

ASIAN DEVELOPMENT BANK

Kazakhstan Resident Mission
Nur-Sultan Office
12 Samal Microdistrict, Astana Tower Business Center, 20th Floor
Nur-Sultan 010000, Kazakhstan

CONTRACT NO. -/

Date:

Contractor:

Address:

Reference: Quotation//proposal dated _____

Date of Commencement of Works/Services:

Date of Completion of Works/Services:

Specifications (Works/Services/Items to be Supplied):

Description:

Attachments:

Appendix 1 for the detailed Statement of Work.

Appendix 2 for the Service Level Agreement agreed to by the parties.

Price and Payment:

a) Total Contract Price

Description	Price USD
Data Room Works – Lump Sum	
Contract Total Lump Sum	

b) The Contract Price shall be deemed to be fixed and shall constitute the full compensation to the Contractor for the works/services/items as specified above and shall cover, unless otherwise specified, all costs, labor, materials, spare parts, supplies, equipment, transportation, supervision, and other charges of any kind incurred by the Contractor.

c) Payment Schedule

- i. 80% monthly progress payment based on fit-out,
- ii. 10% upon full testing and commissioning, including all systems integration, and
- iii. 10% on completion of punch list items.

A retention of 10% will be deducted from each payment and retained by ADB after hand-over and will be released after the one (1) year defects liability period and acceptance of the entire Works by ADB.

d) Payment Terms

- i. CONTRACTOR shall submit invoice for payment for any part of the Works completed in three (3) copies to OAOD-FS showing the amount to which the CONTRACTOR considers to be entitled, together with the supporting documents which may include the Partial Turn Over and Acceptance of the Partial Works Report signed by the Project/Construction Manager, OAOD-FS or his/her representative, and the deduction of the amounts certified in all previous Payment Certificates issued by the CONTRACTOR to ADB (KARM).
 - ii. ADB shall pay the amount stated in the CONTRACTOR's Invoice for Payment within 30 days from the date of receipt of the said invoice in a form satisfactory to ADB.
 - iii. When submitting the Final Invoice for Payment, the CONTRACTOR shall submit a written discharge which confirms that the total of the Final Invoice for Payment represents full and final settlement of all monies due to the CONTRACTOR under the whole Works.
 - iv. The Final Payment Certificate shall be issued by the CONTRACTOR within 30 calendar days after receiving the final payment from ADB.
 - v. The Contract Price shall not be adjusted for changes in the cost of labor, materials, and other matters.
 - vi. The CONTRACTOR shall consign shipment of materials, equipment, and related components to ADB to avail duty free and tax exemptions.
- e) ADB is exempt from all taxes including Value Added Tax. The above contract price is net exclusive of Value Added Tax¹.

Terms and Conditions:

The Contractor is hereby requested to execute the Works under the terms and conditions set out in this Contract and in the attached pages.

TERMS AND CONDITIONS

1. General

1.1 This Contract, including these general terms and conditions, and any special conditions, specifications, and other documents attached hereto, constitute the entire agreement between the parties.

The following documents shall be deemed to form and be read and construed as part of this Contract, viz:

- a. Work Performance Statement (**Appendix 1**)
- b. Service Level Agreement (**Appendix 2**)
- c. Contractor's Proposal (**Appendix 3**)
- d. Standards of Conduct (**Appendix 4**)
- e. Confidentiality Undertaking (**Appendix 5**)

1.2 This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the above Contract documents, then the documents shall prevail in the order listed above.

2. Definitions

2.1 "ADB" means Asian Development Bank.

2.2 "The Contractor" means the bidder who has been accepted by ADB, and includes the Contractor's legal personnel representatives, successors, and assignees.

¹ Applicable only if ADB has a Host Country Agreement with the country where the Field Office is located.

2.3 "The Contract Price" means the unit prices or lump sums, or other sums named in the Contract subject to such addition thereto or deduction therefrom as may be made under the provisions contained in the Contract.

2.4 "Work/Service" means the provision of equipment, supplies, labor, supervision, transportation installation, operation, maintenance, and dismantling of the facilities necessary and/or convenient to the successful completion of the Work/Service described in the applicable provisions of the Contract and covering offer of the Contractor as accepted by ADB.

2.5 "Contract" means those several documents listed in the Contract and constituting the minimum requirements for the execution of the Services by the Contractor.

3. **Acknowledgement and Acceptance of Contract**

The Contractor by signing the Contract and returning it to ADB, signifies acceptance of the Contract and of the terms and conditions governing the Contract.

4. **Changes**

ADB may make any change in the specifications including additions to or deletions from, the quantities of the Work/Service originally contracted. If any such change affects the Contract Price or time of performance hereunder, an equitable adjustment shall be made by ADB to the amount or to the time of performance by written variation order.

5. **Termination**

5.1 ADB may at any time, at its option, terminate this Contract, in whole or in part, by giving written notice thereof to the Contractor on the address stated on the face hereof. In the event of such termination, the amount due under the Contract shall be subject to equitable adjustment.

5.2 If the Contractor becomes insolvent, bankrupt or gives ADB reasonable evidence of its inability to complete the Services as specified or fails to correct any non-conformity in the Services or performs in bad faith by willfully not observing the terms and conditions of this Contract, ADB may terminate this Contract in whole or in part.

5.3 ADB may terminate this Contract, immediately in the case of paragraphs (a) and (b) below, if ADB determines that the CONTRACTOR has committed unlawful acts during the procurement of the Service or implementation of the Contract. Unlawful acts include, but are not limited to, the following:

- (a) if ADB determines that the Contractor has failed to observe or comply with the Standards of Conduct (**Appendix 4** hereof) or that fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in this Contract have been given or received in connection with the selection process or in the Contract's execution;
- (b) if ADB identifies significant integrity or reputational risks through any due diligence review process;
- (c) forging or using forged documents;
- (d) using adulterated materials, means or methods; or using production methods contrary to the rules of science or the trade; and
- (e) any other act analogous to the foregoing.

5.4 ADB may suspend the performance of the whole or part of the Contract, or the disbursement of funds under the Contract, for a period of time as ADB deems necessary if ADB becomes aware that the Contractor may have breached the Standards of Conduct and ADB decides, in its sole discretion, to conduct an enquiry into such potential brief of the Standards of Conduct.

6. Assignment

Any assignment of this Contract or of any rights hereunder, in whole or in part without the prior written consent of ADB shall be void.

7. Language

All communications and documents relating to the Contract shall be in English.

8. Special Status of ADB

The Contractor understands and recognizes the special character of the ADB as an international development finance institution established under the Agreement Establishing the Asian Development Bank (ADB Charter), a multilateral treaty under public international law to which [Host Country] is a signatory and member. Under the ADB Charter and [Host Country Agreement], where applicable, the ADB enjoys certain immunities, exemptions, and privileges. The Contractor undertakes to respect and observe, or cause to be observed, such immunities, exemptions, and privileges.

9. Tax Exemption

Under the Charter and the Host Country Agreement, where applicable, ADB and its assets, property, income, operation, and transactions are exempted from any obligation to pay, withhold or collect any tax or duty.

10. Liability and Indemnification

9.1 The Contractor shall be liable for and shall hold ADB harmless and indemnify it against all claims upon ADB, and the costs thereof, arising out of (i) any injury to or death of third parties or (ii) any damage to property of ADB which have resulted directly or indirectly from negligence or any willful act or omission of the Contractor or any person under the employment, supervision or control of the Contractor, or otherwise engaged by the Contractor to perform the Services.

9.2 The Contractor shall be liable for, and shall hold ADB harmless and indemnify it against all claims upon ADB, and the costs thereof, arising out of (i) any injury to or death of the Contractor's personnel or (ii) any damage to the property, equipment, or materials of the Contractor.

9.3 Except for reasons specified in Section 14 (Force Majeure) of the attached terms and conditions, if the Contractor fails to deliver any or all the work/service within the time period specified in the Contract, ADB may, without prejudice to any other remedy it may have under the Contract, deduct from the Contract value, as liquidated damages, a sum equivalent to one-half percent (0.5%) of the Contract value for each day of delay in delivery subject to a maximum amount of ten percent (10%) of the Contract value.

11. Independent Contractor

Nothing contained in this Contract shall be construed as establishing or creating the relationship of master and servant, employer and employee or principal and agent between ADB and the Contractor or his employees or agents or other persons engaged by the Contractor to perform any of the Services.

12. Standards and Rules

11.1 The Contractor agrees to perform the Services in accordance with the safety standards of ADB and to comply strictly with all the work and safety rules and regulations of ADB.

11.2 Contractor shall not pay any commissions, fees, or grant any rebates to any ADB staff or their dependents, nor favor ADB staff or their dependents with gifts or favors or enter any business arrangements with employees of ADB (other than as representatives of ADB) except with the prior written approval of ADB.

13. Settlement of Disputes

12.1 ADB and the Contractor shall exert effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of this Contract.

12.2 Should effort to resolve disputes under the preceding paragraph fail, either party shall commence arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. The arbitration shall be in accordance with the Rules of the Singapore International Arbitration Centre in effect at the time of the arbitration, except as they may be modified herein or by mutual written agreement of the parties. The seat of the arbitration shall be Singapore, and it shall be conducted in the English language. The arbitration shall be conducted by one arbitrator. The arbitral tribunal shall not be authorized to take or provide, and each party agrees that it shall not seek from any judicial authority, any interim measures of protection or pre award relief against the other party, any provisions of the Rules of the Singapore International Arbitration Centre notwithstanding.

12.3 Notwithstanding unresolved disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Services.

14. **Force Majeure**

The Contractor shall not be liable to ADB for delays due to acts of war, civil commotions, fire and operation of the forces of nature, provided such damage or delay is not due to the Contractor's failure to take adequate precautions.

15. **Confidentiality Undertaking**

15.1. Each party shall treat the Agreement and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Agreement or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other.

15.2. The obligations expressed in sub-Clause 15.1. above shall not apply to any information which:

- (i) Is or subsequently comes into the public domain otherwise than by breach of this Clause.
- (ii) Is already in the possession of the receiving party without an accompanying obligation of confidentiality.
- (iii) Is obtained from a third party who is free to divulge the same; and
- (iv) Is independently and lawfully developed by the recipient or its sub-Contractor outside the scope of the Contract.

15.3. So far as it may be necessary for the performance of the Agreement or for the conduct of the Works subject of the Agreement, each party may divulge any information to be kept confidential under sub-Clause 1 of this Clause to their employees, agents and approved sub-Contractors, if any, on a "need to know" basis but undertake that they will ensure compliance by such employees, agents, and sub-Contractors with the obligations as to confidentiality expressed in this Clause and will be responsible to the other party for any failure by any employee, agent or sub-Contractor to comply with such obligations whether such employee, agent or sub-Contractor was aware of them or not.

15.4 The provisions of this Clause shall continue in perpetuity.

15.5. Contractor shall execute the attached Confidentiality Undertaking (**Appendix 5**).

16. **Corrupt, Fraudulent, Coercive and Collusive Practices**

16.1 For the purposes of this section, the terms above shall have the following meaning:

- (a) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
 - (b) "fraudulent practice" is 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.
 - (c) "coercive practice" is 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.
 - (d) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- 16.2 ADB, bidders, manufacturers, or distributors, and the Contractor shall observe the highest standard of ethics during the institutional procurement exercises of ADB and implementation of the contract.
- 16.3 ADB's Anticorruption Policy requires Contractors under ADB-financed contracts, as well as their staff to observe the highest ethical standards. Firms, entities and individuals bidding for or participating in ADB's institutional procurement of Services and related goods, including but not limited to, Contractors and concessionaires, and their respective officers, employees and agents should report to the Office of Anticorruption and Integrity (OAI) suspected acts of fraud or corruption that they come to know during the bidding process and throughout negotiation or execution of a contract.
- 16.4 Pursuant to its Anticorruption policy, ADB:
- (a) will not award a procurement contract to a winning bidder that has directly or indirectly engaged in any corrupt, fraudulent, collusive or coercive practice in competing for the contract in question;
 - (b) may suspend the procurement process at any stage when there is sufficient evidence to support a finding that an employee, agent or representative of the bidders, Contractors and concessionaires has engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing an ADB-financed contract;
 - (c) will sanction a bidder, service contractor, concessionaire or its successor, if ADB at any time determines that such bidder, service contractor, concessionaire or its successor has, directly or indirectly, engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing, any contract for the institutional procurement of services. Sanctions include, but are not limited to, declaring such bidder, service contractor, concessionaire or its successor ineligible to participate in ADB-financed activities indefinitely or for a stated period of time except under such conditions as ADB deems appropriate; or reimbursement to ADB of costs associated with investigations and proceedings
 - (d) will take appropriate actions to manage conflicts of interest including, but not limited to, rejecting a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.
- 16.5 The Contractor agrees to be bound by ADB's Anticorruption Policy as outlined above.
- 16.6 The Contractor shall permit ADB to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by ADB, if so required by ADB.

17. Performance Security

- 17.1 To secure performance of its obligations under the Contract, the CONTRACTOR shall post sufficient security worth at least 10% of the contract value. The proceeds of the Performance Security shall be payable to the ADB as compensation for any loss

resulting from the CONTRACTOR's failure to complete its obligations under this Contract.

- 17.2 The CONTRACTOR shall submit the performance security within fifteen (15) calendar days from receipt of the Notice of Award from ADB.
- 17.3 ADB shall discharge and return the performance security to the CONTRACTOR not later than thirty (30) days following the date of complete performance of the CONTRACTOR's obligations under the Contract, including warranty obligations, and upon issuance by the ADB of a certification to that effect.
- 17.4 ADB shall have the right to unilaterally call the Performance Security when ADB determines that:
- (a) The CONTRACTOR, in violation of or contrary to its warranties under this Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under this Contract; or
 - (b) The CONTRACTOR breached the Contract and failed to remedy the breach, if ADB deems such breach remediable, within seven [7] calendar days from receipt of notice from ADB.

18. General Liability Insurance and Indemnity

- 18.1. Before commencing performance, the CONTRACTOR shall be required to acquire Comprehensive General Liability Insurance taking into account such conditions acceptable to ADB, including, but not limited to the following:
- (a) The CONTRACTOR shall be liable for and shall indemnify and hold ADB harmless against the costs of claims against ADB arising out of injury to or death of any person, or any loss of or damage to property, including the property of ADB, due to the negligence of the CONTRACTOR or person's acting for the CONTRACTOR.
 - (b) The face value of the insurance shall not be less than _____ for each occurrence, and the insurance shall be automatically renewed after the face value has been expended and/or validity has expired.

19. Good Social Management Certificate (GSMC)

- 19.1 The CONTRACTOR shall perform its obligations under this Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders of competent government agencies or authorities concerning the employees of the CONTRACTOR engaged in performing the Services.
- 19.2 The CONTRACTOR shall submit to ADB the Good Social Management Certificate, confirming its compliance with paragraph 19.1 above, [within fifteen calendar days] from the effective date of the Contract, which shall remain valid during the effectivity of the Contract.
- 19.3 The CONTRACTOR shall indemnify and hold ADB free and harmless from any and all claims made by the CONTRACTOR's personnel under [Host Country] labor laws and other related legislation, including but not limited to, the minimum wage law.

20. Governing Law: This Contract shall be governed by English law.

21. USE OF ADB NAME. The Contractor shall not use ADB's name in publicity releases or advertising during and after the terms of this Contract without the prior written consent of the ADB.

CONFORME:

NAME OF CONTRACTOR

ASIAN DEVELOPMENT BANK