African Development Bank Group
Zimbabwe Country Office

Reference: ADB/ITB/ZWFO/2014/0019

REFURBISHMENT OF THE BANK’S HOUSE IN HARARE, ZIMBABWE

INVITATION TO BID
Open Competition 08\textsuperscript{st} July 2014

TENDER FOR REFURBISHMENT OF THE BANK’S HOUSE IN MOUNT PLEASANT, HARARE, ZIMBABWE

TENDER REFERENCE: ADB/ITB/ZWFO/2014/0019

5\textsuperscript{th} Floor, Joina City, Corner Jason Moyo and Julius Nyerere, Harare, Zimbabwe e-mails: Tenders.sarof@afdb.org or tenders@afdb.org. Internet: www.afdb.org
Dear Sir/Madam,

1. The African Development Bank (the “Bank”) invites bids for the provision of goods, works and related services as described in this Invitation to Bid (ITB). To qualify for award, a bidder shall meet the qualification criteria set out in the Annex I.

2. The bids submitted by bidders shall be received by the Bank on or before the date and time and in the manner specified in Annex I. The Bank’s requirement is set out in Annex II. This bid is not in lots, it is the refurbishment of the existing house and the successful bidder will complete the job and be paid for the job done and completed satisfactorily.

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. 78 member countries including all the 53 African countries and 25 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. However, since 2003 it has been carrying out its operations from its Temporary Relocation Agency in Tunis, Tunisia. For purposes of its operations the Bank also maintains field offices in certain of its RMCs.

6. The information contained in the ITB is designed to enable bidders to complete and submit bids. Bidders shall read the ITB carefully and ensure bids comply with the instructions provided in the ITB. Bidders are required to complete and submit the Bid Questionnaire (Annex III) in accordance with the Instructions to Bidders (Section 1), Bid Data Sheet (Annex I), Statement of Work/Technical Specification/Drawings (Annex II), Eligibility criteria (Annex IV) and General and Specific Conditions (Annex V). The Bank is not bound by any other terms and conditions unless agreed in writing by the Bank.


9. We look forward to receiving your bid and thank you for your interest in doing business with the Bank.
11. **Subcontractors and services 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 Bid** – Bids shall comprise the Bid Questionnaire, completed in full and supported with evidence and information requested by the Bank.

13. **Statement of Conformity and Bill of Quantity/Price Schedule** – Bidders shall sign the Statement of Conformity and complete the bill of quantity/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 ITB, bidders shall not submit brochures, general marketing or promotional material with bids. Publicity brochures shall not be accepted as answers to questions. Bidders shall respond fully to the questions in the ITB.

15. **Meeting the Bank’s requirements**
   15.1. Unless otherwise provided, bidders shall meet the Bank’s requirements by the deadline for submission of bids.
   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 ITB may include mandatory requirements. The classification of a requirement as mandatory gives an indication of its significance to the Bank. A bid 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 to the bidder or the condition of samples upon completion of evaluation will be the same. Should the bidder want the samples back, they shall be returned at the bidders own cost.
   17.2. If provided in the ITB, the Bank shall conduct an inspection of the goods, services and works 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 ITB, the Bank shall require bidders to provide a live demonstration of the proposed solution as part of the evaluation process. 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
27. Bid Security
27.1. If provided in the Bid Data Sheet, the bidder shall furnish, as part of its bid, a bid security in the amount, form and valid for the period stated in the Bid 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 bid 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 bid and shall list all members of the joint venture.
27.5. The bid security shall not be applicable with this bid
27.6. The contract resulting from this solicitation will be a lump-sum contract.

SUBMISSION AND OPENING OF BIDS
28. Deadline for Submission of Bids
28.1. The Bank shall receive bids no later than the deadline in the Bid Data Sheet. It is the sole responsibility of bidders to ensure timely receipt of bids by the Bank.
28.2. The Bank may extend the deadline for submission of bids at any time without incurring any liability to bidders.

29. Late Bids – The Bank shall not consider any bid received after the deadline for submission of bids. Any bid received by the Bank after the deadline for submission shall be declared late and rejected by the Bank.

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

31. Bids submitted electronically via AfDB e-Procurement portal
31.1. If provided in the Bid Data Sheet, bids shall be submitted electronically via AfDB e-Procurement portal.
31.2. Bidders can obtain guidance on submitting bids 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. Bids submitted by mail, courier or hand-delivery
32.1. If provided in the Bid Data Sheet, bids shall be submitted by mail, courier or hand delivery.
32.2. Bids shall be submitted in a sealed envelope (one original and four copies and any attachments, appendix and annex thereto must also be submitted in one original and four copies) and addressed to the Bank at the address in the Bid Data Sheet. The original bid shall clearly be marked “Original” and each of the four copies must clearly be marked “Copy”.
32.3. Each bidder shall seal the original and copies of the bid in an envelope (the “internal envelope”). The internal envelope shall carry the name and address of the bidder and the ITB reference. The internal envelope shall be placed in a large single envelope (the
“external envelope”). The external envelope shall be anonymous and carry the label in the Bid Data Sheet that should be photocopied and placed on the external envelope.

32.4. Any alternative bid shall be prepared, sealed, marked and dispatched as per the instructions in this paragraph and clearly be identified as “Alternative”.

32.5. All pages of the bid shall be numbered. Each copy of the bid shall be bound in a single volume where practical. All documentation submitted with the bid shall be bound in a single volume.

32.6. The person or persons signing the bid shall initial all pages of the bid where correction has been made.

32.7. When delivered by hand, the bid 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 Bids - Bidders may modify or withdraw bids prior to the deadline for submission. Bidders shall not be permitted to modify or withdraw bids after the deadline for submission.

33.1. Bids submitted electronically via AfDB e-Procurement portal - Bidders can obtain guidance on modifying or withdrawing bids in the user manual.

33.2. Bids 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 - Bids shall be opened as soon as possible after the deadline for submission. The record of the bid opening shall be made available on the Bank’s website.

EXAMINATION OF BIDS

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 bids. The Bank reserves the right to disclose information in accordance with the policy on Disclosure and Access to Information, and this policy can be accessed on http://www.afdb.org/en/documents/document/bank-group-policy-on-disclosure-and-access-to-information.

36. Clarification of Bids

36.1. To assist in the examination and evaluation of bids and qualification of bidders, the Bank may, at its discretion:

36.1.1. Require any bidder to clarify any part of its bid;

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 bid shall be sought, offered or permitted. Where a bidder does not provide the information requested the bid shall be evaluated as presented.
Bids that meet the requirements of the ITB shall be considered for stage 2.

**Stage 2**  
**Qualification (Annex III)**  
**Pass/Fail**  
Bidders must pass each qualification criterion to be considered for stage 3. Failure to satisfy any criterion shall result in disqualification of the bidder.

**Stage 3**  
**Technical Evaluation (Annex III)**  
The Bank shall examine the technical bids. Bids that are substantially responsive to the technical requirements and conditions shall be considered for stage 4. Bids that are not substantially responsive to the technical requirements and conditions shall be rejected.

**Stage 4**  
**Correction of arithmetic errors**  
The financial offer shall be checked for completeness and corrected for computational errors.

**Stage 5**  
**Price Schedule (Annex III)**  
Bidders shall be ranked according to price. The bidder offering the lowest evaluated price shall be ranked first and the Bank shall negotiate with the bidder before the contract award.

**Stage 6**  
**Final Ranking**  
The contract shall be awarded to the qualified bidder or bidders whose bid is substantially responsive to the requirements at an acceptable price.

41. **Contract Award**
   41.1. By issuing this ITB, 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 a 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, services or works.

42. **Best and Final Offer** – Following evaluation of bids, the Bank may decide to obtain Best and Final Offers from qualified bidders whose bids 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.
50. **Assistance** – For assistance on using AfDB e-Procurement portal, bidders shall refer to the user manual. Alternatively, bidders can contact tender@afdb.org quoting the tender reference, however, with this particular bid, procurement portal is not applicable, but the queries and questions should be sent to the email address given above.

51. Thank you for your interest in doing business with the African Development Bank and we are looking forward to your timely response with this bid.

52. **Contract Type** – The contract resulting from this solicitation will be a lump-sum contract.

53. **Insurance** - The Contractor shall be responsible for insurance coverage for its experts and employees performing the Works in accordance with relevant industry norms and standards. The Bank shall have no responsibility whatsoever for such coverage or for any expenses that the Contractor or its employees, agents, affiliates, subcontractors or other persons deriving authority from the Contractor (collectively hereinafter referred to as the “Contractor’s Associates”) may incur.

54. **Plant, Tools and Vehicles** - Contractors shall provide all necessary plant, tools and vehicles required for the proper execution of the works and remove when no longer required. Contractor will allow for adapting from time to time as may be necessary and maintaining all plants, tools and other equipment during the course of the contract.

55. **Security of works**-Contractors shall be entirely responsible for the security of works, stores, material, plant and personnel both for his own and sub-contractor and must provide all necessary watching, lighting and other precautions as necessary to ensure security. Works will be in security controlled building therefore diligence is required in maintaining security both day and night.

56. **General Scaffolding** - Contractors shall provide, erect and subsequently remove when no longer required all necessary scaffolding including all external scaffolds and movable platform. Due to the nature of the work, scaffolding will be limited.

57. **Transport** - Contractors will allow for transport of workmen, materials and equipments to and from the site at such hours and by such routes as may be permitted, taking into account of working off- normal working hours.

58. After the negotiation with the Bidders whose bid is responsive and is lowest evaluated, the Bidder whose Bid has been accepted will be notified of the award by the Bank prior to expiration of the Bid validity period by registered letter. The notification of award will constitute the formation of the Contract, and will be substantiated by the Bidder signing the Agreement in accordance with Sub-Clause 31.2.

59. The Bank will send the successful Bidder the Agreement attached as sample contract, after being fine-tuned, incorporating all agreements between the Bank and the successful Bidder.
completion of the works and shall at all reasonable times, during the progress of the works, make them available for inspection.

67. **Removal of Rubbish and Works to be delivered up Clean** - Contractor shall remove all rubbish and debris from the buildings and site as it accumulates and at completion of the works and remove all plant, scaffolding and unused materials at completion and deliver the works clean. Clean all existing / reused partitions clean all floors, sanitary fittings, glass inside and outside, and any other part of the works which may require it. The Contractor shall clean and flush all gutters, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside, and any other part of the works which may require it.

68. **Defects Liability Period and Retention fee**
   (a) The Defect Liability Period under this Contract is one year from the date of successful completion of the work by the Contractor and acceptance thereof by the Bank.

   (b) The Bank shall retain 10% of the contract value until the end of the Defects Liability Period. The Bank shall pay the Contractor the Retention upon certification by the Bank’s Project Representative that the Contractor has corrected all known defects.

69. **Cost of Repairs** - Loss or damage to the Works and Related Services or Materials to be incorporated in the Works and Related Services between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions.

70. **Completion** - The Contractor shall request the Bank, to issue a certificate of Completion of the Works and Related Services, and the Project Manager shall do so upon deciding that the work is completed.

71. **Taking over and acceptance** - The Bank shall accept the Site and the Works and Related Services within seven days of the Bank issuing a certificate of Completion.
76. The contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract price, which shall, except as otherwise provided for this contract, cover all its obligations under this contract,

77. Terms of payment - If the bidder request for an advance payment, the Bank will pay advance of 30% upon provision of payment Guarantee from a recognized Financial Institution, 60% upon the final completion. In accordance with the relevant of terms and conditions of Invitation to Bid. If no advance payment requested,

a) the Bank shall pay the contractor 30% of the contract price on completion of 50% of works, which will include dismantling the unrequired materials from the house;

b) 40% for the entire refurbishment and rehabilitation of the premises, which will be accounting to 80% of the total completion of the contract;

c) Finally, payment of 20% for the completion of the project, which will include the clearing of the premises and hand over to the Bank.

d) The Bank shall retain 10% of the contract value until the end of the defects liability period. The Bank shall pay back the Contractor the retention fee of 10% upon certification by the Bank’s Project Representative, after the Contractor has corrected all known defects. The defects liability period under this contract is one year from the date of successful completion of the work by the Contractor and acceptance thereof by the Bank.

77. Facilities and Services required for the Works - The Contractor shall provide water, electricity and other facilities and equipment, required for the Works.

78. Cancellation of bid - If it becomes necessary to cancel this bid, the Bank will notify all bidders in writing through posting a notice on the website or by engaging in any other quickest means of expedited delivery that will notify all that the bid is cancelled.

Yours faithfully,

[Signature]
Kennedy MBEKEANI
OIC, SARC
§ 7 Request for clarification and/or request for any change to the ITB shall be sent in writing e-mail to tender@afdb.org; or (iii) to the question and answer section in the AfDB e-Procurement portal, tender@afdb.org. The request shall be received by the Bank no later than close of business 25th July 2014 local time of Zimbabwe and shall be answered timely and shared with other bidders.

§ 8 The Bank shall organize a site visit and pre-bid meeting: [YES], [on the 15th June 2014, at 10.30 hrs Zimbabwe], local time, at 90 Pendennis Road, Mt. Pleasant, Harare, Zimbabwe, and shall be the meeting point of the site visit and pre-bid meeting shall follow at the Bank’s office, conference hall from 12pm.

Questions for the site visit and pre-bid meeting shall be submitted to tender@afdb.org, referencing this bid number.

The site visit and pre-bid meeting is a mandatory requirement: [YES] and shall be on 15th July 2014, at 10.30 hrs, Zimbabwe local time.

§ 10 The language of the bids and all correspondence is: [English language].

§ 20 Alternative bids are accepted: [YES] – This means a bidder may realized some missing information after the submission, as a resultant, s/he can submit an alternative bid, which cancels the original bid.

§ 24 The prices shall be expressed in [USD currency].

§ 25 The Bank’s requirement is divided into lots [NO]
Bidders can submit a bid for one or multiple lots [NO]
[Insert any further instructions on submitting bids for lots]

§ 26 The minimum period of validity of bids is ninety (90) days from the deadline for submission of bids.
| § 32 | Bids shall be submitted by mail, courier or hand delivery: [YES] **No email bids shall be accepted.**

Bids shall be sent to the following address and the external envelope shall bear the following information:

The Resident Representative,
African Development Bank Group
Zimbabwe Country Office
5th Floor, Joina City, Corner Jason Moyo and Julius Nyerere,
Harare, Zimbabwe

**ITB – DO NOT OPEN UNTIL BID OPENING DAY**

**ITB Closing and opening Date and Time:** 4th August 2014 at 15.00 hrs. and 15.30 hrs respectively, observing Zimbabwe local time

| § 46 | Performance security is required: [Yes]

The bidder shall furnish the performance security equivalent to 10% of the total contract sum, within [ten (10) days] from the date of the notice to proceed or contract signature whichever is the earliest and in the amount of [insert amount and currency]

If the performance security is in the form of bank guarantee, the format shall be in accordance with the form of performance security in Annex III.

The performance security will be returned to the bidder as set out in the General and Specific Conditions.

If the bidder wants the Bank to retain 10% of the contract sum, the amount will be returned to the bidder as set out in the General and Specific Conditions.

| § 47 | If requested, Advance payment will be provided to the successful bidder: [YES]

Payment will be made as set out in the General and Specific Conditions.

The successful bidder will be required to provide advance payment guarantee in the format set out in Annex III.

| § 48 | The Bank shall retain 10% of the contract sum until the end of the defects liability period, which is twelve months after the date of handing and taking over the project by both parties: [YES]

The amount will be returned to the bidder as set out in the General and Specific Conditions.
SERVICE STANDARDS OR OTHER STANDARDS

Other documents which form part of this bid, which the bidder shall complete are Statement of Conformity, Appendix A, Bidder information Sheet, Appendix B, and Party to Joint Venture Information Sheet, Appendix C. Evaluation criteria Appendix D, Litigation History, Appendix E, Conflict of Interest Disclosure Form, Appendix F, Technical Evaluation Form Appendix G, Bill of Quantities Appendix H.
We understand that you are not bound to accept the bid with the lowest evaluated quoted price or any other bid that you may receive.

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

Name: In the capacity of:

Signed:

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

Dated on:
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<tbody>
<tr>
<td>1.</td>
<td>Bidder’s Legal Name:</td>
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<tr>
<td>2.</td>
<td>JV’s Party legal name:</td>
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<tr>
<td>3.</td>
<td>JV’s Party Country of Registration, Constitution or Incorporation:</td>
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<tr>
<td>4.</td>
<td>JV’s Party Year of constitution or registration into a legally enforceable JV:</td>
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<tr>
<td>5.</td>
<td>JV’s Party Legal address in Country of Registration, Constitution or Incorporation:</td>
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<td>6.</td>
<td>JV’s Party Authorized Representative Information:</td>
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<td>Name:</td>
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<td></td>
<td>Address:</td>
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<td></td>
<td>Telephone/Fax numbers:</td>
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<td></td>
<td>Email Address:</td>
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<td>7.</td>
<td>Attached are copies of original documents of:</td>
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<td></td>
<td>Articles of Registration, Constitution or Incorporation of firm named and information on the capital structure.</td>
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<td></td>
<td>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.</td>
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<td></td>
<td>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</td>
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<tr>
<td></td>
<td>Organizational chart of the company and list of current staff</td>
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</tbody>
</table>
The bidder shall sign and return the document in the format provided for a PASS.

If applicable, a power of attorney shall be attached. A power of attorney may be submitted in the form provided. The statement of conformity in the contract must be completed and signed to bind the bidder to the price and terms of the contract as authorized by a person or persons duly authorized.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Must meet</th>
<th>Existing or N/A</th>
<th>Requirement</th>
<th>Must meet</th>
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<tr>
<td>Partner</td>
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<td>Partner</td>
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<td>At least one partner</td>
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<td>Each</td>
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<td>All partners</td>
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<td>VY must</td>
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<tr>
<td>Evidence Provided</td>
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<td>Response</td>
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</tr>
</tbody>
</table>

**Statement of Conformity**

**Pass/Fail Criteria**

Bidder's Compliance: Bidder shall meet all criteria as provided for submission of bids.

Bidder's Compliance: Bidder shall complete all sections in the questionnaire in sufficient detail and provide evidence and supporting documentation to demonstrate qualitative (pass/fail) assessment.

Appendix D

**Zimbabwe**

Reference: ADB/17/LF/ZWP02/10149, REPUBLISHED OF THE BANK'S HOUSE IN M.L. PLEASANT, HARARE.

Zimbabwe Development Bank Group
<table>
<thead>
<tr>
<th>JV (if applicable)</th>
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<tbody>
<tr>
<td>The bidder shall not be subject to any of the situations above for a PASS</td>
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<tr>
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<tr>
<td>Implementation of the procurement</td>
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<td>services for the preparation of</td>
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<td>the proposal</td>
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<td>The bidder, or any of its affiliates, has been engaged to provide consulting</td>
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<tr>
<td>services, including, but not limited to, auditing, financial advisory, legal, or</td>
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<td>management consulting services</td>
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<td>The bidder, or any of its affiliates, has contained or disclosed financial</td>
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<td>information or other proprietary information of any other</td>
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<td>person or organization</td>
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<td>in the last ten (10) years</td>
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<td>The bidder has been convicted of a</td>
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<td>crime, including, but not limited to, fraud, embezzlement, theft, forgery,</td>
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<tr>
<td>bribery, or other crime involving moral turpitude</td>
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<td>The bidder has been subject to any other</td>
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<td>situation or circumstances that disqualify the bidder</td>
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<td>The bidder has been convicted of a</td>
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<tr>
<td>crime, including, but not limited to, fraud, embezzlement, theft, forgery,</td>
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<tr>
<td>bribery, or other crime involving moral turpitude</td>
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Reference: ADB/TLP/ZWPO/2014/0059, REFINISHERMENT OF THE BANK'S HOUSE IN ML PLAZA, HARMARZ,

Zimbabwe Country Office
African Development Bank Group
<table>
<thead>
<tr>
<th>Requirement</th>
<th>N/A</th>
<th>Must meet requirement</th>
<th>Must meet requirement</th>
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**Financial Resources:**
Other documents to demonstrate contractual advance payments or financial means, other than liquid assets, unencumbered real property, provide evidence such as:

- Current work commitments
- How resources for the contract and overall cash resources to meet the overall cash requirements are available
- Evidence of financial access

The bidder can demonstrate access to liquid assets as at [2011, 2012, 2013 or the latest]

Reference: ADB/117/ZWE/2014/10019, REPLACEMENT OF THE BANK'S HOUSE IN MT. PLEASANT, HARARE.
<table>
<thead>
<tr>
<th>Requirement</th>
<th>Intended J/V or Existing</th>
<th>Must meet requirement</th>
<th>Requirement Intended J/V or Existing</th>
<th>Manager</th>
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**PROJECT MANAGER**

**Perform the contract for a PASS.**

The bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede his ability to

- Bidders small complete the litigation
- Is this net worth defined?
- Project of the bidder’s net worth (How represents more than 50% - 100%)
- The bidder is involved in litigation that
- Bidders small complete the litigation
- Default for unsatisfactory performance or
- Terminated in the last three (3) years
- The bidder has had a contract(s)

**LITIGATION**

**HISTORICAL CONTRACT PERFORMANCE AND PENDING**

**PENDING WORKS REQUIRED FOR A PASS.**

The bidder shall have been in business for the last five (5) years and has the experience and capability to provide the goods, services and

- Customer in the last 3 years
- Contract(s) (including name of
- Contracts undertaken as a prime

**ZIMBABWE**

Reference: ADB/118/ZW/02/1400199, REPURCHASEMENT OF THE BANK’S HOUSE IN MT. PLEASANT, HARARE.

Zimbabwe Country Office
African Development Bank Group
The bidder shall PASS all above criteria to be considered for the next stage.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Requirement</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of contract for a Pass.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The bidder shall have an actual or potential conflict of interest to call into question its participation in the procurement process and award</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The bidder has declared any actual or potential conflict of interest in the form.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflicts of interest declaration form.</td>
<td></td>
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<tr>
<td>The bidder shall attend the site visit and pre-bid meeting for a Pass.</td>
<td></td>
<td></td>
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<tr>
<td>Site visit / pre-bid meeting (mandatory)</td>
<td></td>
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<tr>
<td>The bidder shall be registered with the relevant local registration body for the performance of the contract for a Pass.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence of current registration.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, provide certificate or other body for the work required.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insert name of local registration body.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Reference:** ADB/ITF/ZWFO/2014/0019, REFINISHMENT OF THE BANK’S HOUSE IN MILL PLEASANT, HARARE.

Zimbabwe Development Bank Group

Zimbabwe County Office
LITIGATION HISTORY

Name of Bidder: ITB 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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Non-Performing Contracts – contracts terminated in the past three (3) years for unsatisfactory performance or default</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contract non-performance during the stipulated period</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Name of Purchaser:  
Address of Purchaser:  
Contract description:  
Contract award date:  
Termination date:  
Reason for termination:  

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pending Litigation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|      | Name of Purchaser:  
Address of Purchaser:  
Contract description:  
Contract award date:  
Matter in dispute:  |

<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pending litigation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|      | Name of Purchaser:  
Address of Purchaser:  
Contract description:  
Contract award date:  
Matter in dispute:  |
Appendix G

TECHNICAL EVALUATION

Procurement Practitioners shall amend this section as appropriate. This is an example of information required from bidders for works contract. The information should be tailored to the procurement in question. Procurement practitioners shall also consider whether to ask questions about bidders' past experience and performance in previous contracts. This will be a continuation of the information provided by bidders in the qualification (pass/fail) questionnaire.

Bidders (including each partner of a JV, affiliates and suppliers) shall provide the information required in sufficient detail and provide supporting documentation in support of bidders' response. The Bank shall carry out a detailed examination of the bids to determine compliance with the technical requirements and conditions.

The evaluation of the bidder's technical bid shall include an assessment of the bidder's technical capacity to mobilize key equipment and personnel for the contract, consistent with its proposal regarding work methods, scheduling and material sourcing, in sufficient detail, and fully in accordance with the requirements.

1. Bidders shall provide information on their current commitments on all contract that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which a full completion certificate has yet to be issued.

<table>
<thead>
<tr>
<th>Contact details of client – address /telephone/fax</th>
<th>Value of outstanding work (current US$ equivalent)</th>
<th>Estimated completion date</th>
<th>Average monthly invoicing over last six months (US$/month equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

2. Bidders shall provide a comprehensive description of the proposed major items of equipment for carrying out the works.

<table>
<thead>
<tr>
<th>Type of equipment and characteristics</th>
<th>Description, make, model, year of manufacture</th>
<th>Condition (new, good, poor) and number available</th>
<th>Owned, leased (from whom) or to be purchased (from whom). Include lease agreements, where relevant</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

3. Bidders shall provide details of work performed as a prime contractor on works of a similar nature and volume over the last five years. Bidders shall complete one table per contract.
5. Bidders shall provide a comprehensive work programme and technical information, including drawings, charts, as necessary, to comply with the requirements. The work programme should not exceed the period for completion of all works.

6. Bidders shall provide a comprehensive method statement showing how it intends to carry out the works to conform to the requirements.

7. Bidders shall provide a comprehensive mobilization schedule detailing the action plan for the period between the award of contract and commencement of work, to include mobilization timetable, risk registers, mobilization and deployment of equipment and personnel.

8. Bidders shall provide a comprehensive construction schedule detailing the series of events or plan of actions to complete the project. The response shall identify the critical path.

9. Bidders shall provide a detailed site organization plan detailing how it intends to organize a safe and healthy construction site, including traffic management, materials storage and waste management, meeting local administrative and legal requirements, if relevant.

10. Bidders shall provide details on the qualification and experience of key personnel proposed for the administration and execution of the contract, including the proposed Project Manager. Bidders shall complete one table per individual.
Appendix H

BILL OF QUANTITY/PRICE SCHEDULE

Procurement Practitioners shall set out the bill of quantities for the items required for the works. Notes on preparing the bill of quantity is set out in the Bill of Quantity attached as Appendix

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Qty</th>
<th>Unit</th>
<th>Rate (US$ equivalent)</th>
<th>Amount (US$ equivalent)</th>
</tr>
</thead>
</table>

Procurement Practitioners shall set out the payment schedule for the contract. This will give bidders an idea when to expect payment.

<table>
<thead>
<tr>
<th><strong>Description of Event</strong> (this is the milestone event which triggers amount due to the supplier. Following the milestone event, the supplier will need to submit an invoice including the evidence required to be paid)</th>
<th><strong>Contract Amount</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>For example:</td>
<td></td>
</tr>
<tr>
<td>- Delivery of equipment to the Bank</td>
<td>This can be expressed as a percentage of the contract sum or a set amount.</td>
</tr>
<tr>
<td>- Testing/acceptance of equipment;</td>
<td></td>
</tr>
<tr>
<td>- Training provided to [x] number of staff;</td>
<td></td>
</tr>
<tr>
<td>- Year 1 maintenance</td>
<td></td>
</tr>
</tbody>
</table>
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 laws 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;

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 A 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 mean 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, commissioning, training and initial maintenance, provided that the value of those Services is less than the value of the Goods acquired.
Annex V General Terms and Conditions for the Purchase of Goods, Works and Services

1.0 Constitution of Contract

1.1 The submission of any bid shall constitute acceptance of the African Development Bank General Terms and Conditions for the Purchase of Goods, Works and Services, except to the extent they may be modified by special conditions attached to the Contract or Purchase Order (PO). These General Terms and Conditions are then an integral part of the Contract or PO to which they are attached.

1.2 No additional or inconsistent provisions and no variations in or modifications of that Contract or PO made by the Contractor shall be binding unless agreed to in writing by the African Development Bank (hereinafter called the “Bank”).

2.0 Performance of Contract

2.1 The Contractor agrees to provide the works or services (hereinafter called the “Services”), as the case may be, required hereunder in accordance with the requirements set forth in the Contract or PO documents. The Contractor undertakes to perform the Services hereunder in accordance with the highest standards of professional competence and integrity in the Contractor’s industry, having due regard for the nature and purposes of the Bank as an international organization and to ensure that the employees assigned to perform any Services under the Contract or PO will conduct themselves in a manner consistent therewith. The Services will then be rendered in (1) an efficient, safe, courteous and businesslike manner; (2) in accordance with any specific instructions issued from time to time by the Bank’s designated Representative; and (3) to the extent consistent with the above as economically as sound business judgment warrants. The Contractor shall provide the services of qualified personnel through all stages of the Contract/PO. The Contractor shall promptly replace any member of the Contractor’s project team that the Bank considers unfit or otherwise unsatisfactory. The Contractor represents and warrants that it is in compliance with all the applicable laws of any jurisdiction in which the Services shall be performed.

2.2 The Contractor shall not assign or transfer the whole or any part of its obligations under the Contract/PO without the prior written consent of the Bank. Approval to subcontract will not relieve the Contractor of any liability or obligation under the contract or PO. The Contractor shall be solely responsible for the performance of the Contract/PO in every respect. The Contractor shall indicate the Contract/PO number on all correspondence which shall be addressed to the Bank, unless otherwise stated. The Contractor shall immediately report to the Bank in writing any problems encountered which may jeopardize the performance of the Contract/PO.

2.3 The Contractor shall be responsible for obtaining and renewing at its own cost and in due time such approvals, consents, governmental and regulatory authorizations, licenses and permits as may be required or deemed necessary by the Bank to perform the Contract/PO.

3.0 Conflict of Interest

3.1 The remuneration of the Contractor shall constitute the sole remuneration in connection with the Contract/PO. The Contractor shall not accept for its benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract/PO or in the discharge of its obligations hereunder, and the Contractor shall use its best efforts to ensure that any subcontractors, as well as the personnel and agents of either of them, similarly shall not receive any such additional remuneration.

3.2 Contractor or the contractor’s employees, subcontractors and subcontractor’s employees shall, during the term of the Contract/PO strictly avoid carrying out any other assignments that may be in conflict with
either party to this Contract/PO.

12.3 If the Bank terminates the Contract/PO pursuant to paragraph 12.1.1, the Bank may procure, upon such terms and in such manner as it may deem appropriate, services and works similar to those not delivered and the Contractor shall be liable for any excess costs or damage caused to the Bank by the Contractor’s default. The Bank reserves the right to offset costs, incurred by it in relation to the termination of the Contract/PO, from any monies due. In case of partial termination of the Contract/PO, the Contractor shall continue performance of the Contract/PO to the extent not terminated.

12.4 If the Bank terminates the Contract/PO pursuant to paragraph 12.1.3 for convenience, the notice of such a termination shall state that termination is for the Bank’s convenience, the extent to which the performance under the Contract/PO is terminated, and the effective termination date. The Bank will issue an equitable adjustment, not to exceed the total Contract/PO price, to compensate the Contractor for: (i) the Contract/PO price for the Services accepted by the Bank but not paid previously and adjusted for any savings, (ii) the costs incurred in the performance of the work terminated, including initial and preparatory expenses; (iii) the cost of settling and paying other Contractors, subcontractors or lessors under terminated agreements properly chargeable to the terminated portion of the Contract/PO and not included in items (i) and (ii) hereof; and (iv) a reasonable profit on item (ii) above.

12.5 The Contractor represents and warrants that no employee of the Bank involved in the award of the Contract/PO, has received, or will receive, directly or indirectly, any benefit or advantage from the Contractor, or any of the Contractor’s Associates, resulting from the award of this Contract or its performance.

12.6 If the Contractor or any of the Contractor’s Associates is found to have engaged in any corrupt, fraudulent, coercive and or collusive practice in connection with the Contract/PO, the Bank may, in its sole discretion, do any or a combination of the following: (i) declare void or terminate the Contract/PO without liability for payment of the Contract/PO price or any part thereof; (ii) declare the Contractor ineligible to contract with the Bank or to enter into contracts financed by the Bank; and (iii) pursue legal proceedings against the Contractor.

12.7 For purposes of the Contract/PO, “Corrupt Practice” means offering, giving, receiving or soliciting, directly or indirectly, any thing of value to influence improperly the actions of another. “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. “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, including any arrangement among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Bank of the benefits of free and open competition.

13.0 Period of performance and Liquidated Damages for Delay in Completion

13.1 The period of performance of the Services shall be as stated in the Contract/PO. The schedule for submitting deliverables shall be as stated either in the statement of works attached to the Contract/PO or in the Contract/PO. Deliverables shall be completed within the said period.

13.2 If the Contractor fails to perform the Contract/PO or any part thereof within the specified period, the Bank may, without prejudice to any other remedy under the Contract/PO, deduct from the Contract/PO price, as liquidated damages, a sum equal to 0.5% of the Contract/PO value for each week of delay until actual performance, up to a maximum of 5% of the Contract/PO value.
17.0 Governing law

17.1 Unless specified otherwise in the Contract/PO, the Contract/PO shall be governed by, construed and enforced in accordance with English law.

18.0 Force Majeure

18.1 "Force Majeure" means any event or condition which (a) wholly or partially delays or prevents a party from performing any of its obligations under the Contract/PO, (b) is unforeseeable and unavoidable, (c) is beyond the reasonable control of such party, and (d) occurs without the fault or negligence of such party.

18.2 The party affected by such Force Majeure shall give prompt written notice to the other party of the nature and probable duration of the Force Majeure, and of the extent of its effects on such party's performance of its obligations under the Contract/PO.

18.3 During the continuance of the Force Majeure, the obligations of the affected party shall be suspended to the extent necessitated by the Force Majeure.

18.4 In the event of a Force Majeure which delays performance of the Contract/PO or any part thereof by more than thirty (30) days, either party shall have the right, by written notice to the other party, to terminate the Contract/PO.

19.0 Severability

19.1 In the event that any of these terms and conditions or any provision of the Contract/PO is held to be invalid, illegal or unenforceable, the other remaining terms and conditions and provisions of the Contract/PO shall remain in full force and effect, and the invalid, illegal or unenforceable term or provision shall be replaced by such valid, legal or enforceable term or provision as comes closest to the intention underlying the invalid, illegal or unenforceable term or provision.

20.0 Copyrights, database and design rights

The deliverable report(s) and other creative work of the Contractor produced pursuant to the Contract/PO, including all written, graphic, audio, visual and other materials, contributions, applied work products and production elements contained therein, whether on paper, disk, tape, digital file or any other media, (the "Deliverable Work") shall be regarded as commissioned work in accordance with the applicable copyright, data protection and design laws. The Bank shall be the proprietor of the Deliverable Work from the time of its creation and shall own the rights, title and interests therein throughout the world including, without limitation, copyrights and related rights. To the extent that it is determined that the Deliverable Work does not qualify as commissioned work within the meaning of the applicable copyright, data protection and design laws, then the Contractor hereby irrevocably transfers and assigns to the Bank its rights, title and interest, throughout the world and in perpetuity, in and to the Deliverable Work, including without limitation the Contractor's rights, title and interest in copyright and related rights, free of any claim by the Contractor or any other person or entity.
SECTION 1

FORM OF CONTRACT

THIS CONTRACT is made on the [insert date] day of [insert month], 2014.

THE AFRICAN DEVELOPMENT BANK an International Financial Institution having its headquarters on Avenue Joseph Anoma, 01 BP 1387, ABIDJAN 01, COTE D’IVOIRE, and currently located and operating for the purposes of this Contract from from its Temporary Relocation Agency (TRA) in Tunis, 15 Avenue du Ghana, BP 323 - 1002 Tunis Belvédère, TUNISIA, (hereinafter referred to as the “Bank”)

AND

[insert contractor’s name] a company duly incorporated and existing under the laws of [insert the country of the contractor], company registration number [insert company registration number] and having its registered office address located at [insert business address], (hereinafter referred to as the “Contractor”).

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

WHEREAS:

(i) The Bank requires the provision of Works and related Goods and Services as detailed in the Works Schedule. Following an International Competitive Bidding launched on 30th June 2014, the Bank has appointed the Contractor for the execution and completion of the refurbishment works on the Bank’s house at 90 Pendennis Road, Mount Pleasant, Harare, Zimbabwe and the remedying of any defects therein. The Contractor hereby agrees to provide the Works in accordance with the terms and conditions set out below.

(ii) The Contractor has represented and affirmed to the Bank that it has the required qualifications, professional skills, experience, personnel, technical resources and capability to provide the Works and related Goods and Services.

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

1. TERMS OF THE CONTRACT

1.1 The Contractor shall provide the Bank with the Works and related Goods and Services in accordance with the terms and conditions of this Contract that shall comprise of all documents set out below in paragraph 1.2 (as the same may be supplemented or varied from time to time).
SECTION 2
GENERAL CONDITIONS OF CONTRACT

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   A3 Contractor's Status
   A4 Contract Period
   A5 Care and Supply of Documents
   A6 Compliance with Laws
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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.
calculated from the date on which the Works or section is completed as certified under GCC clause 11 (Taking Over of the Works and Sections).

"Drawings" means the drawing of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Bank in accordance with the Contract.

"Final Payment Certificate" means the payment certificate issued under GCC M13 (Issue of Final Payment Certificate).

"Form of Contract" means the documents comprising section 1 of the Contract 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 the conditions as set out in section 2 of the 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.

"Interim Payment Certificate" means a payment certificate issued under GCC clause M (Contract Price and Payment), other than the Final Payment Certificate.

"International Entity" means the World Bank, Asian Development Bank, Inter-American Development Bank, European Bank for Reconstruction and Development or any other participating institution in the cross debarment agreement signed with the Bank.

"Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

"Letter of Acceptance"

"Materials" means things of all kind (other than Plant) intended to form or forming part of the Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

"Notice to Proceed"
“Special Conditions of Contract” or “SCC” means the conditions as set out in section 3 of the Contract.

“Statement” means a statement submitted by the Contractor as part of an application, under GCC clause M (Contract Price and Payment) for a payment certificate.

“Subcontractor” means any person to whom any of the obligations of the Contractor under the Contract is subcontracted directly or indirectly by the Contractor and includes its legal successors or permitted assignees.

“Contractor” means the person(s) who has been appointed by the Bank and accepted to perform the Contract and is named as such in the Form of Contract and includes the legal successors or permitted assignees.

“Contractor’s Documents” means all approvals, consents, designs, method statement, drawings, manuals, reports or any other document required for the execution of the Works and remedying of defects.

“Contractor’s Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under GCC clause D3 (Contractor’s Representative), who acts on behalf of the Contractor.

“Taking-Over Certificate” means a certificate issued under GCC clause L (Bank Taking Over).

“Tests on Completion” means the tests which are specified in the Contract or agreed by the Parties or instructed as a Variation, and which are carried out under GCC clause H (Tests on Completion) before the Works or a section of the Works (as the case may be) are taken over by the Bank.

“Time for Completion” means the time for completing the Works or a section (as the case may be) under GCC clause G2 (Time for Completion), as stated in the Contract (with any extension under GCC clause G4 (Extension of Time for Completion), calculated from the Commencement Date.

“Unforeseeable” means not reasonably foreseeable by an experienced Contractor or Contractor by the Commencement Date.

“Variation” means any change to the Works, which is instructed or approved as a variation under GCC clause L (Variation and Adjustments).
A3.2 All employees, representatives, or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Bank. Nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Bank.

A3.3 If the Contractor is a joint venture of two or more persons, all such firms shall be jointly and severally bound to the Bank for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as the authorized representative with Bank to bind the joint venture. The composition or constitution of the joint venture shall not be altered without the prior written consent of the Bank.

A4 Contract Period
A4.1 The Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Form of Contract, unless otherwise terminated or extended.

A4.2 The Bank may extend the Contract, for further periods as set out in the Form of Contract. Unless otherwise provided, the provisions of the Contract will apply throughout any such extended period.

A5 Care and Supply of Documents
A5.1 Each of the Contractor’s Documents shall be in the custody and care of the Contractor, unless and until taken over by the Bank. Unless otherwise stated in the Contract, the Contractor shall supply to the Project Manager copies of each of the Contractor’s Documents.

A5.2 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the schedules, the Contractor’s Documents (if any), the Drawings and Variations and other communications given under the Contract. The Bank’s personnel shall have the right of access to all these documents at all reasonable times.

A5.3 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

A6 Delayed Drawings and Instructions
A6.1 The Contractor shall give notice to the Project Manager whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instructions, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

A6.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Project Manager to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Project Manager and shall be entitled subject to GCC clause G5.1 (Contractor’s Claims) to:

(a) claim for an extension of time for any such delay, if completion is or will be delayed, under GCC clause G4 (Extension of Time for Completion), and
B1.3 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Bank to give any such right or possession within such time, the Bank shall give notice to the Project Manager and shall be entitled subject to GCC clause G5 (Contractor’s Claims) to:

(a) claim for an extension of time for any such delay, if completion is or will be delayed, under GCC clause G4 (Extension of Time for Completion), and

(b) claim for payment of any such Cost, which shall be included in the Contract Price.

B1.4 After receiving this notice, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine these matters.

B1.5 However, if and to the extent that the Bank’s failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor’s Documents, the Contractor shall not be entitled to such extension of time or Cost.

B2 Bank’s Personnel

B2.1 The Bank shall be responsible for ensuring that the Bank’s personnel and the Bank’s Contractors and Contractors on the Site co-operate with the Contractor’s effort under GCC clause D4 (Co-operation).

B3 Bank’s Claims

B3.1 If the Bank considers it is entitled to any payment under any clause or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Bank or the Project Manager shall give notice and particulars to the Contractor. However, notice is not required for payments due for services requested by the Contractor.

B3.2 The notice shall be given as soon as practicable and no longer than twenty-eight (28) days after the Bank becomes aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

B3.3 The particulars shall specify the GCC clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Bank considers it is entitled in connection with the Contract. The Bank shall then proceed in accordance with GCC clause C5 (Determinations) to agree or determine (i) the amount (if any) which the Bank is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with GCC clause J3 (Extension of Defects Notification Period).

B3.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Bank shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this GCC clause.

C The Project Manager

C1 Project Manager’s Duty and Authority

C1.1 The Bank shall appoint the Project Manager who shall carry out the duties assigned to him in the Contract. The Project Manager’s staff shall include suitably qualified project managers and other professionals who are competent to carry out these duties.
Project Manager. The Project Manager shall determine an addition to the Contract Price, in respect of such instruction, in accordance with GCC clause L (Variations and Adjustments) and shall notify the Contractor accordingly, with a copy to the Bank.

C2 Delegation by the Project Manager
C2.1 The Project Manager may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident Project Manager, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Project Manager shall not delegate the authority to determine any matter in accordance with GCC clause C5 (Determinations).

C2.2 Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in GCC clause A3 (Language).

C2.3 Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Project Manager.

However:

(a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Manager to reject the work, Plant or Materials;

(b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Project Manager, who shall promptly confirm, reverse or vary the determination or instruction.

C3 Instruction of the Project Manager
C3.1 The Project Manager may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Project Manager, or from an assistant to whom the appropriate authority has been delegated under GCC clause C2 (Delegation by the Project Manager). If an instruction constitutes a Variation, GCC clause L (Variations and Adjustments) shall apply.

C3.2 The Contractor shall comply with the instructions given by the Project Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Project Manager or a delegated assistant:

(a) gives an oral instruction,

(b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two (2) working days after giving the instruction, and
No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Project Manager.

D1.6 If the Contract specifies that the Contractor shall design any part of the Works, then unless otherwise stated in the Contract:

(a) the Contractor shall submit to the Project Manager the Contractor’s Documents for this part in accordance with the procedures specified in the Contract;

(b) these Contractor’s Documents shall be in accordance with the Works and Drawings, shall be written in the language for communications defined in GCC clause A3 (Language), and shall include additional information required by the Project Manager to add to the Drawings for co-ordination of each Party’s designs;

(c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and

(d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Project Manager “as-built” documents and, if applicable, operation and maintenance manuals in accordance with the Works and in sufficient detail for the Bank to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under GCC clause 11 (Taking Over of the Works and Sections) until these documents and manuals have been submitted to the Project Manager.

D2 Performance Security

D2.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the SCC and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Bank. If an amount is not stated in the SCC, this GCC clause shall not apply.

D2.2 The Contractor shall deliver the Performance Security to the Bank within twenty-eight (28) days after receiving the Letter of Acceptance, and shall send a copy to the Project Manager. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form stipulated in the Contract forms or in another form approved by the Bank.

D2.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

D2.4 The Bank shall not make a claim under the Performance Security, except for amounts to which the Bank is entitled under the Contract.
(c) the personnel of any legally constituted public authority,

who may be employed in the execution on or near the Site of any work not included in the Contract.

D4.2 Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delay and/or to incur Cost. Services for these personnel and other Contractors may include the use of Contractor’s Equipment or access arrangements.

D5  Setting Out
D5.1 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Project Manager. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

D5.2 The Bank shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

D5.3 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced Contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Project Manager and shall be entitled subject to GCC clause G5 (Contractor’s Claims) to:

(a) get an extension of time for any such delay, if completion is or will be delayed, under GCC clause G4 (Extension of Time for Completion), and

(b) get payment of any such Cost, which shall be included in the Contract Price.

D5.4 After receiving this notice, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in GCC clause D5.3(a) and (b) above related to this extent.

D6  Safety Procedures
D6.1 The Contractor shall:

(a) comply with all applicable safety regulations,
(b) take care for the safety of all persons entitled to be on the Site,
(c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
(d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under GCC clause I (Bank Taking Over), and
(e) provide any works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.
D9.2 Unless otherwise stated in the Contract, the Contract Price covers all the Contractor’s obligations under the Contract and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

D10 Unforeseeable Physical Conditions
D10.1 In this GCC Clause, “physical conditions” means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

D10.2 If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Project Manager as soon as practicable.

D10.3 This notice shall describe the physical conditions, so that they can be inspected by the Project Manager, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Project Manager may give. If an instruction constitutes a Variation, GCC clause L (Variations and Adjustments) shall apply.

D10.4 If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under GCC clause G3 (Contractor’s Claims) to:

(a) claim for an extension of time for any such delay, if completion is or will be delayed, under GCC clause G4 (Extension of Time for Completion), and

(b) claim for payment of any such Cost, which shall be included in the Contract Price.

D10.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in GCC D10.4(a) and (b) above related to this extent.

D10.6 However, before additional Cost is finally agreed or determined for item (ii) under GCC clause D10.5, the Project Manager may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Proposal. If and to the extent that these more favourable conditions were encountered, the Project Manager may proceed in accordance with GCC clause C5 (Determinations) to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under GCC D10.4(b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

D10.7 The Project Manager shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Proposal, which shall be made available by the Contractor, but shall not be bound by the Contractor’s interpretation of any such evidence.

D11 Avoidance of Interference
otherwise agreed by both Parties, the Bank shall immediately rectify the notified shortage, defect or default.

D15.3 After this visual inspection, the Bank’s Equipment shall come under the care, custody and control of the Contractor. The Contractor’s obligations of inspection, care, custody and control shall not relieve the Bank of liability for any shortage, defect or default not apparent from a visual inspection.

D16 Progress Reports
D16.1 Unless otherwise stated in the SCC, progress reports shall be prepared by the Contractor and submitted to the Project Manager in the frequency and number of copies as specified in the SCC. Each report shall include the information set out in the SCC. Reports shall be submitted within seven (7) days after the last day of the period to which it relates.

D16.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

D17 Security of the Site
D17.1 Unless otherwise stated in the Contract:

(a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and

(b) authorised persons shall be limited to the Contractor’s personnel and the Bank’s personnel; and to any other personnel notified to the Contractor, by the Bank or the Project Manager, as authorised personnel of the Bank’s contractors or Contractors on the Site.

D18 Contractor’s Operations on Site
D18.1 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Project Manager as additional working areas. The Contractor shall take all necessary precautions to keep Contractor’s Equipment and Contractor’s personnel within the Site and these additional areas, and to keep them off adjacent land.

D18.2 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor’s Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and temporary Works which are no longer required.

D18.3 Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor’s Equipment, surplus material, wreckage, rubbish and temporary works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such goods as are required for the Contractor to fulfil obligations under the Contract.

D19 Code of Conduct
D19.1 The Contractor declares that it is fully cognizant of and undertakes to comply with the Code of Conduct for Contractors of the Bank.
E5  Records of Contractor’s Personnel and Equipment
E5.1 The Contractor shall submit, to the Project Manager, details showing the number of each class of Contractor’s personnel and each type of Contractor’s Equipment on the Site. The records of Contractor’s personnel shall include the names, ages, gender, hours worked and wages paid to all works. Details shall be submitted each calendar month, in a form approved by the Project Manager, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

E6  Foreign Personnel
E6.1 The Contractor may bring in to the relevant country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Bank will, if requested by the Contractor, use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor’s personnel.

E6.2 The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the relevant country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

F  Plant, Materials and Workmanship
F1  Manner of Execution
F1.1 The Contractor shall execute the Works:

(a) in the manner (if any) specified in the Contract,
(b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
(c) with properly equipped facilities and non-hazardous Materials.

F2  Samples
F2.1 The Contractor shall submit the following samples of Materials, and relevant information, to the Project Manager for consent prior to using the Materials in or for the Works:

(a) manufacturer’s standard samples of Materials and samples specified in the Contract, all at the Contractor’s cost, and
(b) additional samples instructed by the Project Manager as a Variation.

F2.2 Each sample shall be labelled as to origin and intended use in the Works.

F3  Inspection
F3.1 The Bank’s personnel shall at all reasonable times:

(a) have full access to all parts of the Site,
F4.7 The Contractor shall promptly forward to the Project Manager duly certified reports of the tests. When the specified tests have been passed, the Project Manager shall endorse the Contractor’s test certificate, or issue a certificate to him, to that effect. If the Project Manager has not attended the tests, he shall be deemed to have accepted the readings as accurate.

F5 Rejection
F5.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

F5.2 If the Project Manager requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Bank to incur additional costs, the Contractor shall subject to GCC clause B3 (Bank’s Claims) pay these costs to the Bank.

F6 Remedial Work
F6.1 Notwithstanding any previous test or certification, the Project Manager may instruct the Contractor to:

(a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,

(b) remove and re-execute any other work which is not in accordance with the Contract, and

(c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

F6.2 The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under GCC clause F6.1(c).

F6.3 If the Contractor fails to comply with the instruction, the Bank shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to GCC clause B3 (Bank’s Claims) pay to the Bank all costs arising from this failure.

F7 Ownership of Plant and Materials
F7.1 Except otherwise specified in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the relevant country, become the property of the Bank at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) when it is incorporated in the Works;

(b) when the Contractor is paid the corresponding value of the Plant and Materials under GCC clause G10 (Payment for Plant and Materials in Event of Suspension).
connection with the Contract, the Contractor shall give notice to the Project Manager, describing
the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable,
and not later than twenty-eight (28) days after the Contractor became aware, or should have
become aware, of the event or circumstance.

G5.2 If the Contractor fails to give notice of a claim within such period of twenty-eight (28)
days, the Time for Completion shall not be extended, the Contractor shall not be entitled to
additional payment, and the Bank shall be discharged from all liability in connection with the
claim. Otherwise, the following provisions of this GCC Clause shall apply.

G5.3 The Contractor shall also submit any other notices which are required by the Contract, and
supporting particulars for the claim, all as relevant to such event or circumstance.

G5.4 The Contractor shall keep such contemporary records as may be necessary to substantiate
any claim, either on the Site or at another location acceptable to the Project Manager. Without
admitting the Bank’s liability, the Project Manager may, after receiving any notice under this GCC
Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary
records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if
instructed) submit copies to the Project Manager.

G5.5 Within forty-two (42) days after receiving a claim or any further particulars supporting a
previous claim, or within such other period as may be proposed by the Project Manager and
approved by the Contractor, the Project Manager shall respond with approval, or with disapproval
and detailed comments. The Project Manager may also request any necessary further particulars,
but shall nevertheless give his response on the principles of the claim within the above defined time
period.

G5.6 Within the above defined period of forty-two (42) days, the Project Manager shall proceed
in accordance with GCC clause C5.5 (Determinations) to agree or determine (i) the extension (if
any) of the Time for Completion (before or after its expiry) in accordance with GCC clause G4
(Extension of Time for Completion), and/or (ii) the additional payment (if any) to which the
Contractor is entitled under the Contract.

G5.7 Each Payment Certificate shall include such additional payment for any claim as have been
reasonably substantiated as due under the relevant provision of the Contract. Unless and until the
particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only
be entitled to payment for such part of the claim as he has been able to substantiate.

G5.8 If the Project Manager does not respond within the timeframe defined in this GCC Clause,
either Party may consider that the claim is rejected by the Project Manager and any of the Parties
may refer it to the dispute settlement procedure in accordance with GCC clause Q1 (Dispute
Settlement)

G5.9 The requirements of this GCC Clause are in addition to those of any other GCC clause
which may apply to a claim. If the Contractor fails to comply with this or another GCC clause in
relation to any claim, any extension of time and/or additional payment shall take account of the
extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim,
unless the claim is excluded under the second paragraph of this GCC clause.

G6 Rate of Progress
G6.1 If, at any time:

(a) actual progress is too slow to complete within the Time for Completion, and/or

(b) progress has fallen (or will fall) behind the current programme under GCC clause G3 (Programme),

other than as a result of a cause listed in GCC clause G4 (Extension of Time for Completion), then the Project Manager may instruct the Contractor to submit, under GCC clause G3 (Programme), a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

G6.2 Unless the Project Manager notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's personnel and/or goods, at the risk and cost of the Contractor. If these revised methods cause the Bank to incur additional costs, the Contractor shall subject to notice under GCC clause B3 (Bank’s Claims) pay these costs to the Bank, in addition to delay damages (if any) under GCC clause G7 (Delay Damages).

G6.3 Additional costs of revised methods, including acceleration measures, instructed by the Project Manager to reduce delays resulting from causes listed under GCC clause G4 (Extension of Time for Completion) shall be paid by the Bank, without generating, however, any other additional payment benefit to the Contractor.

G7 Delay Damages
G7.1 If the Contractor fails to comply with GCC clause G2 (Time for Completion), the Contractor shall subject to notice under GCC clause B3 (Bank’s Claims) pay delay damages to the Bank for this default. These delay damages shall be the sum stated in the SCC (Section D, Clause 6), which shall be paid for every day that shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this GCC clause shall not exceed the maximum amount of delay damages (if any) stated in the SCC.

G8 Suspension of Work
G8.1 The Project Manager may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

G8.2 The Project Manager may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following GCC clauses G8 (Consequences of Suspension), G9 (Payment for Plant and Materials in event of Suspension) and G10 (Prolonged Suspension) shall not apply.

G9 Consequences of Suspension
G9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Project Manager’s instructions under GCC clause G8 (Suspension of Work) and/or from resuming the work, the Contractor shall give notice to the Project Manager and shall be entitled subject to GCC clause G5 (Contractor’s Claims) to:
Unless otherwise agreed, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as the Project Manager shall instruct.

H1.3 In considering the results of the Tests on Completion, the Project Manager shall make allowances for the effect of any use of the Works by the Bank on the performance or other characteristics of the Works. As soon as the Works, or a section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these tests to the Project Manager.

H2 Delayed Tests
H2.1 If the Tests on Completion are being unduly delayed by the Bank, GCC clause F4.5 (Testing) and/or GCC clause I3 (Interference with Tests on Completion) shall be applicable.

H2.2 If the Tests on Completion are being unduly delayed by the Contractor, the Project Manager may by notice require the Contractor to carry out the Tests within twenty-one (21) days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period and give notice to the Project Manager.

H2.3 If the Contractor fails to carry out the Tests on Completion within the period of twenty-one (21) days, the Bank’s personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

H3 Retesting
H3.1 If the Works, or a Section, fail to pass the Tests on Completion, GCC Clause F5 (Rejection) shall apply, and the Project Manager or the Contractor may require the failed Tests, and tests on Completion on any related work, to be repeated under the same terms and conditions.

H4 Failure to Pass Tests on Completion
H4.1 If the Works, or a section, fail to pass the Tests on Completion repeated under GCC clause H3 (Retesting), the Project Manager shall be entitled to:

(a) order further repetition of Tests on Completion under GCC clause H3;

(b) if the failure deprives the Bank of substantially the whole benefit of the Works or section, reject the Works or section (as the case may be), in which event the Bank shall have the same remedies as are provided in GCC clause J4 (Failure to Remedy Defects); or

(c) issue a Taking-Over Certificate, if the Bank so requests.

H4.2 In the event of GCC clause H4.1(c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Bank as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Bank may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under GCC clause B3 (Bank’s Claims) and GCC clause C5 (Determinations).
I2.3 After the Project Manager has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

I2.4 If the Contractor incurs Cost as a result of the Bank taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Project Manager and (ii) be entitled subject to GCC clause G5 (Contractor’s Claims) to payment of any such Cost, which shall be included in the Contract Price. After receiving this notice, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine this Cost.

I2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or section (as the case may be) as a whole. The Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under GCC clause G7 (Delay Damages), and shall not affect the maximum amount of these damages.

I3 Interference with Tests on Completion

I3.1 If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Bank is responsible, the Bank shall be deemed to have taken over the Works or section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

I3.2 The Project Manager shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Project Manager shall require the Tests on Completion to be carried out by giving fourteen (14) days’ notice and in accordance with the relevant provisions of the Contract.

I3.3 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Project Manager and shall be entitled subject to GCC clause G5 (Contractor’s Claims) to:

(a) an extension of time for any such delay, if completion is or will be delayed, under GCC clause G4 (Extension of Time for Completion), and

(b) payment of any such Cost, which shall be included in the Contract Price.

I3.4 After receiving this notice, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine these matters.

J Defects Liability
J4.2 If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under GCC clause J2 (Cost of Remediing Defects), the Bank may (at its option):

(a) carry out the work itself or by others, in a reasonable manner and at the Contractor’s cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to GCC clause B3 (Bank’s Claims) pay to the Bank the costs reasonably incurred by the Bank in remedying the defect or damage;

(b) require the Project Manager to agree or determine a reasonable reduction in the Contract Price in accordance with GCC clause C5 (Determinations); or

(c) if the defect or damage deprives the Bank of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Bank shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

J5 Removal of Defective Work
K5.1 If the defect or damage cannot be remedied expeditiously on the Site and the Bank gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

J6 Further Tests
K6.1 If the work of remediing of any defect or damage may affect the performance of the Works, the Project Manager may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within twenty-eight (28) days after the defect or damage is remedied.

J6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under GCC clause J2 (Cost of Remediing Defects), for the cost of the remedial work.

J7 Right of Access
J7.1 Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this GCC clause, except as may be inconsistent with the Bank’s reasonable security restrictions.

J8 Contractor to Search
J8.1 The Contractor shall, if required by the Project Manager, search for the cause of any defect, under the direction of the Project Manager. Unless the defect is to be remedied at the cost of the Contractor under GCC clause J2 (Cost of Remediing Defects), the Cost of the search shall be agreed or determined by the Project Manager in accordance with GCC clause C5 (Determinations) and shall be included in the Contract Price.
K1.4 Except as otherwise stated in the Contract, wherever any Works are to be measured from records, these shall be prepared by the Project Manager. The Contractor shall, as and when requested, attend to examine and agree the records with the Project Manager, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

K1.5 If the Contractor examines and disagrees with the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Project Manager of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Project Manager shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Project Manager within fourteen (14) days after being requested to examine the records, they shall be accepted as accurate.

K2 Method of Measurement
K2.1 Except as otherwise stated in the Contract and notwithstanding local practice:

(a) measurement shall be made of the net actual quantity of each item of the Works, and

(b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable schedules.

K3 Evaluation
K3.1 Except as otherwise stated in the Contract, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above GCC clauses K1.1 and K1.2 and the appropriate rate or price for the item.

K3.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

K3.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

K3.4 However, a new rate or price shall be appropriate for an item of work if:

(a) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other schedule,

(b) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Contract Price,

(c) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and

(d) this item is not specified in the Contract as a “fixed rate item”;

or

(e) the work is instructed under GCC clause L3 (Variations and Adjustments),

(f) no rate or price is specified in the Contract for this item, and
(c) changes to the levels, positions and/or dimensions of any part of the Works,

(d) omission of any work unless it is to be carried out by others,

(e) any additional work, Plant, Materials or services necessary for the Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or

(f) changes to the sequence or timing of the execution of the Works.

L1.4 The Contractor shall not make any alteration and/or modification of the Works, unless and until the Project Manager instructs or approves a Variation.

L2 Value Project Managing

L2.1 The Contractor may, at any time, submit to the Project Manager a written proposal which (in the Contractor’s opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Bank of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Bank of the completed Works, or (iv) otherwise be of benefit to the Bank.

L2.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in GCC clause L3 (Variation Procedure).

L2.3 If a proposal, which is approved by the Project Manager, includes a change in the design of part of the Works, then unless otherwise agreed by both Parties:

   (a) the Contractor shall design this part,

   (b) GCC clauses D1.6(a), D1.6(b), D1.6(c), and D1.6(d) (Contractor’s General Obligations) shall apply, and

   (c) if this change results in a reduction in the contract value of this part, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

      a. such reduction in contract value, resulting from the change, excluding adjustments under GCC clause L4 (Adjustments for Changes in Legislation) and

      b. the reduction (if any) in the value to the Bank of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

L2.4 However, if amount (a) is less than amount (b) there shall not be a fee.

L3 Variation Procedure

L3.1 If the Project Manager requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

   (a) a description of the proposed work to be performed and a programme for its execution,

   (b) the Contractor’s proposal for any necessary modifications to the programme according to GCC clause G3 (Programme) and to the Time for Completion, and

   (c) the Contractor’s proposal for evaluation of the Variation.
M3.5 Unless stated otherwise in the SCC, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Project Manager in accordance with GCC clause M7 (Issue of Interim Payment Certificates), as follows:

(a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 per cent (30%) of the Contract Price less any advance payment; and

(b) deductions shall be made at the amortisation rate stated in the SCC of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when ninety (90) per cent (90%) of the Contract Price less any advance payment has been certified for payment.

M3.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works, or prior to termination under GCC N2 (Termination) GCC Q5 (Force Majeure) (as the case may be), the whole of the balance then outstanding shall immediately become due.

M4 Application for Interim Payment Certificates

M4.1 The Contractor shall submit a Statement in six copies to the Project Manager after the end of each month, in a form approved by the Project Manager, showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with GCC clause D16 (Progress Reports).

M4.2 The Statement shall include the following items, as applicable, which shall be expressed in the currencies in which the Contract Price is payable, in the sequence listed:

(a) the estimated contract value of the Works executed and the Contractor’s Documents produced up to the end of the month (including Variations but excluding items described in this GCC clause M4.2(b) to (g) below);

(b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with GCC clause L4 (Adjustments for Changes in Legislation);

(c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the SCC to the total of the above amounts, until the amount so retained by the Bank reaches the limit of Retention Money (if any) stated in the SCC;

(d) any amounts to be added for the advance payment (if more than one instalment) and to be deducted for its repayments in accordance with GCC clause M3 (Advance Payment);

(e) any amounts to be added and deducted for Plant and Materials in accordance with GCC Clause M6 (Plant and Materials intended for the Works);

(f) any other additions or deductions which may have become due under the Contract or otherwise, including those under GCC clause Q (Disputes and Law); and
(g) the deduction of amounts certified in all previous Payment Certificates.

M5 Schedule of Payments
M5.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

(a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of GCC clause M4.2(a) (Application for Interim Payment Certificates);

(b) GCC Clause M6 (Plant and Materials intended for the Works) shall not apply; and

(c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Project Manager may proceed in accordance with GCC clause C5 (Determinations) to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

M5.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within forty-two (42) days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

M6 Plant and Materials intended for the Works
M6.1 If this GCC clause applies, Interim Payment Certificates shall include, under GCC clause M4.2(e) (Application for Interim Payment Certificates), (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Works under GCC clause M4.2(a) (Application for Interim Payment Certificates).

M6.2 If the lists referred to in GCC clause M.6.3(b) a., or GCC clause M6.3(c) b. below are not included in the schedules, this GCC clause shall not apply.

M6.3 The Project Manager shall determine and certify each addition if the following conditions are satisfied:

(a) the Contractor has:

   a. kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and

   b. submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

   a. are those listed in the schedules for payment when shipped,
(b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Project Manager, the value of this work or obligation may be withheld until the work or obligation has been performed.

M7.4 The Project Manager may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Project Manager’s acceptance, approval, consent or satisfaction.

M8 Payment
M8.1 The Bank shall pay to the Contractor:

(a) the first instalment of the advance payment within forty-two (42) days after issuing the Letter of Acceptance or within twenty-one (21) days after receiving the documents in accordance with GCC clause D2 (Performance Security) and GCC clause M3 (Advance Payment), whichever is later;

(b) the amount certified in each Interim Payment Certificate within fifty-six (56) days after the Project Manager receives the Statement and supporting documents; or, at a time when the bank’s loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within fourteen (14) days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and

(c) the amount certified in the Final Payment Certificate within fifty-six (56) days after the Bank receives this Payment Certificate.

M8.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country specified in the Contract.

M9 Payment of Retention Money
M9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Project Manager for payment to the Contractor. If a Taking-Over Certificate is issued for a section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half fifty (50) percent (50%) of the proportion calculated by dividing the estimated contract value of the section or part, by the estimated final Contract Price.

M9.2 Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Project Manager for payment to the Contractor. If a Taking-Over Certificate was issued for a section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half fifty (50) percent (50%) of the proportion calculated by dividing the estimated contract value of the section by the estimated final Contract Price.

M9.3 However, if any work remains to be executed under GCC clause J (Defects Liability), the Project Manager shall be entitled to withhold certification of the estimated cost of this work until it has been executed.
(b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

M11.2 If the Project Manager disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Project Manager may reasonably require within twenty-eight (28) days from receipt of the said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Project Manager the final statement as agreed. This agreed statement is referred to in these conditions as the “Final Statement”.

M11.3 However if, following discussions between the Project Manager and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Project Manager shall deliver to the Bank (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under GCC clause Q (Disputes and Law), the Contractor shall then prepare and submit to the Bank (with a copy to the Project Manager) a Final Statement.

M12 Discharge
M12.1 When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

M13 Issue of Final Payment Certificate
M13.1 Within twenty-eight (28) days after receiving the Final Statement and discharge in accordance with GCC clause M11 (Application for Final Payment Certificate) and GCC clause M12 (Discharge), the Project Manager shall deliver to the Bank and to the Contractor, the Final Payment Certificate which shall state:

  (a) the amount which he fairly determines is finally due, and

  (b) after giving credit to the Bank for all amounts previously paid by the Bank and for all sums to which the Bank is entitled, the balance (if any) due from the Bank to the Contractor or from the Contractor to the Bank, as the case may be.

M13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with GCC clause M11 (Application for Final Payment Certificate) and GCC clause M12 (Discharge), the Project Manager shall request the Contractor to do so. If the Contractor fails to submit an application within a period of twenty-eight (28) days, the Project Manager shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

M14 Cessation of Bank’s Liability
M14.1 The Bank shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

  (a) in the Final Statement, and also
GCC clause N2.1(f). However, lawful inducements and rewards to Contractor’s personnel shall not entitle termination.

N2.2 In any of these events or circumstances, the Bank may, upon giving fourteen (14) days’ notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of GCC clause N2.1(e) or (f), the Bank may by notice terminate the Contract immediately.

N2.3 The Bank’s election to terminate the Contract shall not prejudice any other rights of the Bank, under the Contract or otherwise.

N2.4 The Contractor shall then leave the Site and deliver any required goods, all Contractor’s Documents, and other design documents made by or for him, to the Project Manager. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

N2.5 After termination, the Bank may complete the Works and/or arrange for any other entities to do so. The Bank and these entities may then use any goods, Contractor’s Documents and other design documents made by or on behalf of the Contractor.

N2.6 The Bank shall then give notice that the Contractor’s Equipment and temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Bank, these items may be sold by the Bank in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

N3 Valuation at Date of Termination

N3.1 As soon as practicable after a notice of termination under GCC clause N2 (Termination by Bank) has taken effect, the Project Manager shall proceed in accordance with GCC clause C5 (Determinations) to agree or determine the value of the Works, goods and Contractor’s Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

N4 Payment after Termination

N4.1 After a notice of termination under GCC clause N2 (Termination by Bank) has taken effect, the Bank may:

(a) proceed in accordance with GCC clause B3 (Bank’s Claims),

(b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Bank, have been established, and/or

(c) recover from the Contractor any losses and damages incurred by the Bank and any extra costs of completing the Works, after allowing for any sum due to the Contractor under GCC clause N3 (Valuation at Date of Termination). After recovering any such losses, damages and extra costs, the Bank shall pay any balance to the Contractor.

N5 Bank’s Entitlement to Termination for Convenience
(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank’s personnel, or any of their respective agents, and

(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank’s personnel, their respective agents, or anyone directly or indirectly employed by any of them.

O1.2 The Bank shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank’s personnel, or any of their respective agents.

O2 Contractor’s Care of the Works

O2.1 The Contractor shall take full responsibility for the care of the Works and goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under GCC clause 11 (Taking Over of the Works and Sections) for the Works, when responsibility for the care of the Works shall pass to the Bank. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any section or part of the Works, responsibility for the care of the section or part shall then pass to the Bank.

O2.2 After responsibility has accordingly passed to the Bank, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

O2.3 If any loss or damage happens to the Works, goods or Contractor’s Documents during the period when the Contractor is responsible for their care, the Contractor shall rectify the loss or damage at the Contractor’s risk and cost, so that the Works, goods and Contractor’s Documents conform with the Contract.

O2.4 The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

O3 Limitation of Liability

O3.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in GCC clause G7 (Delay Damages); GCC clause J2 (Cost of Remedyng Defects); GCC clause N4 (Payment after Termination); GCC clause N9 Payment on Termination; GCC clause Q1 (Indemnities); and GCC clause N6 (Intellectual Property Rights).
O3.2 The total liability of the Contractor to the Bank, under or in connection with the Contract other than under GCC clause N1 (Indemnities) and GCC Clause N6 (Intellectual Property Rights), shall not exceed five (5) times (5x) the Contract Price.

O3.3 This GCC clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

O4 Insurance

O4.1 The Contractor shall at its own expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Bank, who should not unreasonably withhold such approval.

(a) Insurance for Works and Contractor’s Equipment

Insure the Works, Plant, Materials and Contractor’s Documents for not less than the full reinstatement costs including the costs of demolition, removal of debris and professional fees and profit.

(b) Insurance against Injury to Persons and Damage to Property

Insure against any loss, damage, death or bodily injury which may occur to any physical property (including loss and damage to the Bank’s property) (except things insured under GCC clause O4.1(a) (Insurance for Works and Contractor’s Equipment) or to any person (except persons insured under GCC clause O4.1(c) (Insurance for Contractor’s Personnel).

This insurance shall be for a limit per occurrence of not less than the amount stated in the SCC, with no limit on the number of occurrences.

(c) Insurance for Contractor’s Personnel

Insure against liability for claims, damages, losses and expenses (including legal fees and expense) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor’s personnel.

This shall cover the Bank and Project Manager against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other person of the Contractor’s personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Bank or of the Bank’s personnel.

O4.2 The Contractor shall maintain the insurance policies to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate and for loss or damage caused by the Contractor in the course of any other operations (including those under GCC clause J (Defects Liability)).
O5.5 Each Party shall at all-time use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

P. Intellectual Property and Protection of Information

P1 Intellectual Property Rights
P1.1 All Intellectual Property Rights in all documents, reports, materials, design, drawings specifically created for the Bank by the Contractor pursuant to this Contract (the “Deliverables”) shall be the property of the Bank. The Contractor may retain copies of the Deliverables provided that any material which contains Bank specific information shall not be used by the Contractor for purposes unrelated to this Contract, without the prior written authorization of the Bank.

P1.2 If a third party asserts a claim against the Bank that any documents, reports, materials, plant, design drawings, equipment, deliverable or other product (“Product”) that the Contractor provides to the Bank under this Contract infringes third party’s Intellectual Property Rights, the Contractor will defend the Bank against that claim at the Contractor’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 Contractor, provided that the Bank:

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

(b) subject to the rights, immunities, privileges or exemption accorded to the Bank under the Agreement establishing the African Development Bank, allows the Contractor to control, and reasonably cooperates with the Contractor in, the defense and any related settlement negotiations.

P1.3 If a claim is made under GCC clause P1.2, the Bank shall inform the Contractor for the Contractor 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 Contractor determines that none of the foregoing alternatives is reasonably available, then on the Contractor’s written request, the Bank shall return the Product to the Contractor and discontinue its use. The Contractor shall then give the Bank a prorated refund of the cost of the Product based on the Contract period beginning on the date of the Taking-Over Certificate.

P1.4 The Contractor 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 Contractor represents and warrants that it is not aware of any threatened or pending legal action with respect to the Product provided by the Contractor 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.

P2 Bank’s Use of Contractor's Documents
P2.1 As between the Parties, the Contractor shall retain the Intellectual Property Rights in the Contractor’s Documents and other design documents made by (or on behalf of) the Contractor.
Q1.4 Notwithstanding the approval by the Bank of (i) the assignment by the Contractor, in whole or in part, of this Contract; or (ii) the subcontracting of this Contract to a third party by the Contractor, such approval in each such case shall be without prejudice to the Contractor’s obligations and liabilities hereunder and the Contractor shall not be permitted to subcontract the Works specified in the SCC (clause F.10).

Q1.5 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.

Q1.6 The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the SCC:

(a) the Contractor shall not be required to obtain consent to Contractors solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;

(b) the prior consent of the Project Manager shall be obtained to other proposed Subcontractors;

(c) the Contractor shall give the Project Manager not less than twenty-eight (28) days’ notice of the intended date of the commencement of each Subcontractor’s work, and of the commencement of such work on the Site; and

(d) each subcontract shall include provisions which would entitle the Bank to require the subcontract to be assigned to the Bank.

Q1.7 The Contractor shall ensure that the requirements imposed on the Contractor by GCC clause P2 (Confidential Information) apply equally to each Subcontractor.

Q2 Counterparts
Q2.1 The Contract may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

Q3 Severability
Q3.1 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.

Q4 Waiver
Q4.1 No waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

Q5 Entire Agreement
Q5.1 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.
Reference: ADB/ITB/ZWFO/2014/0019, REFURBISHMENT OF THE BANK'S HOUSE IN MT PLEASANT, HARARE, ZIMBABWE
SECTION 3
SPECIAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Communication (GCC Clause A2)

GCC A2.1 All communication shall be in writing and delivered by hand (against receipt, sent by mail or courier, or transmitted using any of the following systems of electronic transmission:

[insert permitted systems of electronic transmission]

All communication shall, be sent to the following address:
For the Bank: [insert position of Bank’s representative, postal address and fax number]
For the Contractor: [insert position of Contractor’s representative, postal address and fax number]

GCC A2.3 The ruling language of the Contract shall be: English.

B. PROJECT MANAGER

2. Project Manager’s Duty and Authority (GCC Clause C1)

GCC C1.1 The Project Manager is:
[insert detail name and contact details of the Project Manager]

GCC C1.3 The Project Manager is required to obtain approval from the Bank before taking any of the following actions:

[__________]

C. THE CONTRACTOR

3. Performance Security (GCC Clause D2)

GCC D2.1 Performance Security shall be denominated in the currency of the Contract for an amount equal to …% of the Contract Price: [insert amount].

4. Progress Reports (GCC Clause D16)

GCC D16.1 The Contractor shall submit to the Bank progress reports.
7. Contract Price (GCC Clause M1)

GCC M1
The Contract Price is: __________
The Contract price includes: .

8. Advance Payment (GCC Clause M3)

GCC M3.1
The Contractor shall provide, prior to an advance payment under the Contract, an advance payment guarantee in the following amount: [insert amount and currency for advance payment guarantee, number and timing of installments (if more than one)]

9. Retention Money (GCC Clause M9)

GCC M9.1
The percentage of retention money is...10% of the Contract Price. The retention money will be deducted from each application for interim payment certificate until the maximum amount of 10% is retained by the Bank.

F. CONTROL OF THE CONTRACT

10. Assignment and Subcontracting (GCC Clause Q1)

GCC Q1.4
The Contractor shall not subcontract 100% of its obligations under the Contract.

[If relevant, insert details of any goods, services or works under the contract which the Contractor should not subcontract. This could be a key element of the contract which the Contractor must provide itself]

G. DISPUTES AND LAW

11. Dispute Settlement (GCC Clause R1)

GCC R1.4
The arbitration shall take place in [.........]
The arbitral proceedings shall be in the English language.
SCHEDULE B

CONTRACTOR’S PROPOSAL
SCHEDULE D

PRICING / PAYMENT SCHEDULE
SCHEDULE F

CONTRACTOR’S PERFORMANCE EVALUATION FORM