.3. If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive proposals.
- 37.3. The Bank shall examine the technical proposals to determine whether proposals are substantially responsive with the requirements.
- 37.4. If a proposal is not substantially responsive to the requirements of the RFP, it shall be rejected by the Bank and may not subsequently be made responsive by correction of the material deviation, reservation or omission.

### **BID EVALUATION**

38. **Conversion to Single Currency** - For the purpose of evaluation, the Bank shall convert all prices into the Bank's Units of Accounts (UA) by using the Bank's monthly moving average rate for the applicable month (deadline for submission of proposals).
39. **Acceptance or Rejection of Proposals** - The Bank reserves the right to accept or reject any or all proposals, and to cancel the procurement process and reject all proposals at any time prior to contract award, without incurring any liability to bidders.

### **AWARD OF CONTRACT**

#### **40. Award Methodology**

- 40.1. The Bank shall evaluate proposals in accordance with the evaluation criteria and methodology.
- 40.2. The Bank may discuss proposals with the successful bidder in order to improve and clearly specify the contents of the winning proposal. Under no circumstances shall the Bank change its requirements.

#### **41. Contract Award**

- 41.1. By issuing this RFP, the Bank is not committed to award a contract for all or part of the requirements.
- 41.2. The Bank reserves the right to award the contract for part of the requirements. Bidders shall indicate if they would not accept a contract for part of the requirements.
- 41.3. If the requirement is divided into lots, the Bank reserves the right to award the contract to a bidder to satisfy the entire requirement.
- 41.4. The Bank reserves the right to increase or decrease the volume of goods or services, usually not to exceed 20%, without any change in unit price or other terms and conditions.

42. **Best and Final Offer** - Following evaluation of proposals, the Bank may decide to obtain Best and Final Offers from qualified bidders whose proposals are substantially responsive with the requirements. If such a decision is made, the Bank shall notify bidders in writing of the process. The Bank may use e-auction for this process.

43. **Notification of Award** – Following a recommendation to award the contract, the Bank shall issue a notice of consideration for award to the successful bidder and regret letters to unsuccessful bidders.

44. **Debriefing** - Unsuccessful bidders may request debrief upon request to the Bank within seven (7) days from receipt of the regret letter.



45. **Contractual Relationship** - The contractual relationship shall be governed by the General and Specific Conditions and shall include the description of goods/technical specification/terms of reference, the successful bidder's technical and financial proposal. **No other terms and conditions put forward at any time by the bidder shall form part of the contract.**
46. **Performance Security**
- 46.1. If provided in the **RFP Data Sheet**, the successful bidder shall furnish the performance security within the period, amount and form stipulated in the **RFP Data Sheet**. The performance security shall be in the form of a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank.
- 46.2. The performance security shall be returned to the bidder as set out in the General and Specific Conditions.
- 46.3. Failure of the successful bidder to comply with the requirements of performance security shall constitute sufficient grounds for cancellation of the award to the bidder without any right of action against the Bank.
- 46.4. In lieu of bank guarantee, the Bank may retain 10% of the contract sum that shall be returned to the bidder as set out in the General and Specific Conditions.
47. **Advance Payment**
- 47.1. If provided in the **RFP Data Sheet**, the Bank shall provide advance payment to the successful bidder, subject to a maximum amount not to exceed 30% of the contract sum. The advance payment request shall be accompanied by an advance payment guarantee from an insurance company or bank located in a member country of the Bank and acceptable to the Bank. The advance payment guarantee shall be in the form specified in the **RFP Data Sheet**.
- 47.2. For the purpose of receiving the advance payment, the bidder shall make an estimate of, and include in its proposal, the expenses that will be incurred during the first month beginning with the date of the Bank's notice to proceed or contract signature, whichever is earliest.
- 47.3. The advance payment shall be repaid to the Bank by deducting proportionate amounts from payments due to the successful bidder as set out in the General and Specific Conditions.
- 47.4. The advance payment guarantee shall be returned to the bidder as set out in the General and Specific Conditions.
48. **Defects Liability Period and Retention Fee** – If provided in the **RFP Data Sheet**, the Bank shall retain 10% of the contract sum until the end of the defects liability period. This is the pre-determined period after practical completion of the project when the successful bidder is responsible for making good any faults which appear and which are due to defective materials or work. The defects liability period is set out in the General and Specific Conditions. The Bank shall pay the successful bidder the retention fee as set out in the **RFP Data Sheet**.

#### **FURTHER ASSISTANCE**

49. **Authorized Representative** – Bidders shall provide the Bank with up to two authorized representatives. The Bank shall contact bidders through the authorized representative. The Bank shall assume that the representative is authorized to act on behalf of the bidder and bind the bidder to any response.
50. **Assistance** – For assistance on using AfDB e-Procurement portal, bidders shall refer to the user manual if provided in the **RFP Data Sheet**. Alternatively, bidders can contact [tender@afdb.org](mailto:tender@afdb.org) and quote the tender reference.



## SECTION 3 – RFP DATA SHEET

<b>The numbering below refers to the appropriate numbering of the introduction</b>	
<b>§ 1</b>	The goods and services to be provided are: <b>PROVISION OF LICENSE AND SERVICES FOR THE BANK EXISTING WEB SECURITY SYSTEM</b>
<b>§ 1</b>	<p>To qualify for award, bidders (including each partner in a joint venture or partnership, subcontractors) shall meet the following pass/fail qualification criteria:</p> <p><b>Eligibility of Bidders, Goods and Services:</b> Goods and services procured by the Bank shall be produced in a member country of the Bank and supplied by bidders from a member country of the Bank.</p> <p><b>Eligibility Criteria:</b> a bidder shall not normally be eligible if any of the situations in the Presidential Directive concerning the rules for corporate procurement activities of the Bank apply.</p> <p><b>Financial Standing:</b> An average turnover of at least USD 180,000 per annum for the <b>last three years 2016, 2015, 2014 or latest</b>. A bidder shall demonstrate current soundness of financial position and its long-term profitability.</p> <p><b>General and Specific Experience:</b> a bidder shall have a minimum of <b>03 years'</b> specific experience and successfully or substantially implemented as a prime contractor at least <b>two projects</b> of a similar nature and complexity (the contracts cited shall be at least 70% complete) in the last <b>05 years</b>.</p> <p><b>Historical Contract Performance and Pending Litigation:</b> a bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract.</p> <p><b>Conflict of Interest:</b> a bidder shall have no actual or potential conflict of interest that would call into question its participation in the procurement process and award of contract.</p>
<b>The numbering below refers to the appropriate numbering of the instructions to bidders</b>	
<b>§ 7</b>	Request for clarification and/or request for change to the RFP shall be sent In writing by electronic mail: <a href="mailto:tender@afdb.org">tender@afdb.org</a> ; or (iii) to the question and answer section in the AfDB e-Procurement portal. The request shall be received by the Bank no later than: <b>22<sup>th</sup> March 2017</b>
<b>§ 8</b>	<p>The Bank shall organize a site visit and pre-bid meeting: <b>NO</b></p> <p>Questions for the site visit and pre-bid meeting shall be submitted to <b>N/A</b></p> <p>The site visit and pre-bid meeting is a mandatory requirement: <b>N/A</b></p>
<b>§ 10</b>	The language of proposals and all correspondence is: <b>English or French</b>
<b>§ 20</b>	Alternative proposals are accepted: <b>NO</b>



§ 24	The prices shall be expressed in <b>Euros</b>
§ 25	The Bank's requirement is divided into lots: <b>YES</b> Bidders can submit a proposal for one or multiple lots <b>YES</b> However, please note that it is a requirement to make a proposal for the <b>base offer</b> in order to be considered for offer lots
§ 26	The minimum period of validity of proposals is <b>ninety (90)</b> days from the deadline for submission of proposals.
§ 27	Bid security: The Bidder shall furnish a <b>Bid-Securing Declaration</b> . The form to be used by the Bidders is included in Section 6, Appendix 6L
§ 28	The deadline for submission of proposals is: <b>06<sup>th</sup> April 2017 AT 12:00 p.m.</b>
§ 31	Electronically Submission of the Proposal <b>is not permitted</b> .
§ 32	Proposals shall be submitted by mail, courier or hand delivery: <b>NO</b> Proposals shall be sent to the following address and the external envelope shall bear the following information:  <b>Corporate Procurement Division, CHGS.2</b> <b>African development Bank</b> <b>Office N 17-22</b> <b>7 Avenue Joseph Anoma – Plateau</b> <b>01 BP 1387 Abidjan 01</b> <b>Abidjan, Cote d'Ivoire</b>  <b>RFP – DO NOT OPEN UNTIL ON BID OPENING DAY</b>  <b>Ref.: ADB/RFP/PSEC/2017/0042– PROVISION OF LICENSE AND SERVICE FOR UPGRADING THE EXISTING WEB SECURITY SYSTEM</b>  <b>RFP Closing Date and Time: <u>06<sup>st</sup> March 2017 at 12:00 PM, Abidjan time.</u></b>
§ 46	Performance security is required: <b>NO</b>
§ 47	Advance payment will be provided to the successful bidder: <b>NO</b>
§ 48	The Bank shall retain 10% of the contract sum until the end of the defects liability period: <b>NO</b>



## SECTION 4 – DESCRIPTION OF GOODS / TECHNICAL SPECIFICATION / TERMS OF REFERENCE

### 1. BACKGROUND INFORMATION

1.1 The African Development Bank Group, hereinafter referred to as “The Bank,” is a multilateral Development bank established to contribute to the economic and social development of Africa, with its Headquarters in Abidjan, Côte d'Ivoire, has 80 members consisting of 54 regional and 26 non-regional member countries.

1.2 The Bank’s Security Unit (SECU) is responsible for the safety and security of all the Bank’s physical and Information assets. This includes personnel, buildings in all locations where the Bank is present, as well as the Bank’s Information Systems. The Unit’s mandate also covers fire prevention and emergency evacuation. The SECU has three teams of security professionals assigned to Physical Security (PHYSEC), Field Office Security (FOSEC) and Information Security (IST).

1.3 The Information Security Team’s mission is to ensure the protection of information the organization uses or produces against threats and to ensure business continuity, minimization of risks and maximization of return on investments and business opportunities. The IST is the Bank’s focal point for information security and is responsible for providing guidance, direction and authority for information security activities at the Bank.

Since 2013, the Bank acquired and implemented the security and filtering solution “Forcepoint Web Security Gateway Anywhere” in order to protect it users and IT infrastructure against some Internet-related threats.

The solution protects all the sites of the Bank including mobile users as described below:

Location	Sites	Technical information
Abidjan, Cote d’Ivoire	Headquarters building	-Triton Management server -Cloud Forcepoint and Appliance Forcepoint V5000 (to be configured)
Abidjan, Cote d’Ivoire	CCIA Building	Cloud Forcepoint and Appliance Forcepoint V5000 (to be configured)
Centurion (South Africa)	Southern Africa Regional Office (RDGS)	Cloud Forcepoint and Appliance Forcepoint V5000 (to be installed and configured)



Nairobi, Kenya	Eastern Africa Regional Office (RDGE)	Cloud Forcepoint and Appliance Forcepoint V5000 (to be installed and configured)
Tunis, Tunisia	Northern Africa Regional Office (RDGN)	Cloud Forcepoint and Appliance Forcepoint V5000 (to be installed and configured)
Field offices (35 African countries)		Forcepoint Cloud
Mobile and off-site users		Forcepoint Cloud

The solution include Forcepoint Web Security Gateway Anywhere license for 2000 users which expired on 30<sup>th</sup> January 2017. **The license validity has been extended for 3 additional months which will be covered by the new contract.**

The Bank wish to renew the license of the solution for 2000 users and finalize the deployment of Forcepoint Proxy appliances V5000 for the four (04) major locations.

## **2. OBJECTIVE OF THE PROJECT**

The African Development Bank has decided to issue an invitation for competitive bidding to service providers of FORCEPOINT solutions for provision of Forcepoint license and services.

The purpose of the assignment is to provide, deploy and maintain Forcepoint Web Security Gateway Anywhere license for 2000 users and the existing Forcepoint V5000 appliances.

## **3. SCOPE OF WORK**

- (i) Develop and propose an implementation methodology with roadmap/schedule for requested goods and services as described below.
- (ii) Provide 2000 Forcepoint Web Security Gateway Anywhere license
- (iii) Install, configure, and maintain Forcepoint appliances
- (iv) Provide the implementation services of the solution as stated in the (ix) Good and services from installation, customization, configuration and deployment of the solution system
- (v) Deliver Training/Knowledge transfer services of the solution during the implementation for technical staff for functional and technical aspects.
- (vi) Deliver documentation of the solution from the installation and customization to deployment.
- (vii) Provide support and assistance including both remote and/or local/onsite assistance for resolution of major technical problems or technical issues.
- (viii) Provide maintenance service for the solution including software and hardware upgrade.





**(ix) Goods and Services**  
**Base offer (mandatory)**

#	Goods and Service Description	City (Country)
1	Forcepoint Web Security Gateway Anywhere License for fourteen (14) months including Forcepoint support	Abidjan (Côte d'Ivoire)

**Additional offer:**

Additional Offer - Mandatory			Site	City (Country)
Lot 1	1	Reinstallation and reconfiguration of Triton management server and the Forcepoint Web Security Gateway Anywhere solution including Web DLP	Headquarters building	Abidjan, Cote d'Ivoire
	2	Installation, configuration and integration of one appliance Forcepoint V5000		
	3	Installation, configuration and integration of one appliance Forcepoint V5000	CCIA Building	
	4	* Training/Knowledge transfer for 10 persons * Documentation	Headquarters building	
	5	Technical support of the global solution ( Remontly and/or on site if available ) for one (01) year	ALL SITE	
Additional Offer - Optional				
Lot 2	6	Installation, configuration and integration of one appliance Forcepoint V5000 Knowledge Transfer	North Africa Regional Office (RDGN)	Tunis (Tunisia)
Lot 3	7	- Installation, configuration and integration of one appliance Forcepoint V5000 - Knowledge Transfer	South Africa Regional Office (RDGS)	Centurion (South Africa)
Lot 4	8	- Installation, configuration and integration of one appliance Forcepoint V5000 - Knowledge Transfer	East Africa Regional Office (RDGE)	Nairobi (Kenya)

**Delivery**

The license must be delivered in Abidjan (Côte d'Ivoire). With respect to the optional implementation services, if they are selected, they must be delivered on the concerned sites, according to a mutually agreed schedule.

**4. DELIVERABLES**

At the end of the work the bidder shall provide:

- (i) 2000 Forcepoint Web Security Gateway Anywhere license, which is delivered, installed, configured, deployed and operational.



- (ii) Demonstrated and documented Integration of the Forcepoint appliances V5000 G3 within the Bank' IT infrastructure as required in the scope of work.
- (iii) Administration guide, integration guide, operating guide, troubleshooting guide and user guide.
- (iv) Technical documentation of the solution including the architecture of the solution and its integration with the corporate infrastructure
- (v) Completion of training to the technical staff as part of knowledge transfer both on the functional and technical aspects of the solution
- (vi) Service Support and Assistance documentation along with Escalation procedure and SLA

#### **5. EXPECTED COMMENCEMENT DATE**

End of April 2017

#### **6. DURATION OF THE PROJECT**

Upon selection of the service provider and the successful completion of negotiations, the Bank intends to award a contract with a base period of 14 months, renewable on the request of the Bank upon satisfactory performance.

#### **7. APPROACH AND METHODOLOGY AND PLAN FOR IMPLEMENTATION**

The technical proposal should include the implementation process describing how the solution will be deployed, installed and transitioned into an operational system. The bidder is required to provide an overview and a brief description of the major tasks involved in the implementation, the overall resources needed to support the implementation effort (such as hardware, software, facilities, materials, and personnel), any site-specific implementation requirements and the estimated period of implementation.

#### **8. EXPERIENCES WITH OTHER MULTILATERAL DEVELOPMENT BANKS AND INSTITUTIONS**

The firm should provide references for the implementation of similar system in other institutions. If possible contact names should be provided. Existing African Development Bank (AfDB) Contractors shall include AfDB as a reference.

#### **9. TECHNICAL REQUIREMENTS / SPECIFICATION / FUNCTIONAL PERFORMANCE**

Please refer to the functional requirement described in **Appendix 6 M**

#### **10. TECHNICAL ASSISTANCE AND SUPPORT**

Technical assistance should be easily reachable (phone, email or client web portal) and provide prompt service. We expect technical assistance able to respond to IT problems (functionality, data downloading etc...) and to provide reliable information on the methodology of implementation and the solution features. Assistance should also help to understand some of risk measures or sensitivity analysis.



**11. TRAINING**

The proposal should also indicate the capacity of the firm to conduct training sessions for the Bank's staff and should provide details on how such training will be carried out.

**12. PERFORMANCE EVALUATION OF THE CONTRACT**

The Contract to be entered into between the Bank and the contractor will be evaluated on a semi-annually basis. The quality of delivery of services will be assessed using performance criteria on which the Contractor agrees. Insufficiencies detected will be immediately reported in writing to the attention of the Contractor, as well as opportunities for improvement in order to meet the standards and market quality.

The results below those expected by the Bank and the failure to obtain the minimum required score for each criterion expose the Contractor to sanctions ranging from formal termination of the Agreement.

**13. ATTACHMENTS**

The overview of the existing AfDB IT environment and secure authentication system is provided as Appendix 6N

**14. FUNCTIONAL REQUIREMENT OF THE SOLUTION (PLEASE SEE APPENDIX 6M)**  
*(To be completed and included in the technical proposal)*

**15. SERVICE STANDARDS OR OTHER STANDARDS**  
*(Please Refer To Section 9)*



## SECTION 5 – EVALUATION CRITERIA AND METHODOLOGY

- (a) A qualification (pass/fail) assessment will be carried out to determine whether proposals meet the eligibility and qualification criteria. Proposals determined to meet the eligibility and the qualification criteria shall be considered for the next stage. Proposals not meeting the qualification criteria shall be rejected. The qualification (pass/fail) questionnaire is set out in Appendix 6D.
- (b) Technical proposals determined to meet the minimum pass/fail criteria shall be evaluated using a two-stage evaluation procedure.
- (c) Bidders which have satisfied the minimum technical evaluation score (based on documentation submitted in the technical proposals) of 70 points will be considered for financial evaluation. Bidders scoring less than 70 points will be rejected and their financial proposals will not be considered.
- (d) Proposals shall be ranked according to technical score (Nt) and financial score (Nf) using the weights (T = the weight given to the technical proposal, **70%**), (F = the weight given to the financial proposal **30%**) ( $T + f = 1$ ).
- (e) The award shall be made to the bidder receiving the highest technical and financial evaluation score (above 70%) and ranked no “1” and with whom satisfactory price and terms can be negotiated and agreed upon.
- (f) The RFP will be evaluated taking into account the base offer only. The additional offer will be considered for the bidder who will be selected on the base of the basic offer.

### 1. **TECHNICAL EVALUATION**

- 1.1 Following Pass/Fail assessment, responsive offers will be subject to a technical analysis. The Bank shall carry out evaluation applying the evaluation criteria and point systems specified below. Each responsive proposal shall be attributed a technical score.

CRITERIA	Maximum Points
<b>ORGANIZATION AND EXPERIENCE OF THE COMPANY – 23 Points</b>	
Description and Organization of the Bidder	3
Bidder’s General Experience	5
Experience in Previous Assignments and the nature and similarity of such assignments to this project: (5 projects each 3 marks at maximum): 15 marks at maximum for 5 projects	15
<b>QUALIFICATIONS AND COMPETENCE OF THE KEY PERSONNEL FOR THE ASSIGNMENT AS WELL AS PARTNERSHIP LEVEL– 24 Points</b>	
General Qualifications (Service delivery management, Language Capacity )	5
General Experience with International Financing Institutions (e.g. WB, IMF, AfDB), UN, Central and Large Commercial Banks, Large public or private companies	5
Experience in the Specific Assignment Described (3 projects each 2 points at maximum)	6



Composition of qualified technical Staff (certified experts 8 points, Professional 3 points, Specialist 2 points)	8
<b>PROPOSAL MEETS ALL FUNCTIONAL REQUIREMENTS AS STATED IN THE TOR– 53 Points.</b>	
General Requirement and Training/transfer of knowledge	8
Document and Support	7
Implementation	33
Technical Information	5
<b>TOTAL</b>	<b>100</b>

- 1.2 Bidders shall obtain a minimum of 70 points following evaluation of technical proposals to be considered for financial evaluation. Bidders obtaining less than 70 points shall be rejected.
- 1.3 The bidder obtaining the Qualifying Technical Score shall be notified of the opening of financial proposals. The financial proposals shall be opened and checked for completeness and corrected for computational errors.

**FINANCIAL EVALUATION**

- 1) The financial proposals shall be evaluated in accordance with the formula below. The bidder or bidders with the lowest **basic** financial proposal (Fm) shall be given 100 points. The financial scores of the other bidders (F) shall be computed as follows:

$$\text{Nf (financial score)} = 100 \times \text{Fm} / \text{F}$$

(F = amount of financial proposal converted in the common currency).

**FINAL RANKING**

- 2) The bidder with the highest combined technical and financial score will be ranked first and eligible for award of the contract.



## SECTION 6 – TECHNICAL PROPOSAL FORMS



Appendix 6A

**STATEMENT OF CONFORMITY**

To the **African Development Bank**

Dear Sir/Madam,

We, the undersigned, declare that:

- (a) We have examined the Request for Proposal (RFP) No **ADB/RFP/PSEC/2017/0042** and have no reservation to the RFP including addendum issued;
- (b) We have read and understood the general and specific conditions and accept to be bound by the general and specific conditions;
- (c) We offer to provide the goods and services in conformity with the RFP;
- (d) We agree that any other terms or conditions or any general reservation that may be provided on any correspondence emanating from us in connection with the RFP shall not be applicable to any resulting contract;
- (e) Our proposal shall be valid for the period indicated in the RFP and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest which will call into question our participation in the procurement process and award of contract;
- (g) We understand that the Bank's policy requires bidders and suppliers to observe the highest standard of ethics, as such we have not offered any gift to Bank staff;
- (h) We understand that if we withdraw our proposal after the deadline for submission, the Bank may decide to exclude us from future procurements;
- (i) We, including our subcontractors or suppliers for any part of the contract, have nationalities from member countries of the Bank;
- (j) Our firm, its affiliates or subsidiaries (including any subcontractors or suppliers for any part of the contract) has not been declared ineligible by the Bank;
- (k) We are not under sanction by the World Bank, Asian Development Bank, Inter-American Development Bank or European Bank for Reconstruction and Development.

We undertake that, in competing for (and, if the award is made to us, in executing) the contract, we will strictly observe the laws in force in our country of registration and the country where the contract is performed.

We understand that you are not bound to accept the most advantageous proposal or any other proposal that you may receive.

We confirm that the undersigned are authorized to commit the bidder(s) to the obligations contained in the RFP and the contract.

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signature \_\_\_\_\_

Duly authorized to sign this proposal for and on behalf of: \_\_\_\_\_

Dated on \_\_\_\_\_

Official Stamp \_\_\_\_\_



## Appendix 6B

### BIDDER INFORMATION SHEET

1. Bidder's Legal Name:

2. In case of joint venture or any other form of partnership (JV), legal name of each party:

3. Bidder's actual or intended Country of Registration, Constitution or Incorporation:

4. Bidder's actual or intended Year of Registration, Constitution or Incorporation:

5. Bidder's legal address in Country of Registration, Constitution or Incorporation:

**6. Bidder's Authorized Representative Information:**

Name:

Address:

Telephone/Fax numbers:

Email Address:

7. Attached are copies of original documents of:

- Articles of Incorporation or Registration of firm named and information on the capital structure.
- In case of JV, letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement
- In case of government owned entity from the Bank's member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.
- Organizational chart of the company and list of current staff





**Appendix 6C**

**PARTY TO JOINT VENTURE INFORMATION SHEET**

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration, Constitution or Incorporation:
4. JV's Party Year of constitution or registration into a legally enforceable JV:
5. JV's Party Legal address in Country of Registration, Constitution or Incorporation:
6. JV's Party Authorized Representative Information: Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Registration, Constitution or Incorporation of firm named and information on the capital structure. <input type="checkbox"/> A letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement and power of attorney nominating an authorized representative of the JV <input type="checkbox"/> In case of government owned entity from the Bank's member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law <input type="checkbox"/> Organizational chart of the company and list of current staff



Appendix 6D

**QUALIFICATION (PASS/FAIL) ASSESSMENT  
ADB/RFP/PSEC/2017/0042**

Bidders shall complete all sections in the questionnaire in sufficient detail and provide evidence and supporting documentation to demonstrate compliance. Bidders shall meet each criterion by the deadline for submission of proposals.

PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<b>STATEMENT OF CONFORMITY AND BID SUBMISSION FORM</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
A person or persons duly authorized to bind the bidder to the price and contract has completed and signed the statement of conformity and bid submission form in the format provided. A power of attorney shall be attached, if applicable.							
<b>The bidder shall sign and return the documents in the format provided for a PASS.</b>							
<b>ELIGIBILITY CRITERIA</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
The bidder is from a member country of the Bank. If yes, provide evidence, such as, articles of incorporation or registration of firm, memorandum of association (if available), information on the capital structure and legal status of the bidder.							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
The goods and services offered are produced in a member country of the Bank. If yes, provide evidence, such as, operating license, information on origin of goods and services.							
<b>The bidder, goods and services offered shall meet the eligibility criteria on the basis of nationality for a PASS.</b>							
The bidder has become bankrupt, is insolvent or is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has suspended business activities; or is in any analogous situation arising from a similar procedure provided for in the relevant national legislation or regulation.							
The bidder has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the bidder is established or where the contract is to be performed.							
The bidder has been convicted of a criminal offence relating to the conduct of its business of profession in the last ten (10) years?							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
The bidder has been subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity.							
The bidder has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices.							
The bidder, or any of its affiliates, has not been engaged to provide consulting services for the preparation or implementation of the procurement.							
<b>The bidder shall not be subject to any of the situations above for a PASS</b>							
<b>JV (if applicable)</b>	N/A	Existing or intended JV must meet requirement	Must meet requirement	N/A			
The bidder has included a JV agreement, or letter of intent to form a legally enforceable JV including a draft agreement.							
The bidder has nominated an authorized representative of the JV who has the authority to conduct all business for and on behalf of all partners and enter into the contract. Provide contact details of authorized representative of the JV and power of attorney signed by a legally authorized representative of the JV.							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<p>The bidder shall provide a JV agreement or letter of intent to form a legally enforceable JV and draft agreement, contact details of the authorized representative of the JV and power attorney for a PASS.</p>							
<b>FINANCIAL STANDING</b>	See below						
The bidder has a minimum turnover of at least <b>USD 180 000</b> for the <b>last three years 2016, 2015, 2014 or latest.</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet at least 20% of the requirement	Must meet 40% of the requirement			
<p>The bidder can demonstrate sound financial performance?</p> <p>If yes, provide evidence, such as audited balance sheets (including notes and income statements), copies of financial statements or other documents to demonstrate financial performance for the past three years 2016, 2015, 2014 or the latest.</p> <p>If the laws of the bidders' country of establishment do not require audits, bidders may submit their balance sheets certified by a registered accountant and supported by copies of tax returns for the past three years 2016, 2015, 2014 or the latest.</p>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<p>The bidder can demonstrate access to and availability of financial resources to meet the overall cash flow requirements for the contract and its current work commitments?</p> <p>If yes, provide evidence, such as, liquid assets, unencumbered real assets, lines of credit and other financial means, other than contractual advance payments or other documents to demonstrate financial resources.</p>	Must meet requirement	Existing or intended JV must meet requirement	N/A	Must meet requirement			
<b>The bidder shall demonstrate current soundness of its financial position and its long-term profitability for a PASS.</b>							
<b>GENERAL AND SPECIFIC EXPERIENCE</b>	See below						
<p>The bidder has been in business for the past <b>(03) years</b>.</p> <p>If yes, provide evidence, such as, information on the bidder's company (description, including a short history, business plan, services offered, organizational chart, number of staff and list of current staff, number of years in business).</p>	Must meet requirement	Existing or intended JV must meet requirement	N/A	Must meet requirement			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<p>The bidder has specific experience in at least <b>two (02)</b> similar contracts as a prime contractor within the last <b>three (03)</b> years, which have been successfully or substantially completed (the contract shall be at least 70% completed). The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in the RFP.</p> <p>If yes, provide description of similar contracts undertaken as a prime contractor (including name of customer) in the <b>last 3 years</b>.</p>	Must meet requirement	Existing or intended JV must meet requirement	N/A	Must meet requirement			
<p><b>The bidder shall have been in business for the last three (3) years and has the experience and capability to provide the goods and services required for a PASS.</b></p>							
<b>HISTORICAL CONTRACT PERFORMANCE AND PENDING LITIGATION</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
<p>The bidder has had a contract(s) terminated in the last three (3) years for unsatisfactory performance or default. Bidders shall complete the litigation history form.</p>							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture and any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<p>The bidder is involved in litigation that represents more than <b>70% - 100%</b> percent of the bidder's net worth.</p> <p>Bidders shall complete the litigation history form.</p>							
<p><b>The bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract for a PASS.</b></p>							
<b>CONFLICT OF INTEREST</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
<p>The bidder has declared any actual or potential conflict of interest in the conflict of interest declaration form.</p>							
<p><b>The bidder shall have no actual or potential conflict of interest to call into question its participation in the procurement process and award of contract for a PASS.</b></p>							
<p><b>A bidder shall PASS all above criteria to be considered for the next stage.</b></p>							
<b>Remarks (Accept/Reject for the next stage)</b>							



**LITIGATION HISTORY  
ADB/RFP/PSEC/2017/0042**

Name of Bidder:  
RFP Reference:

Bidders shall provide information on any history of litigation or arbitration resulting from contracts executed in the last **three years** or currently under execution. A separate sheet shall be used for each partner of a joint venture.

Non-Performing Contracts – contracts terminated in the past <b>three (3) years</b> for unsatisfactory performance or default			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Contract non-performance did not occur during the stipulated period			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Contract non-performance during the stipulated period			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
		Name of Purchaser: Address of Purchaser: Contract description: Contract award date: Termination date: Reason for termination:	
		Name of Purchaser: Address of Purchaser: Contract description: Contract award date: Termination date: Reason for termination:	
Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> No pending litigation			
<input type="checkbox"/> Pending litigation			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Name of Purchaser: Contract description: Address of Purchaser: Contract award date: Matter in dispute:	_____
_____	_____	Name of Purchaser: Contract description: Address of Purchaser: Contract award date: Matter in dispute:	_____



**Appendix 6F**

<b>CONFLICT OF INTEREST DISCLOSURE FORM</b>			
Name of Bidder:		RFP Reference:	
<p>It is the Bank's policy to ensure fairness and integrity in its procurement process. All bidders (including affiliates, partners in joint venture, suppliers and subcontractors) are required to disclose any actual or potential conflict of interest. Bidders shall respond to the questions below and provide further information pertaining to any relationship/connection with the Bank.</p>			
	Bidders Response		Comments /Information provided
	Yes	No	
Are you connected to a person employed by the Bank who is involved in the procurement process? This could be a personal or business relationship.			
Have you been engaged in providing consulting services for the preparation or implementation of an assignment relating to the procurement?			
Are you an employee or stakeholder of the Bank?			
Has the Bank offered you a contract of employment in the last 12 months?			
Are you participating in more than one proposal in the procurement process?			
Have you hired any Bank staff involved in the preparation or implementation of the assignment relating to the procurement in the last 12 months?			
<p>We hereby certify that: a) we have read and understood the contents of this disclosure form; and b) we have disclosed all actual or potential conflict of interest.</p> <p>We understand that the Bank shall determine, in its sole discretion, whether any conflict of interest disclosed shall result in rejection of our proposal from the procurement process.</p>			
Name:		In the capacity of:	
Signed:			
Duly authorized to sign this proposal for and on behalf of:			
Dated on:			

## Appendix 6G

### FINANCIAL CAPACITY

[The Bidder's financial capacity to mobilize and sustain the Services is imperative. In the Proposal, the Bidder is required to provide information on its financial status. This requirement can be met by submission of one of the following: 1) audited financial statements for the last three (3) years, supported by audit letters, 2) certified financial statements for the last three (3) years, supported by tax returns, or if not required by the law of the Bidder's country, other financial statements acceptable to the Bank. If the Proposal is submitted by a joint venture, all parties of the joint venture are required to submit their financial statements.

Additionally, the following financial data form shall be filled out for the Bidder and all named associates. The Bank reserves the right to request additional information about the financial capacity of the Bidder. A Bidder that fails to demonstrate through its financial records that it has the financial capacity to perform the required Services may be disqualified.]

Financial Information (US\$)	Historical information for the previous three (3) years (most recent to oldest in USD equivalent)		
	Year 2016	Year 2015	Year 2014
Information from Balance Sheet			
(1) Total Assets (TA)			
(2) Current Assets (CA)			
(3) Total Liabilities (TL)			
(4) Current Liabilities (CL)			
Information from Income Statement			
(5) Total Revenue (TR)			
(6) Profits before Taxes (PBT)			
Net Worth (1) – (3)			
Current Ratio (2) / (4)			

### AVERAGE ANNUAL TURNOVER

Year	Amount and Currency	US\$ equivalent
<b>2016</b>		
<b>2015</b>		
<b>2014</b>		
<b>*Average Annual Turnover</b>		

\*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified

Name of Firm: \_\_\_\_\_

## Appendix 6H

### ORGANIZATION OF THE BIDDER

[Provide a brief description of the background and organization of your firm/entity and of each associate for this assignment. Include the organization chart of your firm/entity]

**BIDDER'S EXPERIENCE**

**General Experience**

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Service performed by the Bidder: Name of Client: Address: Email:	_____ —
_____	_____		Contract name: Brief Description of the Service performed by the Bidder: Name of Client: Address: Email:	_____ —
_____	_____		Contract name: Brief Description of the Service performed by the Bidder: Name of Client: Address: Email:	_____ —
_____	_____		Contract name: Brief Description of the Service performed by the Bidder: Name of Client: Address: Email:	_____ —
_____	_____		Contract name: Brief Description of the Service performed by the Bidder: Name of Client: Address: Email:	_____ —
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____ —



**Appendix 6L BIS**

**Specific Experience**

(Please complete one form per assignment)

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Assignment name:	Approx. value of the contract (in current US\$):
Country: Location within country:	Duration of assignment (months):
Name of client	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in current US\$):
Start date (month/year): Completion date (month/year):	No. of professional staff-months provided by associated consultants:
Name of associated consultants, if any:	Name of proposed senior professional staff of your firm involved and functions performed (indicate most significant profiles such as project director/coordinator, team leader):
Narrative description of project:	
Description of actual services provided by your staff within the assignment:	

Name of Bidder: \_\_\_\_\_

**DESCRIPTION OF THE APPROACH, METHODOLOGY  
AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

[In this section, the Bidder should provide a comprehensive description of how it will provide the required Services in accordance with the Terms of Reference (TOR) included in this RFP. Information provided must be sufficient to convey to the Bank that the Consultant has an understanding of the challenges in performing the required Services and that it has an approach, methodology and work plan to overcome those challenges.

Your Technical Proposal should be divided into the following:

- (a) Technical Approach and Methodology,
- (b) Project Plan – Project Management and Risk Management Proposal including installation, Task, Time, and Resource Schedule
- (c) Training and transfer of knowledge
- (d) Technical documentation



**Appendix 6K**

**KEY PERSONNEL**

Key Professional Personnel				
Name of Staff	Organization	Area of Expertise	Position Assigned	Task Assigned

**Please insert CV for proposed Key Professional Personnel**



## Appendix 6K BIS

### RESUME OF PROPOSED PERSONNEL

(The Bidder shall provide all the information requested below. – Please complete one form per staff)

<b>Position*</b>					
<b>Personnel information</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;"><b>Name*</b></td> <td style="padding: 5px;"><b>Date of birth</b></td> </tr> <tr> <td colspan="2" style="padding: 5px;"><b>Professional qualifications</b></td> </tr> </table>	<b>Name*</b>	<b>Date of birth</b>	<b>Professional qualifications</b>	
	<b>Name*</b>	<b>Date of birth</b>			
<b>Professional qualifications</b>					
<b>Present employment</b>	<b>Name of employer</b>				
	<b>Address of employer</b>				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%; padding: 5px;"><b>Telephone</b></td> <td style="padding: 5px;"><b>Contact (manager / personnel officer)</b></td> </tr> </table>	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>		
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%; padding: 5px;"><b>Fax</b></td> <td style="padding: 5px;"><b>E-mail</b></td> </tr> </table>	<b>Fax</b>	<b>E-mail</b>		
<b>Fax</b>	<b>E-mail</b>				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%; padding: 5px;"><b>Job title</b></td> <td style="padding: 5px;"><b>Years with present employer</b></td> </tr> </table>	<b>Job title</b>	<b>Years with present employer</b>			
<b>Job title</b>	<b>Years with present employer</b>				

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience



**Appendix 6L**

**BID-SECURING DECLARATION FORM**

Date: [insert date (as day, month and year)]

Bid No.: **ADB/RFP/PSEC2017/0042**

To: **The African Development Bank**

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Bank for the period of time of **three (3) years** starting from the bid submission date, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, if required.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: [insert signature of person whose name and capacity are shown] In the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]

Name: [insert complete name of person signing the Bid-Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

**FUNCTIONAL REQUIREMENT OF THE SOLUTION**

**Functional Requirements for the solution**

Instructions: In the table below, the “Required or Desired” column represents whether a feature is a business requirement (Required), or if it is a feature that either will be used sparingly or may not be utilized/configured until a future date (Desired).

Please identify and describe where necessary the levels of support as: Full Support, Partial Support and No Support, which we define as follow:

(1) Fully Supported	The function is supported as a standard/configurable feature within the package.
(2) Partially Supported	The desired function is available in a separate optional package, or could be made available through the development of a new component or application, or only some of the features listed are fully supported. Please explain and specify associated costs for full support, where applicable.
(3) No Support	The desired function is not within the scope of the package and there is no practical way to provide it.

For each requirement, indicate which level of support pertains to the requirement by entering “1, 2, or 3” in the appropriate box.

- If the requirement is not fully supported, do not enter “1” in the Support Level box.
- In the case of Partial Support follow the “2” with an explanation and the estimated cost (to be included in the financial proposal) associated with the work in the “Vendor Support Level Detail” cell.
- You may also provide detail to other support levels if desired.

**SCORING OF QUESTIONNAIRE**

Category	Points
General Requirement and Training	8
Availability of document and Support	7
Implementation	33
Technical Information	5
<b>Total</b>	<b>53</b>

## 1. General requirement (8 points)

Ref#	Requirements / Questions	Maximum Mark	Bidder's Score	Vendor Response (Please answer as specifically as possible)
	Comprehensiveness project plan and overall implementation methodology. Specify sections or pages in your proposals documents where project plan and overall implementation methodology are described.	2		
	Conformity of the proposed solution with the requirements (hardware, software, devices and versions)	3		
	Suitability of proposed knowledge transfer program, training and documentation. Describe your user training program(s), including a synopsis of relevant courses offered, options for delivery (web-based, CBT, instructor-led, etc.) and the locations of your major training centers.	2		
	Reasonability of proposed implementation timeframe	1		
	<b>Total</b>	<b>8</b>		

## 2. Availability of Documentation and Support (7 points)

Requirement / Question	Maximum Mark	Bidder's Score	Vendor Response (Please answer as specifically as possible)
Support Availability	05		
Is local onsite support available?	1		
Is global support available?	1		
At what times is support available?	1		
Describe your levels of support programs. Specify guarantees on software performance or Service Level Agreements (SLAs) if any.	1		
Provide release notes when upgrades and/or patches are released, far prior to the upgrade or patch date (to allow for decision and test design) <b>Provide downloadable hot fixes/patches</b>	1		
Documentation Availability	02		
What type of user and technical documentation is provided?	1		
Is there a cost associated with documentation?	1		
<b>Total</b>	<b>7</b>		



**3. Implementation (33 points)**

Ref#	Requirement / Questions	Required or Desired	Max Mark	Vendor Support Level (1,2,3)	Vendor Support Level Detail/Comment	Bidder's Score
<b>Capacity</b>						
	Bidder will implement and configure the solution to provide Multi-sites protection and support Mobile solution both on premise or SAAS based including Web DLP	Required	1			
	Bidder will provide an Integrated and all in one solution: all the required features in only one box.  Bidder will implement and configure the solution with complete license for Antivirus, SSL and web security built in solution for user base (2000) from the first day.	Required	1			
	Bidder will implement and configure the solution to provide <b>Off-site and mobile users support; ie</b> provide internet access protection and web security for mobile and off-site users.	Required	1			
<b>Scanning &amp; Filtering</b>						
	Bidder will implement and configure the solution to provide proxy, caching, on box malware inspection, content and web filtering, SSL inspection, protocol filtering and inline AV in block mode on the vendor specific hardware appliance.	Required	1			
	Bidder will implement and configure the solution to support same policy enforcement for users even when they access Internet outside the corporate network, this should be enforced through an agent deployment on roaming endpoints.  The agent on the roaming user machines should be tamperproof, for example, the agent cannot be uninstalled by the user even with admin rights to the system or the user cannot stop the services.	Required	1			



Ref#	Requirement / Questions	Required or Desired	Max Mark	Vendor Support Level (1,2,3)	Vendor Support Level Detail/Comment	Bidder's Score
	Bidder will implement and configure the solution to provide SOPHOS Antivirus, Anti-malware and Malicious Browser Codes Protection (using 2000 SOPHOS licenses).	Required	1			
	Bidder will implement and configure the solution to provide Real-time Security Scanning.	Required	1			
	Bidder will implement and configure the solution to provide Real-Time Social Networking and Web 2.0 Security like Facebook, LinkedIn, and other Web 2.0 destinations.	Required	1			
	Bidder will implement and configure the solution to provide, detect and block below mentioned security categories with automatic database updates: Advanced malware command and control, Advanced malware payloads, Bot networks, Compromised websites, key loggers, Phishing, and other frauds Spywares.	Required	1			
<b>Application and User Aware</b>						
	Bidder will implement and configure the solution to provide Application and Protocol Control.	Required	1			
	Bidder will implement and configure the solution to provide User Identification	Required	1			
	Bidder will implement and configure the solution to provide Visibility of SSL-Encrypted Traffic, to perform SSL inspection to detect and block malicious content downloaded through SSL.	Required	1			

Ref#	Requirement / Questions	Required or Desired	Max Mark	Vendor Support Level (1,2,3)	Vendor Support Level Detail/Comment	Bidder's Score
<b>Management</b>						
	Bidder will configure and implement the solution to be able to manage the complete solution through centralized management and reporting console.	Required	1			
	Bidder will implement and configure the solution to provide Advanced Reporting.	Required	1			
	Bidder will implement and configure the solution to enable Forensics functionalities and operations.	Required	1			
	Bidder will implement and configure the solution to provide Real-Time Session tracking.	Required	1			
	Bidder will implement and configure the solution to provide Quota & Time Scheduling in Policies.	Required	1			
	Bidder will configure and implement the solution to provide pre-built report templates which the administrator can use for generating reports.	Required	1			
	Bidder will configure and implement the solution to allow granular control over popular social web applications like Facebook, LinkedIn, Twitter, YouTube, and others.	Required	1			
	Bidder will configure and implement the solution to allow automatic delivery of reports based on schedule to selected recipients.		1			
<b>Deployment/Integration/Resiliency</b>						
	<b>Integration with the existing solution:</b> Bidder will deploy, configure and integrate the 2000 license new appliances in the existing solution	Required	1			

Ref#	Requirement / Questions	Required or Desired	Max Mark	Vendor Support Level (1,2,3)	Vendor Support Level Detail/Comment	Bidder's Score
	<p><b>Solution Resiliency:</b></p> <p>Bidder will implement and configure the solution in high-availability mode and failover between the Proxy appliances and the Cloud service (Hybrid); ie if the proxy servers are not available, users must be filtered by the Cloud.</p>	Required	1			
	<p><b>Transparent Deployment Mode:</b></p> <p>Bidder will implement and configure the solution in Transparent and Proxy Modes for Gateways with no change to users' internet browsers.</p>	Required	1			
	<p>Bidder will implement and configure the solution to ensure Integration with Active Directory/LDAP.</p>	Required	1			
	<p>Bidder will implement and configure the solution to ensure integrates with the bank's Cisco ASA Firewalls &amp; Cisco Network Devices and Support Appliance, Virtual Appliance, Software or Mixed Versions.</p>	Required	1			
	<p>Bidder will configure and implement the solution to enable scheduled automatic backup of system configuration.</p>	Required	1			
	<p>Bidder will configure and implement the solution to allow access to the following web services/applications used by the Bank with no restrictions: Bloomberg, Reuters, TradeWeb, Euroclear</p>	Required	1			
	<p>Bidder will configure and implement the solution to allow access to the following web Online Storage services with no restrictions for authorized users: Dropbox, Wettransfer, Google, etc</p>	Required	1			





Ref#	Requirement / Questions	Required or Desired	Max Mark	Vendor Support Level (1,2,3)	Vendor Support Level Detail/Comment	Bidder's Score
	Bidder will implement and configure the solution with ability to block anonymizer sites or proxy avoidance tools. Below mentioned tools should be blocked from first day and should be provided in default protocol database Ghostsurf, Google web accelerator, Hopster, Jap, Realtunnel, Socksonline, Tongtongtong, Toonel, Tor, Yourfreedom.	Required	1			
	Bidder will configure and implement the solution to provide detailed information on security incidents to comprehensively investigate individual threat events	Required	1			
	Bidder will configure and implement the solution to be integrated to third-party SIEM applications like syslog/CEF (ArcSight), syslog key-value pairs (Splunk and others), syslog LEEF (QRadar), and MC Afee.	Required	1			
	Bidder will provide technical support for the global solution (remotely and/or on site if available) by providing a proposed plan for Post-Warranty Service Plan and Technical Support Plan. The supplier and/or local agent shall provide support 24 hours, seven days a week by phone and on site interventions by operations and solution specialists.	Required	1			
	Bidder will restore the existing policies and authorizations granted	Required	1			
<b>Total</b>			<b>33</b>			

4. Technical Information (6 points)

Requirement	Maximum Mark	Vendor Response - Description (Please answer as specifically as possible)	Bidder's Score
List of Software and versions	1		
License	1		
<b>High level architecture</b> Description: High level design illustrating how the solution should be implemented to cover all the Bank locations (mobile users, Field Offices, and HQ)	3		
<b>Total</b>	<b>5</b>		



**Appendix 6N**

**AfDB IT ENVIRONMENT AND SECURE AUTHENTICATION SYSTEM  
(OVERVIEW)**

**1. IT environment**

The IT environment of African Development Bank, relating to this project and which require integration with the Web Security Solution is summarized as follows:

<b>System</b>	<b>Description</b>	<b>Number to be set up by the bidder</b>
Business Web applications	Bloomberg, Reuters, TradeWeb, Euroclear	4
Workstations	Windows and Mac workstations	3 of each
Mobile devices	Android, iPhone, Windows Phone, Blackberry	2 of each
Online Storage/File sharing	DropBox, Wetransfer, Google	3
Others	Banking web sites, IT specialized web sites, etc.	6

**2. Existing Web Security System**

The existing Web Security Solution is presented as follows:

<b>Requirement</b>	<b>Description</b>	<b>Quantity</b>
List of Hardware	Forcepoint V5000 G3: 2 installed but not operational, 3 to be installed	5
List of Software	Forcepoint TRITON Manager 8.2 (VM)	2
	Forcepoint TRITON AP-ENDPOINT Web 8.2.2328 (endpoints)	2000
High level architecture	Hybrid Web Security solution: <ul style="list-style-type: none"> <li>- Triton management server hosted at Bank HQ in Abidjan (management and reporting for the Hybrid solution)</li> <li>- Proxy appliances to be deployed on main locations (Abidjan, Tunis, Nairobi, Centurion)</li> <li>- Field offices filtered with Forcepoint Cloud</li> <li>- Mobile users and off-sites users filtered with Forcepoint Cloud</li> </ul>	n/a

## **SECTION 7 – FINANCIAL PROPOSAL FORMS**

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Appendix 7A

**BID SUBMISSION FORM**

To: The African Development Bank  
Corporate Procurement Division, CHGS.2  
HQ Building, South Tower, Office N° 17-S24  
01 BP 1387 Abidjan 01  
Cote d'Ivoire

Dear Sir/Madam,

We, the undersigned, declare that:

- (a) We have examined the Request for Proposal (RFP) No **ADB/RFP/PSEC/2017/0042** and have no reservation to the RFP including addendum issued;
- (b) We offer to provide the goods and services in the amount indicated in the Price Schedule form included in our proposal;
- (c) If provided in the RFP, the prices quoted shall remain fixed for the duration of the contract;
- (d) Our proposal shall be valid for the period indicated in the RFP and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We understand that you are not bound to accept the most advantageous proposal or any other proposal that you may receive.

We confirm that the undersigned are authorized to commit the bidder(s) to the obligations contained in the RFP and the contract.

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signature \_\_\_\_\_

Duly authorized to sign this proposal for and on behalf of: \_\_\_\_\_

Dated on \_\_\_\_\_

Official Stamp \_\_\_\_\_

## PRICE SCHEDULE FORM ADB/RFP/PSEC/2017/0042

### BASE OFFER

Sno	Description	QTY	PRICE EUR (VAT excluded)	COUNTRY OF ORIGIN
<b>Goods and Services</b>				
1	Forcepoint Web Security Gateway Anywhere License for fourteen (14) months including Forcepoint maintenance and support, Abidjan (Cote d'Ivoire)	2000		
<b>TOTAL</b>				

As an **ADDITIONAL OFFER**, please provide us with your all-inclusive flat-rate prices per site or city, for services described as follows

Sno	Description	Qty	Price EUR (Vat excluded)	Country of Origin
<b>Additional Offer- Mandatory</b>				
<b>COTE D'IVOIRE</b>				
Lot 1	1	Reinstallation of Triton management server and reconfiguration of the Forcepoint Web Security Gateway Anywhere solution including Web DLP, Abidjan (Cote d'Ivoire)	1 lumpsun	
	2	Installation, configuration and integration of one appliance Forcepoint V5000 G3 at AfDB Headquarters building, Abidjan (Cote d'Ivoire)	1 lumpsun	
	3	Installation, configuration and integration of one appliance Forcepoint V5000 G3 at CCIA Building, Abidjan (Cote d'Ivoire)	1 lumpsun	
	4	<b>Training</b> (technical and functional aspects) for 10 persons, Abidjan (Cote d'Ivoire)	1 lumpsun	
	5	<b>Technical support</b> of the global solution (remotely and/or on site if available) for one (01) year	1 lumpsun	
<b>TOTAL 1</b>				



Sno	Description	Qty	Price EUR (Vat excluded)	Country of Origin
<b>Additional Offer - Optional</b>				
<b>TUNISIA</b>				
Lot 2	6 <b>Installation, configuration and integration</b> of one appliance Forcepoint V5000 G3 at North Africa Regional Office (RDGN), Tunis (Tunisia)	1 lumpsum		
<b>SOUTH AFRICA</b>				
Lot 3	7 <b>Installation, configuration and integration</b> of one appliance Forcepoint V5000 G3 at South Africa Regional Office (RDGS), Centurion (South Africa)	1 lumpsum		
<b>KENYA</b>				
Lot 4	8 <b>Installation, configuration and integration</b> of one appliance Forcepoint V5000 G3 at East Africa Regional Office (RDGE), Nairobi (Kenya)	1 lumpsum		
<b>TOTAL 2</b>				

**NB: The Offers will be evaluated taking into account the base offer only. The additional offer will be considered for the bidder who will be selected on the basis of the base offer.**

The selected bidder may be requested by the bank to implement a similar solution in other Bank's premises. The cost of the implementation and related services will be negotiated and agreed upon before the start of the assignment.

## **SECTION 8 – PRESIDENTIAL DIRECTIVE CONCERNING THE RULES FOR CORPORATE PROCUREMENT ACTIVITIES OF THE BANK**

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### **ARTICLE 3: ELIGIBILITY**

- 3.1 Goods, Services, Real Estate and Works procured by the Bank shall be produced in a member country and supplied by Contractors from a member country, as described in paragraphs 3.2 and 3.3, unless a waiver of Article 17(1)(d) of the Agreement establishing the Bank is granted by the Board of Directors.
- 3.2 The eligibility of a Bidder or Contractor on the basis of nationality shall be determined in accordance with the following rules:
- a) Natural Person: a Natural Person is eligible if he or she is a national of a member country of the Bank. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her submission is that of a member country of the Bank.
- b) Business: a Business is eligible if it satisfies the following criteria:
- It has its registered office or has its principal place of business in a country that is a member of the Bank;
  - Its legal existence is recognized and is in accordance with the laws of a country that is a member of the Bank; and
  - The majority of its capital is held by nationals from a country that is a member of the Bank or, if the Business has no capital, more than half of the value of the members' contributions to the Business has been contributed by nationals from a country that is a member of the Bank.
- 3.3 In order to be eligible:
- a) Goods to be procured must have a value of which more than half is attributable to production or to originating materials and inputs from one or more eligible member countries of the Bank;
- b) Works must be performed where more than half of the value of the labour is supplied from one or more eligible member country of the Bank, and where the equipment and materials needed for carrying out the Works have a value of which more than half is attributable to production or to originating materials and inputs from one or more member countries of the Bank.
- 3.4 Any Natural Person or Business shall not normally be eligible at any stage of a competitive procurement process and contract execution if any of the following situations apply and have been declared or should have been declared by the Bidder:



- a) The Natural Person or Business has become bankrupt, is insolvent or in the case of a Business is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has suspended business activities; or is in any analogous situation arising from a similar procedure provided for in the relevant national legislation or regulation;
  - b) The Natural Person or Business has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the Natural Person or Business is established or where the contract is to be performed;
  - c) The Natural Person or Business has been convicted of a criminal offence relating to the conduct of its business or profession in the last 10 years;
  - d) The Natural Person or Business has been the subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity; or
  - e) The Natural Person or Business has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices.
- 3.5 The Natural Person or Business, or any of its affiliates, that has been engaged to provide Consulting Services for the preparation or implementation of an assignment shall be disqualified from subsequently providing Goods, Services, Real Estate or Works (other than a continuation of earlier Consulting Services) for the same assignment.
- 3.6 In addition to the foregoing paragraphs, Vendors of a particular country or goods and work materials manufactured in a particular country may be declared ineligible if:
- a) as a matter of law or official regulation, the country where the contract is to be performed prohibits commercial relations with that particular country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of Goods, Services, Real Estate and Works, or
  - b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the country where the contract is to be performed prohibits any import of Goods from, or payments to, that particular country or Vendor.

## **DEFINITIONS**

Bank means the African Development Bank, the African Development Fund and the Nigerian Trust Fund collectively, or any of them individually, as the case may be.

Bidder means a Vendor that has responded to a solicitation document issued by the Bank.

Business means any incorporated or unincorporated organization recognized by the laws of a member country of the Bank that has the capacity of entering into contracts and of offering Goods, Services, real Estate and Works.



Contractor means a Vendor who has entered into a contract with the Bank for the provision of Goods, Services, Real Estate or Works.

Goods means tangible items, including assets and expendable items that are purchased, hired, leased or rented by the Bank, A 'Good' may include related Services, such as transportation, insurance, installation, commission, training and initial maintenance, provided that the value of those Services is less than the value of the Goods acquired.

Natural Person means an individual authorized by the laws of a member country of the Bank to offer Goods, Services, Real Estate and Works.

Real Estate, also known as real property, means land, buildings and premises that are purchased, built or leased by the Bank.

Services means all services except consulting services. For the purposes of this Directive "Consulting Services" refers to expert intellectual or advisory services.

Vendor means any Natural Person or Business that is in the business of selling or otherwise providing Goods, Services, Real Estate or Works.

Works means the construction, reconstruction, demolition, outfitting, repair or renovation of premises or related infrastructures. Such contracts may include related Services where the value of those Services does not exceed the value of the Works.

## List of Member Countries of the Bank:

<b>REGIONAL COUNTRIES</b>			
1. <b>Algeria*</b>	2. <b>Angola*</b>	3. Benin	4. Botswana
5. <b>Burkina Faso*</b>	6. <b>Burundi*</b>	7. <b>Cameroon*</b>	8. Cape Verde
9. <b>Central African Rep. *</b>	10. <b>Chad*</b>	11. Comoros	12. Congo
13. <b>Côte d'Ivoire (HQ)</b>	14. <b>Democratic Rep of Congo*</b>	15. Djibouti	16. <b>Egypt*</b>
17. Equatorial Guinea	18. Eritrea	19. <b>Ethiopia*</b>	20. <b>Gabon*</b>
21. Gambia	22. <b>Ghana*</b>	23. Guinea	24. <b>Guinea Bissau**</b>
25. <b>Kenya*</b>	26. Lesotho	27. <b>Liberia*</b>	28. Libya
29. <b>Madagascar*</b>	30. Malawi	31. <b>Mali*</b>	32. Mauritania
33. <b>Mauritius **</b>	34. <b>Morocco*</b>	35. <b>Mozambique*</b>	36. Namibia
37. Niger	38. <b>Nigeria*</b>	39. <b>Republic of South Africa*</b>	40. <b>Rwanda*</b>
41. <b>Sao Tome &amp; Principe**</b>	42. <b>Senegal*</b>	43. Seychelles	44. <b>Sierra Leone*</b>
45. Somalia	46. <b>South Sudan*</b>	47. <b>Sudan*</b>	48. Swaziland
49. <b>Tanzania*</b>	50. <b>Togo*</b>	51. <b>Tunisia*</b>	52. <b>Uganda*</b>
53. <b>Zambia*</b>	54. <b>Zimbabwe*</b>		
<b>NON REGIONAL COUNTRIES</b>			
1. Argentina	2. Austria	3. Belgium	4. Brazil
5. Canada	6. China	7. Denmark	8. Finland
9. France	10. Germany	11. India	12. Italy
13. <b>Japan*</b>	14. Korea	15. Kuwait	16. Luxembourg
17. Netherlands	18. Norway	19. Portugal	20. Turkey
21. Saudi Arabia	22. Spain	23. Sweden	24. Switzerland
25. United Kingdom	26. United States of America		



**PART II – CONDITIONS OF CONTRACTS FORMS**

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## **SECTION 9 – CONTRACT FORMS**

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CONTRACT FOR THE PROVISION OF LICENSE AND SERVICES FOR THE BANK  
EXISTING WEB SECURITY SYSTEM

CONTRACT N° ADB/CTR/PSEC/2017/0042

BETWEEN

AFRICAN DEVELOPMENT BANK

AND



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**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 of the one part,

And

[**NAME OF THE LEGAL ENTITY**] formed and existing under the laws of [place of incorporation] (hereinafter called the "Vendor"), whose address is [**Street address, City, Postal Code, State/, Province/, District, COUNTRY**], of the other part.

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

**WHEREAS** the Bank identified a need, and launched the Request For Proposals (RFP) for the PROVISION OF LICENSE AND SERVICES FOR THE BANK EXISTING WEB SECURITY SYSTEM for 01 year of a global secure web gateways solution for the Bank IT infrastructure Ref.: ADB/RFP/PSEC/2017/0042 (which form an integral part of this Contract);

**WHEREAS** the Bank has selected the Supplier for the PROVISION OF LICENSE AND SERVICES FOR THE BANK EXISTING WEB SECURITY SYSTEM for 01 year, on a open competition as provided under this Contract (the "Services");

**AND WHEREAS** the Supplier, having participated in the process 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 solution and perform the required services, and has agreed to provide the Solution and Services on the terms and conditions set forth in this Contract;

**WHEREAS** the Bank has negotiated some technical aspects with the Supplier who had accepted to accommodate such changes and to make a refined proposal.

**WHEREAS** the Bank has accepted the refined Proposal made by the Supplier on ..... for the Acquisition, implementation, and maintenance for 01 years of a global secure web gateways solution for the Bank IT infrastructure;

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



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## 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 for the **PROVISION OF LICENSE AND SERVICES FOR THE BANK EXISTING WEB SECURITY SYSTEM** for 01 year, Ref.:ADB/RFP/PSEC/2017/0042; 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 for **one year** effective from its signature by both parties (the date of the last 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 shorter and longer periods than one year, up to a maximum of three consecutive renewals, 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, and implementation 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/PSEC/2017/0042: 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; and the refined Proposal made by the Supplier on ..... as accepted by the Bank: Appendix G;; and
- (i) The Payment Schedule: Appendix H. (agreed upon between both parties)

**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 PROVISION OF LICENSE AND SERVICES FOR UPGRADING THE BANK EXISTING WEB SECURITY SYSTEM for 01 year, an amount not exceeding ..... 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.



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## 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 Countries 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 and software 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 12 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 General Manager as its 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:**

The African Development Bank  
**General Services and Corporate Department**  
**HQ Building, South Tower, Office N° 17-S24**  
**01 BP 1387 Abidjan 01**  
**Cote d'Ivoire**  
**Division Manager**  
***Corporate Procurement Division***

**Attention**

**For the Supplier**

***[Name of the Vendor***  
***Postal Address***  
***City***  
***State/ Province/ District]***  
***Country]***  
**Fax:**



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## 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 THE AFRICAN DEVELOPMENT BANK**

\_\_\_\_\_  
[NAME OF AUTHORISED SIGNATORY]  
[TITLE]

\_\_\_\_\_  
**Date**

**FOR THE VENDOR**

\_\_\_\_\_  
[NAME OF AUTHORISED SIGNATORY]  
[TITLE]

\_\_\_\_\_  
**Date**



**GENERAL CONDITIONS OF CONTRACT**

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## A. GENERAL PROVISIONS

### A1 Definitions and Interpretation

A1.1 In this Contract, the following terms shall be interpreted as indicated below.

“Bank” means the African Development Bank;

“Bidding Documents” means a request for proposal, a request for quotation, an invitation to bid or any other collection of solicitation documents issued by the Bank to instruct and inform potential vendors of the process to submit a proposal, of the selection process and the contractual conditions governing the relationship between the Bank and the Vendor;

“Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

“Commencement Date” means the date set out in the Contract Agreement.

“Commissioning” means operation of the System or any Subsystem by the Vendor following Installation, to be carried out by the Vendor as provided in the SCC, for the purpose of carrying out Operational Acceptance Test(s).

“Contract” means the written agreement entered into between the Bank and the Vendor consisting of the Contract Agreement and the Contract Documents.

“Contract Documents” means the documents described as such in the Contract Agreement forming part of the Contract;

“Contract Price” means the price payable to the Vendor by the Bank under the Contract as set out in the Contract Agreement and the Price Schedule;

“Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

“Delivery” means the transfer of the Goods from the Vendor to the Bank in accordance with the SCC and the *Incoterms* specified in the Contract.

“Contract Agreement” means the document signed by or on behalf of the parties confirming their willingness to enter into and be bound by the terms of the Contract;

“Fraudulent Practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

“General Conditions of Contract” or “GCC” means this document;

“Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Vendor is required to supply and/or install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Vendor’s Equipment.

“Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Vendor is required to supply and install under this Contract;

“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;

“International Entity” means the World Bank, Asian Development Bank, Inter-American Development Bank, European Bank for Reconstruction and Development or any other participating institution who has signed the cross-debarment agreement to which the Bank is a party;

“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 Bank under the Contract;

“Obstructive Practice” means

(a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(b) acts intended to materially impede the exercise of the Bank’s inspection and audit rights;

“Operational Acceptance” means the acceptance by the Bank of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with the SCC;

“Operational Acceptance Tests” means the tests specified in the Contract 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 Contract, in accordance with the provisions of the SCC;

“Post Warranty Period” means the number of years defined in the SCC (if any), following the expiration of the Warranty Period during which the Vendor 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);

“Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Contract that are to be carried out by the Vendor in preparation for Commissioning of the System;

“Project Manager” means the person appointed by the Bank to perform the duties delegated by the Bank and mentioned in the Contract Agreement;

“Project Plan” means the document to be developed by the Vendor and approved by the Bank, pursuant to the Contract, based on the requirements of this Contract and the Vendor’s bid. For the sake of clarity, “the Agreed and

Finalized Project Plan” refers to the version of the Project Plan approved by the Bank. Should the Project Plan conflict with this Contract in any way, the relevant provisions of this Contract, including any amendments, shall prevail;

“Project Site(s)” means the place(s) specified in the Contract for the supply and installation of the System;

“Special Conditions of Contract” or “SCC” means the special conditions attached to the Contract Agreement;

“Services” means all technical, logistical, management, and any other Services to be provided by the Vendor under the Contract to supply, install, customize, integrate, and make operational the System and as further specified in the Terms of Reference. 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;

“Software” means a part of the System which is a computer program that causes information processing in the System or Subsystems to perform in a specific manner or execute specific functions or operations;

“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;

“Subcontractor” means any person to whom any of the obligations of the Vendor, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Vendor and includes its legal successors or permitted assigns;

“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;

“Vendor” 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 Vendor;

“Vendor’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 Vendor;

“Vendor’s Proposal” means the Vendor’s technical and financial proposal submitted to the Bank in response to the Bidding Documents and as accepted by the Bank.

“Warranty Period” means the period of validity of the warranties given by the Vendor commencing at the date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the Vendor is responsible for defects with respect to the System (or the relevant Subsystem[s]) and other related services.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;



- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
- (e) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **A2 Vendor's Status**

**A2.1** At all times during the Contract period the Vendor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorized to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

**A2.2** All employees, representatives, or Subcontractors engaged by the Vendor in connection with the performance of the Contract shall be under the complete control of the Vendor and shall not be deemed to be employees of the Bank. Nothing contained in the Contract or in any subcontract awarded by the Vendor shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Bank.

**A2.3** If the Vendor is a joint venture of several entities or persons, all such entities or persons shall be jointly and severally liable to fulfill the provisions of the Contract and shall designate among themselves one entity or person to act as the authorized representative of the joint venture. The composition or constitution of the joint venture shall not be altered without the prior consent of the Bank.

## **A3 Incoterms**

**A3.1** The meaning of any trade term and the rights and obligations of the Parties thereunder shall be as prescribed by the current edition of Incoterms published by the International Chamber of Commerce, Paris, France.

## **A4 Notices**

**A4.1** Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing. Such notice shall be deemed to be duly given when it has been delivered by hand, registered mail, courier or facsimile to the Party to which it is required to be given, at such Party's address as specified in the SCC.

## **A5 Immunity**

A5.1 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, the Headquarters Agreement between the Bank and Cote d'Ivoire, any other international agreement or convention or any other applicable law.

## **B. PERFORMANCE OF THE CONTRACT**

### **B1 Scope of the System**

B1.1 Unless otherwise expressly limited in the Contract, the Vendor'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.

B1.2 The Vendor 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.

### **B2 Vendor's Responsibilities**

B2.1 The Vendor shall conduct all contracted activities with due care and diligence, in accordance with the requirements of the Contract, with the skill and care expected of a competent service provider of information technologies, information systems, support, maintenance, training, and other related services, and in accordance with best industry practices. In particular, the Vendor 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.

B2.2 The Vendor confirms that it has entered into this Contract on the basis of a proper examination of the data provided by the Bank in respect of the System, information that the Vendor could have obtained from a visual inspection of the Site (if access to the Site was available) and other data readily available to the Vendor relating to the System prior to bid submission. The Vendor 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.

B2.3 The Vendor 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.



B2.4 The Vendor shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually agreed Project Plan. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to Article H.

B2.5 The Vendor shall acquire and retain in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings that are necessary for the performance of the Contract, for the duration of the Contract, including, without limitation, visas for the Vendor's and Subcontractor's personnel and entry permits for all imported Vendor's Equipment.

B2.6 The Vendor shall comply with all laws in force in the Vendor's country of registration and the country where the Goods are delivered and the Services are performed. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Vendor. The Vendor 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 Vendor or its personnel, including the Subcontractors and their personnel.

B2.7 The Vendor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with this Contract, pay due regard to all local laws and regulations pertaining to the employment of labor.

### **B3 Vendor's Personnel**

B3.1 The Services shall be carried out by the personnel of the Vendor accepted by the Bank. No substitution of any such personnel and of the billing rates proposed by the Vendor for the replacement personnel shall be made without the Bank's prior written authorization, such authorization not to be unreasonably withheld.

B3.2 In the event of disruption resulting from the action of a member of the Vendor's personnel, the Bank shall have the right to request the replacement of the personnel, stating its reasons for so doing. Replacement personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions.

B3.3 The Vendor shall (and shall ensure that any of its personnel and agents that are engaged within the boundaries of the Bank's premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel in or outside the Bank's premises.

## **B4 Bank's Responsibilities**

B4.1 The Bank shall be responsible for provision of all resources, information, and decision making under its control that are necessary to reach an agreed Project Plan.

B4.2 If requested by the Vendor, the Bank shall use its best endeavors to assist the Vendor 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 Vendor or Subcontractors or the personnel of the Vendor or Subcontractors, as the case may be, to obtain.

B4.3 The Bank will designate appropriate staff for the training courses (if needed) to be given by the Vendor and shall make all appropriate logistical arrangements for such training as specified in the Contract.

B4.4 The Bank assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with the SCC. The Bank shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Vendor's responsibilities after the date of Operational Acceptance as specified in the Contract.

## **B5 Conflict of Interest**

B5.1 The Vendor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. A conflict of interest could arise in particular as a result of economic interest or shared interest. Any conflict of interest which could arise during performance of the Contract must be notified to the Bank in writing without delay. In the event of such conflict, the Vendor shall immediately take all necessary steps to resolve it.

B5.2 The Bank reserves the right to verify that such steps are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall determine. The Vendor shall ensure that its staff is not placed in a situation which could give rise to conflict of interest. Without prejudice to Section B3 above the Vendor shall replace, immediately and without compensation from the Bank, any member of its staff exposed to such a situation.

## **B6 Eligibility Rule**

B6.1 All Goods and Services supplied under the Contract shall be produced in a member country of the Bank as defined in the Bank's rules on its corporate procurement activities.

B6.2 For purposes of this Section, goods must have a value of which more than half is attributable to production or to originating materials and inputs from one or more member country of the Bank.

## **B7 Environmental Protection**



B7.1 The Vendor shall ensure that the work performed under the Contract meets the legal requirements in force on the environment, safety, human health and preservation. The Vendor must be able to justify compliance at any time during the performance of the Contract and during the Warranty Period upon request of the Bank.

B7.2 In the event that the legal requirements referred to in Subsection B7.1 above evolves during the performance of the Contract, any changes requested by the Bank to comply with the new legal requirements shall be effected through an amendment of the Contract.

### **C. CONTRACT AMOUNT AND PAYMENT TERMS**

#### **C1 Payment Terms**

C1.1 Unless otherwise provided, payments shall be made promptly by the Bank and in any case, no later than thirty (30) days after submission to and acceptance by the Bank of accurate and complete invoices, together with satisfactory documentary evidence of the delivery or execution of Goods or Services required, in support of the claim for payment.

C1.2 The Bank shall not be obligated to make any payment under this Contract except to the extent provided in the Price Schedule or as otherwise mutually agreed by the Parties in writing. Payment shall be made for the portion of the Contract Price corresponding to the Goods and/or Services actually delivered, Installed and operationally accepted.

C1.3 The Vendor's request for payment shall be made to the Bank in writing, accompanied by an invoice (one original and a copy) describing, as appropriate, the System or Subsystem(s) Delivered, Pre-commissioned, Installed, and Operationally Accepted, and accompanied by any other documents specified in the Contract, and upon fulfillment of other obligations stipulated in the Contract. Unless otherwise provided, the Vendor shall indicate the Contract number on all invoices, shipping documents, packing slips, packages and correspondence, which shall be addressed to the Bank and any further information specified in the Contract.

C2.4 No payment made by the Bank herein shall be deemed to constitute acceptance by the Bank of the System or any Subsystem(s).

#### **C4 Taxes and Duties**

C4.1 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. The Vendor shall not claim from the Bank any taxes, levies, license fees or any other such charges which are paid or may be payable to the municipal/local council or any other responsible authority in relation to this Contract and the Services provided under this Contract. The Vendor

authorizes the Bank to deduct the amount of any tax, duty or other imposts included in any invoice presented in connection with this Contract, either knowingly or inadvertently by the Vendor without any cost to the Bank.

C4.2 If a Vendor is unable to quote or invoice exclusive of all applicable taxes, such taxes shall be separately set forth on the quote or invoices and the Vendor shall provide to the Bank any additional information or document as may be required by the Bank for obtaining the requisite exemption.

## **D. INTELLECTUAL PROPERTY AND PROTECTION OF INFORMATION**

### **D1 Intellectual Property infringement**

D1.1 If a third party asserts a claim against the Bank that any hardware, software, equipment, deliverable, material or other Good that the Vendor provides to the Bank under this Contract or the use of the System by the Bank, infringes third party's Intellectual Property Rights, the Vendor will defend the Bank against that claim at the Vendor's expense and pay all costs, damages, and attorney's fees awarded against the Bank or that are included in a settlement approved by the Vendor, provided that the Bank:

(a) promptly notifies the Vendor in writing of the claim, and

(b) subject to the rights, immunities, privileges or exemptions accorded to the Bank under the Agreement establishing the African Development Bank, the Headquarters Agreement between the Bank and Cote d'Ivoire, or any other applicable international agreement or convention or applicable law, allows the Vendor to control, and reasonably cooperates with the Vendor in, the defense and any related settlement negotiations.

D1.2 If a claim is made under Subsection D1.1 above, the Bank shall inform the Vendor for the Vendor 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, or (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 Vendor determines that none of the foregoing alternatives is reasonably available, then on the Vendor's written request, the Bank shall return the Product to the Vendor and discontinue its use. The Vendor shall then give the Bank a full refund of the cost of the Product.

D1.3 The Vendor 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 Product supplied under this Contract without further consent of any other person. As of the Commencement Date, the Vendor represents and warrants that it is not aware of any threatened or pending legal action with respect to the Product provided by the Vendor under this Contract regarding infringement or other violation of any copyright, trademark, patent, or other intellectual or proprietary or other rights of any third party.





## D2 Confidential Information

D2.1 No Party shall at any time without written authorization from the other Party, communicate to any third party any Confidential Information disclosed to it, or obtained in the course of, performing its obligations under this Contract. For purposes of this paragraph, “Confidential Information” means (a) any information of the Vendor or the Bank that, if disclosed in writing, is marked “confidential” or “proprietary” at the time of disclosure, or, if disclosed orally, is identified as “confidential” or “proprietary” at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure; or (b) any information that, under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary. Without limiting the foregoing, the Vendor’s Confidential Information includes its Software.

D2.2 The obligations under Subsection D2.1 will not be deemed to have been breached to the extent that Confidential Information: (a) is disclosed 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 Subsection D2.1; or (c) is independently and legally developed or acquired without the obligation of confidentiality; or (d) is legally required to be disclosed by operation of law or judicial process, provided that the Party required to make such disclosure has given the other Party prompt prior notice of any such request for disclosure.

D2.3 Where a party discloses Confidential Information to another person or entity pursuant to Subsection D2.1, the disclosing party will notify the receiving person that (a) the information is Confidential Information and (b) require the receiving person not to disclose the confidential information. In every instance, the disclosing Party shall notify the other party (a) prior to making any such disclosure and (b) promptly of any breach of its confidentiality obligations when it has learned of such a breach.

D2.4 The Vendor shall not publish or cause or permit to be published, without the prior written approval of the Bank, the existence of this Contract nor any conclusions or recommendations nor part thereof formulated in the course of or as a result of the performance of the Services.

D2.5 The Vendor further agrees to include the contents of this Section D2 in all subcontracts and consulting agreements entered into by the Vendor for the performance of the Contract.

D2.6 The provisions of this Section D2 shall survive the expiration or the termination of this Contract.

### **D3 Data Protection**

D3.1 The Vendor shall not damage, disclose, alter, lose or destroy any information or data of the Bank for any reason unless specifically instructed to do so in writing by the Bank. Nor shall the Vendor use any such information or data for any purpose other than that for which it has been specifically communicated or disclosed by the Bank. The Vendor shall maintain appropriate security measures to prevent unauthorized use, disclosure, destruction or loss of any exchange information or data.

D3.2 In the event of loss of any Bank data or information where such loss is due to the intentional act or omission or negligence of the Vendor or any of its Subcontractors, the Vendor shall be responsible for recreating or reconstituting such lost data in the manner and on the schedule set out by the Bank. The Vendor shall ensure that all data is backed up and recoverable by the Vendor. The Vendor shall use its best efforts to assure that at no time shall any actions undertaken by the Vendor under this Contract (or any failures to act when the Vendor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Vendor is working hereunder.

### **D4 Disaster Recovery**

D4.1 If the Vendor, at any time during the performance of the Contract is determined by the Bank, at its sole discretion, to provide services essential to the Bank's mission (based on the nature of an actual or threatened emergency situation), then upon such notice to the Vendor, the Vendor shall take immediate and effective measures to ensure the availability or use of back-up or redundant services and/or system(s) support to deal with such emergency, and to ensure uninterrupted support of the services or systems support under the Contract so identified.

## **E. FRAUD AND CORRUPTION**

### **E1 Fraud and Corruption**

E1.1 The Vendor represents that no employee of the Bank involved in the award of the Contract has received, or will receive, directly or indirectly, any kind of benefit or advantage from the Vendor, its agents or affiliates, resulting from the award of the Contract or its implementation.

E1.2 The Vendor shall not engage in Corrupt, Fraudulent, Coercive, Collusive or Obstructive practice in competing for or in executing the Contract.

E1.3 The Bank reserves the right, where the Vendor has been found by a national or International Entity to have engaged in Corrupt, Fraudulent, Coercive, Collusive or Obstructive practice, to declare that the Vendor is ineligible, for a stated period of time, to be awarded a Bank contract.



## **F. GUARANTEES AND WARRANTIES**

### **F1 Guarantees**

- F1.1 The Vendor 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 Contract, or within such extended time to which the Vendor shall be entitled or which could be agreed to by the Bank.
- F1.2 The Vendor guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Bank's requirements set forth in the technical requirements in the Contract and it conforms to all other aspects of the Contract. The Vendor acknowledges that the provisions of the SCC regarding Commissioning and Operational Acceptance govern how technical conformance of the System to the Contract requirements will be determined.

### **F2 Warranties**

- F2.1 The Vendor represents and warrants that it possesses the requisite experience, qualifications, competence and skills to perform the Services hereunder and to carry out all of its duties and responsibilities set out in the Contract and that all information given concerning such experience, qualifications, competence and skills is accurate.
- F2.2 The Vendor represents and warrants that it is in compliance with all the applicable laws and regulations in force at its place of incorporation. The Vendor covenants that during the term of the Contract it shall abide by, and take all measures necessary to enable it to be in compliance with, all laws and regulations in force in any place where the Services are to be wholly or partially performed.
- F2.3 The Vendor 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 in the Contract or that limit in a material way the performance, reliability, or extensibility of the System and/or Subsystems. The Vendor 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 in the Contract.
- F2.4 The foregoing guaranties and warranties of the Vendor shall survive expiration or termination of this Contract.

## **G. FORCE MAJEURE**

- G1.1 Neither Party to this Contract shall be responsible for any delay or failure to perform its obligations under this Contract if the delay or failure is attributable to Force Majeure. "Force Majeure" means any event or condition which (a) wholly or partially delays or prevents the affected Party from performing any of its obligations under this Contract, (b) is unforeseeable and unavoidable, (c) is beyond the reasonable control of the Party invoking Force Majeure, and (d) occurs without the fault or negligence of such Party.
- G1.2 The Party affected by such Force Majeure shall give prompt written notice to the other Party specifying the nature and probable duration of the Force Majeure, and the extent of its effects on such Party's performance of its obligations under this Contract. During the continuance of such Force Majeure, the obligations of the affected Party shall be suspended to the extent necessitated by such Force Majeure.
- G1.3 In the event of a Force Majeure which delays or prevents performance of the whole or any part of this Contract for more than thirty (30) days, either Party shall have the right, by notice in writing to the other Party, to terminate this Contract without liability to the other Party.

## **H. TERMINATION**

### **H1 Termination for Bank's Convenience**

- H1.1 The Bank may terminate the Contract, in whole or in part, at any time for its convenience upon not less than thirty (30) days written notice to the Vendor.
- H1.2 In the event of termination of the Contract under Section H1, the Bank shall pay to the Vendor, not to exceed the Contract Price, the following amounts:
- (a) the Contract Price properly attributable to the parts of the System executed by the Vendor as of the date of termination;
  - (b) the costs reasonably incurred by the Vendor in removing the Vendor's personnel and Equipment from the site.
  - (c) costs incurred by the Vendor in protecting the System and leaving the site in a clean and safe condition pursuant to Subsection H4.1; and
  - (d) the costs of satisfying all obligations, commitments and claims that the Vendor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by Paragraph H1.2 (a) through (c) above.



## H2 Termination for Vendor's Default

H2.1 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 notice of termination and its reasons to the Vendor:

- (a) if the Vendor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Vendor 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 Vendor takes or suffers any other analogous action in consequence of debt;
- (b) if the Vendor assigns or transfers the Contract or any right or interest therein without authorization;
- (c) if the Vendor, in the judgment of the Bank, has engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive 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; or
- (d) if the Vendor commits a material breach of the Contract.

H2.2 If the Vendor:

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the System promptly;
- (c) 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 Contract at rates of progress that give reasonable assurance to the Bank that the Vendor can attain Operational Acceptance of the System at the time for achieving Operational Acceptance, as extended;

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

H2.3 The Vendor shall notify the Bank immediately in writing of any proposal or negotiation which will or may result in a merger, take-over, change of control, change of name or status (“**Change of Control**”). Where the Bank has not given its prior approval, the Bank may terminate the Contract with immediate effect by notice in writing and without compensation to the Vendor within six (6) months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Bank becomes aware of the Change of Control.

H2.4 The Bank may enter upon the Project Site, expel the Vendor, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Bank deems appropriate, the Bank shall give notice to the Vendor that the Vendor’s Equipment will be returned to the Vendor at or near the site and shall return the Vendor’s Equipment to the Vendor in accordance with such notice. The Vendor shall thereafter without delay and at its cost remove or arrange removal of the same from the Project Site.

H2.5 Subject to Subsection H2.6, the Vendor 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 Subsection H4.1. Any sums due to the Bank from the Vendor accruing prior to the date of termination shall be deducted from the amount to be paid to the Vendor under this Contract.

H2.6 If the Bank completes the System, the cost of completing the System by the Bank shall be determined. If the sum that the Vendor is entitled to be paid, pursuant to Subsection H2.5, plus the reasonable costs incurred by the Bank in completing the System, exceeds the Contract Price, the Vendor shall be liable for such excess. If such excess is greater than the sums due the Vendor under Subsection H2.5, the Vendor shall pay the balance to the Bank, and if such excess is less than the sums due the Vendor under Subsection H2.5, the Bank shall pay the balance to the Vendor. The Bank and the Vendor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

### **H3 Termination by Vendor**

H3.1 If:

- (a) the Bank has failed to pay the Vendor any sum due under the Contract within the specified period or has failed to approve any invoice or supporting documents without just cause, the Vendor may give a notice to the Bank that the Vendor requires payment of such sum or approval of such invoice or supporting documents to remedy the same. If the Bank fails to pay such sum or to approve such invoice or supporting documents or give its reasons for withholding such payment or approval within thirty (30) days after receipt of the Vendor’s notice; or



- (b) the Vendor is unable to carry out any of its obligations under the Contract for any reason attributable to the Bank, including but not limited to the Bank's failure to provide possession of or access to the site or other areas or the Bank's failure to obtain any governmental permit necessary for the execution and/or completion of the System;

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

H3.2 If the Contract is terminated under Subsection H3.1 above, the Bank shall pay to the Vendor all payments specified in Subsection H2.5.

#### **H4 Consequences of Contract Termination or Expiration**

H4.1 Upon receipt of the notice of termination under Sections H1, H2 or H3, or expiration of the Contract, the Vendor 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 Bank may specify in the notice of termination for the sole purpose of protecting that part of the System already executed,
- (b) remove all Vendor's Equipment and personnel from the site, repatriate the Vendor's and its Subcontractor's personnel from the site;
- (c) remove from the site any wreckage, rubbish and debris of any kind, and leave the site in a clean and safe condition;
- (d) deliver to the Bank the parts of the System executed by the Vendor up to the date of termination;
- (e) to the extent legally possible, assign to the Bank all right, title, and benefit of the Vendor to the System, as at the date of termination, and as may be required by the Bank, in any subcontracts concluded between the Vendor and its Subcontractors;
- (f) deliver to the Bank all non-proprietary drawings, specifications, and other documents prepared by the Vendor or its Subcontractors as of the date of termination in connection with the System.

H4.2 In this Article H, 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

Vendor and used or intended to be used for the purpose of the System, up to and including the date of termination.

H4.3 In this Article H, in calculating any monies due from the Bank to the Vendor, account shall be taken of any sum previously paid by the Bank to the Vendor under the Contract, including any advance payment paid pursuant to the SCC.

## **I. CONTROL OF THE CONTRACT**

### **I1 Monitoring of Contract Performance**

11.1 The Vendor shall immediately report to the Bank in writing any problems encountered which may jeopardize the performance of the Contract, any corrective action and the date by which that action will be completed.

### **I2 Assignment and Subcontracting**

12.1 The Vendor shall not assign, transfer or make any other disposition of any of its rights or obligations under this Contract, in whole or in part, except with the prior written consent of the Bank, such approval in each such case shall be without prejudice to the Vendor's obligations and liabilities hereunder.

12.2 The Vendor shall not subcontract for the whole or any part of the Services to any person or entity except with the prior written consent of the Bank given in respect of the particular person or entity, such approval in each such case shall be without prejudice to the Vendor's obligations and liabilities hereunder

12.3 Notwithstanding any such consent given by the Bank pursuant to Subsections 12.1 and 12.2 above, the Vendor hereby guarantees full compliance by the Subcontractors and assignees with the terms of the Contract and the prompt performance by each of them of the subcontracted parts of the Services. The Vendor further represents and warrants that it shall be fully responsible as primary obligor to the Bank regarding the manner and standard of performance of the Services.

12.4 However, it should be understood, that no third party shall be a subcontractor or perform work on the basis of this Contract unless incorporated as a business in one of the Bank's member countries.

### **I3 Amendment**

13.1 Except by mutual agreement in writing between the parties, no change, modification or amendment shall be made to this Contract.





## **I4 Severability**

- 14.1 If any provision of the Contract is held to be invalid or unenforceable, the remainder of the Contract will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

## **I5 Waiver**

- 15.1 No waiver of any right or remedy arising from a breach of the Contract shall constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **I6 Entire Agreement**

- 16.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

## **J. DISPUTES AND LAW**

### **J1 Dispute settlement**

- J1.1 The Parties 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 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.
- J1.2 If, after forty-five (45) 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.
- J1.3 The arbitration tribunal shall consist of one (1) arbitrator selected by agreement of the parties. If the parties are unable to agree on the arbitrator within sixty (60) days of notification to commence arbitration, the London Court of International Arbitration (LCIA) shall act as the appointing authority

- J1.4 The arbitration shall take place in Abidjan, Côte d'Ivoire and the arbitral proceedings shall be in the language of the Contract.
- J1.5 The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.
- J1.6 The arbitrator shall abide by the rules of ethics for international arbitrators established by the International Bar Association. The arbitration tribunal shall have no authority to award exemplary, punitive, or special damages or any other damages excluded by this Contract.
- J1.7 The resulting award shall be final and binding on the Parties and shall be in lieu of any other remedy.
- J1.8 The provisions of this Article J shall survive the termination of this Contract.