USER GUIDE FOR PROCUREMENT OF INFORMATION TECHNOLOGY PRODUCTS AND SERVICES

STANDARD BIDDING DOCUMENT

DECEMBER 2021

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For projects governed by Procurement Regulations for ADB Borrowers:
Goods, Works, Nonconsulting and Consulting Services (2017)

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Notes:

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This document applies to projects governed by the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).

Contents

Abbreviations	v
Introduction.....	1
The Bidding Process	2
Bidding Procedures.....	5
Invitation for Bids	7

SBD IT: Single-Stage Bidding Procedure

Section 1 Instructions to Bidders (ITB)	13
This section specifies the procedures to be followed by Bidders in the preparation and submission of their Bids, and the procedures to be followed by the Purchaser on the submission, opening, and evaluation of bids and on the award of contract.	
Section 2 Bid Data Sheet (BDS).....	39
This section consists of provisions that are specific to each procurement and supplements the information or requirements included in Section 1 (Instructions to Bidders).	
Section 3 Evaluation and Qualification Criteria (EQC)	47
This section contains the criteria to determine the Most Advantageous Bid and the qualifications of the Bidder to perform the contract if the bidding were not preceded by a prequalification exercise.	
Section 4 Bidding Forms (BDF).....	62
This section contains the forms to be completed by the Bidder and submitted as part of its Bid if the bidding were not preceded by a prequalification exercise.	
Section 5 Eligible Countries (ELC)	92
This section contains the list of eligible countries.	
Section 6 Schedule of Requirements (SOR).....	94
This section contains the List of IT Products and Services, Delivery and Completion Schedule, Technical Specifications, and Drawings.	
Section 7 General Conditions of Contract (GCC)	99
This section contains the general clauses to be applied in all contracts. These Conditions are subject to the variations and additions set out in Section 8 (Special Conditions of Contract).	
Section 8 Special Conditions of Contract (SCC).....	118
This section contains provisions that are specific to each contract and that modify or supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.	

Section 9 Contract Forms (COF)125

This section contains forms that, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

SBD IT: Two-Stage Bidding Procedure

Section 1 Instructions to Bidders (ITB)132

This section specifies the procedures to be followed by Bidders in the preparation and submission of their Bids, and the procedures to be followed by the Purchaser on the submission, opening, and evaluation of bids and on the award of contract.

Section 2 Bid Data Sheet (BDS)166

This section consists of provisions that are specific to each procurement and supplements the information or requirements included in Section 1 (Instructions to Bidders).

Section 3 Evaluation and Qualification Criteria (EQC)176

This section contains the criteria to determine the Most Advantageous Bid and the qualifications of the Bidder to perform the contract if the bidding were not preceded by a prequalification exercise.

Section 4 Bidding Forms (BDF) 195

This section contains the forms to be completed by the Bidder and submitted as part of its Bid if the bidding were not preceded by a prequalification exercise.

Section 5 Eligible Countries (ELC)247

This section contains the list of eligible countries.

Section 6 Schedule of Requirements (SOR)249

This section contains the List of IT Products and Services, Delivery and Completion Schedule, Technical Specifications, and Drawings.

Section 7 General Conditions of Contract (GCC)264

This section contains the general clauses to be applied in all contracts. These Conditions are subject to the variations and additions set out in Section 8 (Special Conditions of Contract).

Section 8 Particular Conditions of Contract (SCC)332

This section contains provisions that are specific to each contract and that modify or supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

Section 9 Contract Forms (COF)343

This section contains forms that, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

Abbreviations

ADB	Asian Development Bank
BDF	bidding forms
BDS	bid data sheet
COF	contract forms
CON	historical contract nonperformance
DCS	delivery and completion schedule
ELC	eligible countries
ELI	eligibility form
EQC	evaluation and qualification criteria
EXP	experience form
GCC	general conditions of contract
ICC	International Chamber of Commerce
IFB	invitation for bids
Incoterms.....	international commercial terms
IT	information technology
ITB.....	instructions to bidders
LITS.....	list of IT products and services
O&M.....	operation and maintenance
OCB	open competitive bidding
PCC	particular conditions of contract
SBD	standard bidding document
SCC	special conditions of contract

Introduction

The Asian Development Bank (ADB) has adopted three procedures from which the Purchaser may select for the bidding of information technology (IT) Products and Services. The bidding procedures are as follows:

- (a) Single-Stage: One-Envelope
- (b) Single-Stage: Two-Envelope
- (c) Two-Stage

Accordingly, three types of Standard Bidding Documents (SBDs) for the procurement of information technology (IT) products and services have been prepared to facilitate the three bidding procedures. Detailed information on bidding procedures is given under the section “Bidding Procedures.”

This guide has been prepared to cover the single-stage: one envelope and two-stage types of SBDs for the procurement of IT Products and Services. The SBD has been designed to

- (a) simplify the Purchaser’s preparation of a specific Bidding Document for the procurement of IT Products and Services;
- (b) reduce bidders’ bidding time and effort;
- (c) facilitate and simplify the Purchaser’s evaluation and comparison of bids and contract award; and
- (d) minimize ADB’s time required for the prior review of the Bidding Document.

An important feature of the SBDs is that they can be used with minimum changes, as they do not contain explanations, footnotes, or examples that should not form part of the Bidding Document. The SBDs are only available in electronic format and can be found on the ADB website.

The purpose of this guide is to help purchasers prepare a Bidding Document based on the SBDs. This guide should be read in conjunction with various Guidance Notes provided by ADB.

The provisions in Section 1 (Instructions to Bidders) and Section 7 (General Conditions of Contract) must be used with their text unchanged. Any data and provisions that these sections require for a specific procurement and contract shall be included respectively in Section 2 (Bid Data Sheet) and Section 8 (Special [Particular] Conditions of Contract).

This guide includes a section on how to prepare the Invitation for Bids (IFB). The Purchaser should note that the IFB is neither a part of the Bidding Document nor a contract document.

ADB welcomes any feedback or experiences from both borrowers and bidders on the use of its SBD. For information on procurement under ADB-financed projects, contact

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The Bidding Process

The open competitive bidding (OCB) process includes six main phases: (i) advertisement and notification, (ii) preparing and issuing the Bidding Document, (iii) bid preparation and submission, (iv) bid opening, (v) bid evaluation, and (vi) contract award.

Advertisement and Notification

An Invitation for Bids (IFB) shall be advertised on the Asian Development Bank (ADB) website; on a freely and publicly accessible website in English; and in a newspaper of national circulation (at least in one English language newspaper, if available) or website in the borrower's country. A copy of the IFB shall be submitted to ADB for no-objection and for publication on the ADB website in accordance with Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).

For large or specialized contracts, ADB may additionally require that the IFB be advertised in well-known technical magazines or trade publications, or in newspapers of wide international circulation, with sufficient time to enable prospective Bidders to prepare and submit Bids.

Preparing and Issuing a Bidding Document

The Purchaser is responsible for preparing and issuing the Bidding Document for a specific contract.

The Bidding Document shall be prepared by the Purchaser based on the appropriate SBD issued or agreed by ADB, as this is a mandatory requirement for contracts to be financed by ADB.

When ADB's SBDs are used, the Purchaser shall prepare the Bidding Document using the published version of the SBD without changing, or adding text to the sections of the document that must be used without modification, which are Section 1 (Instructions to Bidders) and Section 7 (General Conditions of Contract). All information and data particular to each individual bidding process must be provided by the Purchaser in the following sections of the Bidding Document:

- Section 2 (Bid Data Sheet)
- Section 3 (Evaluation and Qualification Criteria)
- Section 4 (Bidding Forms)
- Section 5 (Eligible Countries)
- Section 6 (Schedule of Requirements)
- Section 8 (Special Conditions of Contract)
- Section 9 (Contract Forms)

The following directions should be observed by the Purchaser when finalizing the Bidding Document:

- In preparing the Bidding Document, the Purchaser should refer to this *User Guide for Procurement of Information Technology Products and Services* as it contains guidance and instructions for the Purchaser.
- Specific details, such as name of the Purchaser, address for bid submissions, qualification requirements, electronic procurement procedures, etc., should be provided in the spaces indicated by italicized notes in brackets.
- The “italicized notes” which give guidance and instructions for the Purchaser, except those that apply to forms to be filled out by Bidders, should be deleted from the actual Bidding Document.
- Where alternative clauses or text are given, the Purchaser shall select the most appropriate for the particular IT Products and Services and discard the unused clauses or text.
- The Purchaser shall allow Bidders sufficient time (generally not less than 6 weeks from the issuance or publication date of the Invitation for Bids or the date of availability of the Bidding Document, whichever is later), to study the Bidding Document, prepare complete and responsive bids, and submit their bids.

Bid Preparation and Submission

The Bidder is solely responsible for the preparation and submission of its Bid. During this stage, the Purchaser shall

- promptly respond to requests for clarifications from Bidders and amend the Bidding Document as needed; and
- amend the Bidding Document only with the prior approval of ADB.

Bid Opening

The Purchaser is responsible for the Bid Opening, which is a critical event in the bidding process. The Purchaser shall appoint experienced staff to conduct the Bid Opening, as inappropriate procedures at Bid Opening are usually irreversible and may lead to cancellation of the bidding process with consequent delays and waste of resources.

The Purchaser, in observance of best practices, shall perform the following checks:

- Conduct the Bid Opening, strictly following the procedures specified in the Instructions to Bidders (ITB) for all Bids received not later than the date and time of the bid submission deadline. The term “Bid Opening” should be understood in the context of the ITB because, as provided in the ITB, a Bid for which a Bid Withdrawal or Bid Substitution notice was received on time shall not be opened, but returned unopened to the Bidder. The sequence in which Bids are handled, opened, and recorded is crucial.
- Ensure that all Bids that were received on time are accounted for, before starting the Bid Opening, as Bids that are not opened and read out at Bid Opening shall not be considered further.
- Not reject any Bid at Bid Opening, except for late bids received after the date and time of the bid submission deadline. Technically, late bids should not reach the Bid Opening, but in certain cases a Bidder may attempt to submit its bid at the Bid Opening place after the deadline. This late bid shall also not be considered.
- Examine the Bids at Bid Opening in accordance with the provisions of the ITB. The Purchaser shall, however, verify at Bid Opening the validity of the documentation, such as Power of Attorney or other acceptable equivalent document as specified in the ITB, confirming the validity of a bid modification, bid withdrawal, or bid substitution, because a withdrawn or substituted bid shall not be opened and consequently not read out and, therefore, shall not be considered by the Purchaser. Similarly, a bid modification shall be opened, read out, and recorded to modify a Bid that was received on time.

Bid Evaluation and Contract Award

The Purchaser is responsible for bid evaluation and contract award. The Purchaser shall appoint experienced staff to conduct the evaluation of the Bids. Mistakes committed at bid evaluation may later prompt complaints from Bidders, requiring reevaluation of the Bids, with consequent delays and waste of resources.

The Purchaser, in observance of best practices, shall

- keep the bid evaluation process strictly confidential;
- reject attempts or pressures to distort the outcome of the evaluation, including fraud and corruption; and
- strictly apply only and all of the evaluation and qualification criteria specified in the Bidding Document.

Use of Electronic Procurement System

When an electronic procurement system is used, the applicable procedures of the bidding process such as (i) advertisement and notification; (ii) preparing and issuing the Bidding Document; (iii) bid preparation and submission; (iv) bid opening; (v) bid evaluation; and (vi) contract award, including the means of communication between the Purchaser and Bidders, shall be specified in the relevant clauses of Section 2 (Bid Data Sheet).

Bidding Procedures

ADB has adopted three procedures from which the Purchaser may select for the bidding of information technology (IT) products and services. The bidding procedures are as follows:

- (a) **Single-Stage: One-Envelope.** It is the main bidding procedure used for most of the procurement financed by ADB.
- (b) **Single-Stage: Two-Envelope.** It allows bids to be evaluated on purely technical and administrative grounds without reference to price.
- (c) **Two-Stage.** It allows the Purchaser to discuss first-stage technical bids with bidders and to revise the specifications, with price bids and revised technical bids to be submitted in the second stage.

Standard Bidding Document Using a Single-Stage Bidding Procedure

Single Stage procurement is suitable for straightforward IT Products and Services. If the Purchaser considers that value for money will be achieved by awarding the contract to the substantially responsive bidder offering the lowest evaluated bid price, the SBD for the Procurement of Goods will be appropriate. If the Purchaser considers that value for money will be achieved only by use of a point scoring methodology, to give greater importance to quality aspects in determining the bidder to be awarded the contract, the SBD for the Procurement of IT Products and Services will be appropriate. Single Stage Procurement is not suitable for complex systems, applications and transformational IT projects. Two-Stage procurement should be used for these.

Standard Bidding Document Using a Two-Stage Bidding Procedure

Under the Two-Stage bidding process, it is often the Purchaser's business and/or functional requirements that form the basis of the Bidding Documents, rather than the detailed technical specifications. In the first-stage bidding, the Purchaser solicits non-priced technical proposals to address these business/functional requirements. By way of a direct and structured dialogue with the Purchaser, each sufficiently responsive Bidder gains a clear and documented understanding of those aspects of its bid that (a) fulfill the Purchaser's requirements, (b) do not conform to the requirements, and/or (c) are missing. The Purchaser may also revise the specifications, especially to transform its business and/or functional requirements into detailed and up-to-date Technical Specifications based on the first-stage technical proposals and discussions with Bidders. Based on this bidder-specific and documented understanding, and any amendments to the Bidding Documents, the Purchaser will request each sufficiently responsive Bidder to submit a revised (updated) technical proposal and corresponding financial proposal, i.e., a complete, final, and priced bid. These second-stage bids are then handled and evaluated in essentially the same manner as a single-stage bid.

In addition to maintaining openness in the technological and/or implementation approaches and permitting interaction between the Purchaser and Bidders during the first stage, the Two-Stage bidding process can also save the Purchaser time in formally translating its business/functional requirements into (nonrestrictive)

technical requirements. While Two-Stage bidding may take longer, it allows the Purchaser and Bidders to correct any unforeseen issues, misunderstandings, or errors in the Bidding Document and their bids, respectively. This will improve the quality of the Bidding Document and bids, leading to a transparent and efficient bid evaluation process and smooth contract finalization and implementation (in the absence of major issues with the Bidding Document or winning bid that could not be adequately addressed in the bid evaluation). Therefore, Two-Stage bidding should lead to a higher quality and more efficient procurement outcome. However, if the Purchaser chooses to conduct a technical dialogue with Bidders during the first stage, the Purchaser must be fully prepared and diligently record understanding with each Bidder.

IT Products and Services that are most suited to Two-Stage bidding include the following:

- Complex business applications, (e.g., an integrated commercial banking system, a treasury management system, etc.)
- A system requiring extensive software development
- Complex information technologies (e.g., large-scale data processing equipment; systems including highly specialized equipment such as graphics workstations, plotters, photographic equipment like for advanced cadastres; systems requiring large-scale high-speed telecommunications)
- Systems involving extensive technical services for design, development, customization, installation, training, operations, and technical support
- A combination of the above

Invitation for Bids

The Invitation for Bids (IFB) provides information that enables potential Bidders to decide whether to participate. Apart from the essential items listed in the Standard Bidding Document, the IFB should also indicate any important bid evaluation criteria (e.g., the application of a domestic preference in bid evaluation) and qualification criteria (e.g., a requirement for a minimum level of experience in manufacturing or supplying a similar type of product for which the IFB is issued).

The IFB is not a part of the Bidding Document, and therefore it shall not be included in the Bidding Document.

The IFB shall be advertised on the ADB website; on a freely and publicly accessible website in English; and in a newspaper of national circulation (at least in one English language newspaper, if available) or website in the borrower's country. A copy of the IFB shall be submitted to ADB for no-objection and for publication on the ADB website in accordance with Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).

For large or specialized contracts, ADB may additionally require that the IFB be advertised in well-known technical magazines or trade publications, or in newspapers of wide international circulation, in sufficient time to enable prospective Bidders to prepare and submit Bids.

Standard Format for Invitation for Bids

[Letterhead of the purchaser]

Date
Loan/Grant No. and Title
Contract No. and Title
Deadline for Submission of Bids.....[insert closing date and time].....

1. The [insert name of the borrower or recipient] has received¹ financing from the Asian Development Bank (ADB) toward the cost of [insert name of the project], and it intends to apply part of the proceeds of this financing to payments under the contract² named above. Bidding is open to Bidders³ from eligible source countries of ADB.⁴
2. The [insert name of the purchaser] (“the Purchaser”) invites sealed bids from eligible Bidders³ for [insert description of IT Products and Services to be procured].⁵
3. Open competitive bidding will be conducted in accordance with ADB’s [insert appropriate bidding procedure]⁶ procedure and is open to all Bidders from eligible countries as described in the Bidding Document.⁷
4. Only eligible Bidders with the following key qualifications⁸ defined in the Bidding Document may participate in this bidding:
5. To obtain further information and inspect the Bidding Documents, Bidders should contact:
 [insert purchaser’s office]⁹
 [insert name of the officer]
 [insert postal address or street address, include zip code]
 [insert telephone number including country code]

¹ Substitute with “has applied for” if appropriate.

² Substitute “contracts” where bids are called concurrently for multiple contracts. Add the following as a new para. 2 and renumber paras. 2–8: “Bidders may bid for one or several contracts, as further defined in the Bidding Document. Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so provided those discounts are included in the Letter of Bid.”

³ Insert “prequalified” if the bidding is preceded by a prequalification exercise.

⁴ Insert if applicable: “This contract will be jointly financed by [insert name of cofinancing agency] The eligibility rules and procedures of ADB will govern the bidding process.”

⁵ A brief description of the IT Products and Services should be provided, including quantities, location of project, and other information necessary to enable potential bidders to decide whether to respond to the invitation. The Bidding Document may require bidders to have specific experience or capabilities; such requirements should also be included in this paragraph.

⁶ Insert one of the bidding procedures adopted by ADB: (a) Single-Stage: One-Envelope, (b) Single-Stage: Two-Envelope, or (c) Two-Stage. The choice of the Two-Stage bidding procedure shall be subject to ADB’s advance approval on a case-to-case basis, depending on the complexity of the contract and the particular circumstances surrounding its procurement and implementation.

⁷ Occasionally, contracts may be financed out of Special Funds, which would further restrict eligibility to a particular group of ADB members. When this is the case, it should be mentioned in this paragraph. The list of eligible countries will be specified in Section 5 of the Bidding Document.

⁸ Insert an additional paragraph indicating key qualification criteria consistent with the bidding document to enable potential Bidders to decide whether to respond to the invitation

⁹ The Borrower and the Purchaser may be the same or different entities. The text of the Invitation for Bids and the texts of the other associated documents must indicate which agency will act as the Purchaser.

[insert e-mail address]

[insert fax number]

[or insert relevant website link where the above information is available]

6. To purchase the Bidding Documents in English, eligible Bidders should
- write to the address above requesting the Bidding Documents for *[insert number and title of the contract]*
 - pay a nonrefundable fee¹⁰ of *[insert amount and currency]* by *[insert method of payment]*¹¹
 - The document will be sent by *[insert delivery procedure]*¹² No liability will be accepted for loss or late delivery.

[and/or modify the above to include the website address from where the bidding document can be downloaded]

7. Deliver your bid:
- to the address *[insert address]*
 - on or before the deadline: *[insert closing date and time consistent with the Bidding Document]*
 - together with a Bid Security/Bid-Securing Declaration as described in the Bidding Document.

[modify the above to include bid submission using e-procurement system.]

Bids will be opened promptly after the deadline for bid submission in the presence of Bidders' representatives who choose to attend.

8. When comparing bids, domestic preference will be applied as stipulated in the Bidding Document.¹³

¹⁰ The fee chargeable should only be nominal to cover reproduction and mailing or shipping costs.

¹¹ For example, cashier's check, direct deposit to a specified account number, etc.

¹² The delivery procedure is usually airmail for overseas delivery and surface mail or courier for local delivery. If urgency or security dictates, courier services may be required for overseas delivery.

¹³ Include para. 8 only if Domestic Preference has been expressly provided in the Procurement Plan and is included in the Bid Data Sheet.

Standard Format for Invitation for Second-Stage Bids

[Letterhead of the Purchaser]

Date
Loan/Grant No. and Title.....
Contract No. and Title
Deadline for Submission of Bids..... *[insert closing date and time]*

To: *[insert name and address of the bidder]*

1. We hereby inform you that you are invited to submit a sealed Second-Stage Bid for the execution and completion of the cited Contract for which you submitted a First-Stage Bid on *[insert date of submission of First-Stage Bid consistent with the Bidding Document]*, which was reviewed during the clarification meeting(s) held on *[insert dates]* and has been found technically responsive.
2. Your Second-Stage Bid should include an updated technical and commercial bid based on the attached amendment, if any,¹⁴ and on the modifications, if any, listed in the Annex to the Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation” issued as a result of the clarification meeting(s).¹⁵
3. Second-Stage Bids shall be submitted on or before *[insert time, date, and address for Second-Stage Bid submission]* and will be opened in the presence of the Bidder’s representatives who choose to attend at *[insert time, date, and address for Second-Stage Bid opening]*¹⁶
4. Second-Stage Bids shall remain valid for *[insert number of days]*¹⁷ after the date of the bid opening prescribed above.
5. All Second-Stage Bids must be accompanied by a bid security/Bid-Securing Declaration as described in the Bidding Document.
6. *[If Bidders were prequalified, include any requirement for updating information provided during prequalification.]*¹⁸

¹⁴ Amendment shall be common to all bidders invited to submit a Second-Stage Bid.

¹⁵ A copy of the respective annex may be attached to the letter to the corresponding bidder.

¹⁶ The dates of bid submission and bid opening should be the same, and the time should also be the same or immediately thereafter.

¹⁷ The period should be sufficient to permit completion of the Second-Stage Bid evaluation, review of the recommended selection by ADB, the process of obtaining approvals, and notification of award. A realistic period should be specified to avoid the need for bid validity extension.

¹⁸ Information to be updated may be specified such as an updated financial situation, new contractual commitments, or current litigation.

7. Please confirm receipt of this letter immediately in writing by fax *[insert fax number]*, or by e-mail *[insert e-mail address]*. If you do not intend to bid, we would appreciate being so notified again in writing at your earliest opportunity.

Yours truly,

Authorized signature:

Name and title:

Attachments: *[insert title of amendments, if any, and the memorandum entitled "Changes Required Pursuant to First-Stage Evaluation"]*

SBD IT Products and Services— Single-Stage: One-Envelope Bidding Procedure

Section 1: Instructions to Bidders

The Instructions to Bidders (ITB) specify the procedures that regulate the bidding process. The ITB contains standard provisions that have been designed to remain unchanged and to be used without modifying their text. The ITB clearly identifies the provisions that may need to be specified for a particular bidding process and requires that such specification be introduced through the Bid Data Sheet (BDS).

Table of Contents

A. General	15
1. Scope of Bid.....	15
2. Source of Funds	15
3. Fraud and Corruption.....	15
4. Eligible Bidders	18
5. Eligible IT Products and Services	20
B. Contents of Bidding Document.....	20
6. Sections of the Bidding Document.....	20
7. Clarification of Bidding Document	21
8. Amendment of Bidding Document.....	21
C. Preparation of Bids	21
9. Cost of Bidding.....	21
10. Language of Bid	21
11. Documents Comprising the Bid	22
12. Letter of Bid and Price Schedules	22
13. Alternative Bids	22
14. Bid Prices and Discounts	22
15. Currencies of Bid.....	24
16. Documents Establishing the Eligibility of the Bidder.....	25
17. Documents Establishing the Eligibility of the IT Products and Services	25
18. Documents Establishing the Conformity of the IT Products and Services to the Bidding Document.....	25
19. Documents Establishing the Qualifications of the Bidder.....	26
20. Period of Validity of Bids	26
21. Bid Security/Bid-Securing Declaration.....	26
22. Format and Signing of Bid.....	27

D. Submission and Opening of Bids.....	28
23. Sealing and Marking of Bids.....	28
24. Deadline for Submission of Bids.....	29
25. Late Bids.....	29
26. Withdrawal, Substitution, and Modification of Bids.....	29
27. Bid Opening.....	29
E. Evaluation and Comparison of Bids.....	30
28. Confidentiality.....	30
29. Clarification of Bids.....	31
30. Deviations, Reservations, and Omissions.....	31
31. Determination of Responsiveness.....	31
32. Nonmaterial Nonconformities.....	32
33. Correction of Arithmetical Errors.....	32
34. Conversion to Single Currency.....	32
35. Domestic Preference.....	32
36. Evaluation and Comparison of Bids.....	33
37. Abnormally Low Bids.....	35
38. Postqualification of the Bidder.....	36
39. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids.....	36
40. Notice of Intention for Award of Contract.....	36
F. Award of Contract.....	36
41. Award Criteria.....	36
42. Purchaser's Right to Vary Quantities at Time of Award.....	36
43. Notification of Award.....	37
44. Signing of Contract.....	37
45. Performance Security.....	38
46. Bidding-Related Complaints.....	38

A. General

- 1. Scope of Bid**
 - 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Purchaser, as indicated in the BDS, issues this Bidding Document for the supply of IT Products and Services incidental thereto as specified in Section 6 (Schedule of Requirements). The name, identification, and number of lots of the open competitive bidding (OCB) are provided in the BDS.
 - 1.2 Throughout this Bidding Document,
 - (a) the term “in writing” means communicated in written (including electronic) form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.
- 2. Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “ADB”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
 - 2.2 Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called the Financing Agreement), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.
- 3. Fraud and Corruption**
 - 3.1 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB’s Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “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;

- (iii) “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;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
 - (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
 - (viii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

¹ Whether as a Supplier, Subcontractor, Consultant, Manufacturer, or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

- (e) will have the right to require that a provision be included in Bidding Documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers, and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
- (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
- (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
- (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communication Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
- (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
- (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.

3.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, subcontractors, and other third parties engaged or involved in ADB-related activities, such subconsultants, subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.

- 3.4 The Purchaser hereby puts the Bidder on notice that the Bidder or any Joint Venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint Venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.
- 3.5 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1(a)(iii) of the General Conditions of Contract.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, or government-owned enterprise subject to ITB 4.5—or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture,
 - (a) all parties to the Joint Venture shall be jointly and severally liable; and
 - (b) the Joint Venture shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract, including related services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:
 - (a) they have controlling shareholders in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this Bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 13. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)–(d) above, this does not limit the participation of a Bidder as a Subcontractor in another bid or of a firm as a subcontractor in more than one Bid; or

- (f) a Bidder, Joint Venture partner, associates, parent company, or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the IT Products and Services that are the subject of the Bid; or
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Purchaser or Borrower as Project Manager for the contract; or
 - (h) a Bidder would be providing goods, works, or nonconsulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - (i) A Bidder that has a financial or familial relationship with staff of the Purchaser including project implementing/executing agency, or of a recipient of a part of the loan who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ADB throughout the procurement process and execution of the contract.
- 4.4 A firm will not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporarily suspended or debarred firm will be rejected and such bid may be in breach of debarment conditions, thereby subject to further ADB's investigation.
- 4.5 Government-owned enterprises in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Purchaser.
- 4.6 A Bidder shall not be under suspension from Bidding by the Purchaser as the result of the execution of a Bid-Securing Declaration.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.8 Bidders shall be excluded if, 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 Borrower's country prohibits any import of goods from, or payments to, a particular country, person or entity in respect of goods or services originating in that country. Where the Borrower's country prohibits payments to a particular person or entity or for particular goods or services by such an act of compliance, that firm shall be excluded.

5. Eligible IT Products and Services

- 5.1 All IT Products and Services to be supplied under the Contract and financed by ADB shall have their country of origin in eligible source countries as defined in ITB 4.2, and all expenditures under the Contract will be limited to such IT Products and Services.
- 5.2 For the purposes of these Bidding Documents, the IT Products and Services means all:
- (a) the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Bidder is required to supply and install under the Contract, plus all associated documentation, and all other materials and products to be supplied, installed, integrated, and made operational (collectively called “the products” in some clauses of the ITB); and
 - (b) the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other Services necessary for proper operation of the products to be provided by the selected Bidder and as specified in the Contract.
- 5.3 For the purposes of ITB 5.1 above “origin” means the place where through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of the Bidding Document

- 6.1 The Bidding Document consists of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

PART I Bidding Procedures

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation and Qualification Criteria (EQC)
- Section 4 Bidding Forms (BDF)
- Section 5 Eligible Countries (ELC)

PART II Supply Requirements

- Section 6 Schedule of Requirements (SOR)

PART III Conditions of Contract and Contract Forms

- Section 7 General Conditions of Contract (GCC)
- Section 8 Special Conditions of Contract (SCC)
- Section 9 Contract Forms (COF)

- 6.2 The IFB issued by the Purchaser is not part of the Bidding Document.
 - 6.3 The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Purchaser in the IFB.
 - 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.
- 7. Clarification of Bidding Document**
- 7.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the BDS. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than 21 days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified in the BDS, the Purchaser shall also promptly publish its response at the web page identified in the BDS. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 8 and ITB 24.2.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.
 - 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum on the Purchaser's web page in accordance with ITB 7.1.
 - 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 24.2.

C. Preparation of Bids

- 9. Cost of Bidding**
- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid**
- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents Comprising the Bid	11.1 The Bid shall comprise the following: (a) Letter of Bid; and the applicable Price Schedules, in accordance with ITB 12, ITB 14, and ITB 15; (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21; (c) alternative Bids, if permissible, in accordance with ITB 13; (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22; (e) documentary evidence in accordance with ITB 16, establishing the Bidder's eligibility to bid; (f) documentary evidence in accordance with ITB 17, that the IT Products and Services to be supplied by the Bidder are of eligible origin; (g) documentary evidence in accordance with ITB 18 and ITB 31, that the IT Products and Services conform to the Bidding Document; (h) documentary evidence in accordance with ITB 19, establishing the Bidder's qualifications to perform the contract if its bid is accepted; and (i) list of subcontractors, in accordance with ITB 18.4; and (j) any other document required in the BDS. 11.2 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.
12. Letter of Bid and Price Schedules	12.1 The Bidder shall submit the Letter of Bid using the form furnished in Section 4 (Bidding Forms). This form must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. 12.2 The Bidder shall submit the Price Schedules for IT Products and Services, according to their origin as appropriate, using the forms furnished in Section 4 (Bidding Forms) and as required in the BDS.
13. Alternative Bids	13.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.
14. Bid Prices and Discounts	14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below. 14.2 All items in the Schedule of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed not to be included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB 32.3. Unit rates and prices for all items in the Schedule of Supply shall be expressed in positive values. If unit rates and prices are expressed in negative values, the bid will be rejected.

- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid excluding any discounts offered. Absence of the total bid price in the Letter of Bid may result in the rejection of the Bid.
- 14.4 The Bidder shall quote discounts and the methodology for their application in the Letter of Bid.
- 14.5 The terms EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 14.6 Prices shall be quoted as specified in each Price Schedule included in Section 4 (Bidding Forms). The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered
- (a) for IT products offered from within the Purchaser's country:
 - (i) the price of the IT products quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of IT products quoted ex works or ex factory, or on the previously imported IT products of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;
 - (ii) sales tax and all other taxes applicable in the Purchaser's country and payable on the IT products if the Contract is awarded to the Bidder; and
 - (iii) the total price for the item.
 - (b) for IT products offered from outside the Purchaser's country:
 - (i) the price of the IT products quoted CIF (named port of destination), or CIP (border point), or CIP (named place of destination) in the Purchaser's country, as specified in the BDS;
 - (ii) the price of the IT products quoted FOB port of shipment (or FCA, as the case may be), if specified in the BDS; and
 - (iii) the total price for the item.
 - (c) for services whenever such are specified in the Schedule of Requirements:
 - (i) the local currency cost component of each item comprising the services; and
 - (ii) the foreign currency cost component of each item comprising the services, inclusive of all customs duties, sales, and other similar taxes applicable in the Purchaser's country, payable on the services, if the Contract is awarded to the Bidder.

Unless otherwise specified in the BDS, the prices must include all costs incidental to the performance of the services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the services but incurred by the Purchaser or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these Bidding Documents (as, e.g., a requirement for the Bidder to include the travel and subsistence costs of trainees).

- 14.7 Prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, shall be quoted as service prices in accordance with ITB 14.6(c) on the Price Schedule for Recurrent Costs. Recurrent costs are all-inclusive of the costs necessary items such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the IT Products and Services and, if appropriate, of the Bidder's own allowance for price increases.
- 14.8 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 31. If in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract but a Bid submitted with no indexes identified in the Tables of Adjustment Data will also be treated as nonresponsive and be rejected.
- 14.9 If so indicated pursuant to ITB 1.1, Bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price discount for the award of more than one Contract shall specify in their bid the price discount applicable to each package, or alternatively, to individual Contracts within the package. Price discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots are submitted and opened at the same time.

15. Currencies of Bid

- 15.1 Bid prices shall be quoted in the following currencies:
 - (a) Bidders may express their bid price in any fully convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly.
 - (b) If some of the expenditures for the related services are to be incurred in the borrowing country, such expenditures should be expressed in the Bid and will be payable in the Purchaser's currency.

16. Documents Establishing the Eligibility of the Bidder	16.1 To establish their eligibility in accordance with ITB 4, Bidders shall (a) complete the eligibility declarations in the Letter of Bid, included in Section 4 (Bidding Forms); and (b) if the Bidder is an existing or intended Joint Venture in accordance with ITB 4.1, submit a copy of the Joint Venture Agreement, or a letter of intent to enter into such an agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended Joint Venture, as appropriate.
17. Documents Establishing the Eligibility of the IT Products and Services	17.1 To establish the eligibility of the IT Products and Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms included in Section 4 (Bidding Forms).
18. Documents Establishing the Conformity of the IT Products and Services to the Bidding Document	18.1 To establish the conformity of the IT Products and Services to the Bidding Document, the Bidder shall furnish as part of its Bid documentary evidence that the IT Products and Services conform to the requirements specified in Section 6 (Schedule of Requirements). 18.2 The documentary evidence may be in the form of literature, drawings, or data, and shall consist of a detailed item-by-item description of the essential technical and performance characteristics of the IT Products and Services, demonstrating substantial responsiveness of the IT Products and Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of Section 6 (Schedule of Requirements). 18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in Section 6 (Schedule of Requirements), are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Section 6 (Schedule of Requirements). 18.4 For major items of IT Products and Services as listed by the Purchaser in Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Purchaser for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

19. Documents Establishing the Qualifications of the Bidder	19.1 The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Purchaser's satisfaction that the Bidder meets each of the qualification criterion specified in Section 3 (Evaluation and Qualification Criteria). 19.2 If so required in the BDS, a Bidder that does not manufacture or produce the IT Products and Services it offers to supply shall submit the Manufacturer's Authorization using the form included in Section 4 (Bidding Forms) to demonstrate that it has been duly authorized by the manufacturer or producer of the IT Products and Services to supply these IT Products and Services in the Purchaser's country. 19.3 If so required in the BDS, a Bidder that does not conduct business within the Purchaser's country shall submit evidence that it will be represented by an agent in the country equipped and able to carry out the Supplier's maintenance, repair, and spare parts stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.
20. Period of Validity of Bids	20.1 Bids shall remain valid for the bid validity period specified in the BDS. The bid validity period starts from the date fixed for the bid submission deadline date prescribed by the Purchaser in accordance with ITB 24.1. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive. 20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 21, it shall also be extended 28 days beyond the deadline of the extended bid validity and bid security validity issued by the Purchaser. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.
21. Bid Security/ Bid-Securing Declaration	21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its Bid, in original form, either a Bid-Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS. 21.2 If a Bid-Securing Declaration is required pursuant to ITB 21.1, it shall use the form included in Section 4 (Bidding Forms). The Purchaser will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if a Bid-Securing Declaration is executed. 21.3 If a bid security is specified pursuant to ITB 21.1, the bid security shall be, at the Bidder's option, in any of the following forms: (a) an unconditional bank guarantee (hard copy of the bank guarantee or in the form of SWIFT message MT760), or (b) an irrevocable letter of credit, or (c) a cashier's or certified check.

all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Purchaser. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 20.2.

- 21.4 Unless otherwise specified in the BDS, any bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 21.1, shall be rejected by the Purchaser as nonresponsive.
- 21.5 If a bid security is specified pursuant to ITB 21.1, the bid security of unsuccessful Bidders shall be returned promptly upon signing of the contract with the successful Bidder pursuant to ITB 44.
- 21.6 If a bid security is specified pursuant to ITB 21.1, the bid security of the successful Bidder shall be returned promptly once the successful Bidder has signed the Contract Agreement and furnished the required Performance Security.
- 21.7 The bid security may be forfeited or the Bid-Securing Declaration executed, if
 - (a) notwithstanding ITB 26.3, a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 20.2; or
 - (b) the successful Bidder fails to
 - (i) sign the Contract Agreement in accordance with ITB 44;
 - (ii) furnish a Performance Security in accordance with ITB 45; or
 - (iii) accept the arithmetical corrections of its bid in accordance with ITB 33.
- 21.8 If the bid security is required as per ITB 21.1, the bid security of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security shall be in the name of any or all of the Joint Venture partners. If the Bid-Securing Declaration is required as per ITB 21.1, the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

22. Format and Signing of Bid

- 22.1 The Bidder shall prepare one original set of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS, and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

- 22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Purchaser shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Purchaser's request shall cause the rejection of the Bid. If either the Letter of Bid or the Bid-Securing Declaration (if applicable) is not signed, the Bid shall be rejected.
- 22.3 A Bid submitted by a Joint Venture shall be signed so as to be legally binding on all partners.
- 22.4 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.
- 22.5 For electronic bid submission, procedures for format and signing of the bid shall be as specified in the BDS.

D. Submission and Opening of Bids

23. Sealing and Marking of Bids

- 23.1 Bidders shall submit their Bids as specified in the BDS. Procedures for submission, sealing, and marking are as follows:
 - (a) Bidders submitting Bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL," "ALTERNATIVE," and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 23.2 and ITB 23.3.
 - (b) If electronic bid submission is used, Bidders shall follow the procedures specified in the BDS. In such case, manual bid submission shall not be permitted.
- 23.2 The inner and outer envelopes shall
 - (a) bear the name and address of the Bidder;
 - (b) be addressed to the Purchaser in accordance with ITB 24.1;
 - (c) bear the specific identification of this bidding process pursuant to ITB 1.1 and any additional identification marks as specified in the BDS; and
 - (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB 27.1.
- 23.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Bid.

- 24. Deadline for Submission of Bids**
- 24.1 Bids must be received by the Purchaser at the address (or electronic portal) and no later than the date and time indicated in the BDS.
- 24.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 25. Late Bids**
- 25.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 26. Withdrawal, Substitution, and Modification of Bids**
- 26.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2 (except for withdrawal notices, which do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be
- (a) prepared and submitted in accordance with ITB 22 and ITB 23 (except for withdrawal notices, which do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and
 - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 24.
- 26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.
- 26.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.
- 26.4 If electronic bid submission is used, Bidders shall follow the procedures for withdrawal, substitution, and modification specified in the BDS.
- 27. Bid Opening**
- 27.1 The Purchaser shall open the Bids in public at the address, on the date and time specified in the BDS in the presence of Bidders’ designated representatives and anyone who chooses to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 23.1(b), shall be as specified in the BDS.

- 27.2 First, envelopes marked “WITHDRAWAL” shall be opened, read out, and recorded, and the envelope containing the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened, read out, recorded, and exchanged for the corresponding Bid being substituted. The substituted Bid shall not be opened, but returned unopened to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at bid opening. Envelopes marked “MODIFICATION” shall be opened, read out, and recorded with the corresponding Bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.
- 27.3 All other envelopes shall be opened one at a time, reading out the name of the Bidder and whether there is a modification; the Bid Prices (per lot if applicable), discounts, and alternative offers; the presence of a bid security or a Bid-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Bid and Price Schedules are to be initialed by at least three representatives of the Purchaser attending the bid opening. No Bid shall be rejected at bid opening except for late Bids, in accordance with ITB 25.1.
- 27.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, any discounts, and alternative offers if they were permitted; and the presence or absence of a bid security or Bid-Securing Declaration, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted online if electronic bidding was permitted.

E. Evaluation and Comparison of Bids

- 28. Confidentiality**
- 28.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until the publication of Contract award.
- 28.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and postqualification of the Bids or Contract award decisions may result in the rejection of its Bid.
- 28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.

- 29. Clarification of Bids**
- 29.1 To assist in the examination, evaluation, comparison, and postqualification of the bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder with regard to its bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids, in accordance with ITB 33.
- 29.2 If a Bidder does not provide clarifications on its Bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.
- 30. Deviations, Reservations, and Omissions**
- 30.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 31. Determination of Responsiveness**
- 31.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 31.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the IT Products and Services specified in Section 6 (Schedule of Requirements); or
 - (ii) limits in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 31.3 The Purchaser shall examine the technical aspects of the Bids in particular, to confirm that all requirements of Section 6 (Schedule of Requirements) have been met without any material deviation, reservation, or omission.
- 31.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall not be considered further and be rejected by the Purchaser. The Bidder shall not be permitted to correct or withdraw material deviation, reservation, or omission once bids have been opened.

32. Nonmaterial Nonconformities	32.1 Provided that a Bid is substantially responsive, the Purchaser may waive nonconformities in the bid that do not constitute a material deviation, reservation, or omission. 32.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. 32.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities or omissions related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or nonconforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).
33. Correction of Arithmetical Errors	33.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis: (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected. (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected. (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. 33.2 If the Bidder that submitted the Most Advantageous Bid does not accept the correction of errors, its Bid shall be rejected and its bid security may be forfeited, or its Bid-Securing Declaration executed.
34. Conversion to Single Currency	34.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.
35. Domestic Preference	35.1 Unless otherwise specified in the BDS, domestic preference shall not apply.

36. Evaluation and Comparison of Bids

36.1 The Purchaser shall use the criteria and methodologies listed in this ITB and Section 3 (Evaluation and Qualification Criteria). No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Purchaser shall determine the Most Advantageous Bid.

Preliminary Examination

36.2 The Purchaser will examine the bids, to determine whether they have been properly signed, whether required securities have been furnished, and are substantially complete (e.g., not missing key parts of the bid or silent on excessively large portions of the technical requirements). In the case where a prequalification process was undertaken for the Contract(s) for which these bidding documents have been issued, the Purchaser will ensure that each bid is from a prequalified bidder and that, in the case of a Joint Venture, partners and structure of the Joint Venture are unchanged from those in the prequalification.

Technical Evaluation

36.3 The Purchaser will examine the information supplied by the Bidders pursuant to ITB 11 and ITB 16, and in response to other requirements in the Bidding document, taking into account the following factors:

- (a) overall completeness and compliance with, and deviations from, the Section 6 (Schedule of Requirements);
- (b) type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the IT products;
- (c) any other relevant technical factors that the Purchaser deems necessary or prudent to take into consideration;
- (d) any proposed deviations in the bid to the contractual and technical provisions stipulated in the bidding documents.

36.4 If specified in the BDS, the Purchaser's evaluation of responsive Bids will take into account technical factors, in addition to cost factors. An Evaluated Bid Score (B) will be calculated for each responsive Bid using the formula, specified in Section 3 (Evaluation and Qualification Criteria), which permits a comprehensive assessment of the Bid cost and the technical merits of each Bid.

36.5 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Purchaser will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

Economic Evaluation

- 36.6 To evaluate a Bid, the Purchaser shall consider the following:
- (a) the bid price as quoted in accordance with ITB 14;
 - (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
 - (c) price adjustment due to discounts offered in accordance with ITB 14.4;
 - (d) adjustment for nonmaterial nonconformities in accordance with ITB 32.3;
 - (e) assessment whether the bid is abnormally low in accordance with ITB 37;
 - (f) price adjustment due to application of the evaluation criteria specified in Section 3 (Evaluation and Qualification Criteria), including factors related to the characteristics, performance, and terms and conditions of purchase of the IT Products and Services, which have been expressed in monetary terms; and
 - (g) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 34.
- 36.7 The Purchaser's evaluation of a bid will exclude and not take into account,
- (a) in the case of IT products offered from within the Purchaser's country, all sales tax and all other taxes, applicable in the Purchaser's country and payable on the IT products if the Contract is awarded to the Bidder;
 - (b) in the case of IT products offered from outside the Purchaser's country, all customs duties, sales tax, and other taxes, applicable in the Purchaser's country and payable on the IT products if the Contract is awarded to the Bidder; and
 - (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Bid.
- 36.8 If the Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the price combinations offering optimum value for money, including any discounts offered in the Bid Submission Sheet, is specified in Section 3 (Evaluation and Qualification Criteria).
- 36.9 The Purchaser shall compare all substantially responsive Bids to determine the Most Advantageous Bid.

37. Abnormally Low Bids

- 37.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.
- 37.2 When the offered bid price appears to be abnormally low, the Purchaser shall undertake a three-step review process as follows:
- (a) identify abnormally low costs and unit rates by comparing them with the engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;
 - (b) clarify and analyze the bidder's resource inputs and pricing, including overheads, contingencies and profit margins; and
 - (c) decide whether to accept or reject the bid.
- 37.3 With regard to ITB 37.2 (b) above, the Purchaser shall seek written explanation of the reasons for proposed price or costs from the bidder, including a detailed analysis of its bid prices by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process, the services provided, the technical solutions chosen or any exceptionally favorable conditions available to the bidder for the supply of the IT Products and Services or for the execution of the work; or the originality of the work, supplies, or services proposed.
- 37.4 After examining the explanation given and the detailed price analyses presented by the bidder, the Purchaser may
- (a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low;
 - (b) accept the bid, but require that the amount of the performance security be increased at the expense of the bidder to a level sufficient to protect the Purchaser against financial loss. The amount of the performance security shall generally be not more than 20% of the contract price; or
 - (c) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

- 38. Postqualification of the Bidder**
- 38.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the Most Advantageous Bid is qualified to perform the Contract satisfactorily.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 19. Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. The Purchaser reserves the right to reject the bid of any bidder found to be in circumstances described in GCC 35.2. A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the next Most Advantageous Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 39. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids**
- 39.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the bidding process and reject all bids at any time prior to Contract award, without thereby incurring any liability to the Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.
- 40. Notice of Intention for Award of Contract**
- 40.1 If Standstill provisions apply as specified in the BDS, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful bidder can challenge the proposed award.

F. Award of Contract

- 41. Award Criteria**
- 41.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined successful in line with ITB 36 to ITB 38 above.
- 42. Purchaser's Right to Vary Quantities at Time of Award**
- 42.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of IT Products and Services originally specified in Section 6 (Schedule of Requirements), provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the Bid and the Bidding Document.

43. Notification of Award

- 43.1 Prior to the expiration of the period of bid validity and upon expiry of the standstill period specified in ITB 40.1, or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Purchaser shall transmit the Notification of Award using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted. At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding.
- 43.2 Unless standstill period applies, upon notification of award, unsuccessful Bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Purchaser shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.
- 43.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract
- 43.4 Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies, or, if a complaint has been filed within the standstill period, upon receipt of ADB's confirmation of satisfactory resolution of the complaint, the borrower shall publish in an English language newspaper or widely known and freely accessible website the results identifying the bid and lot or package numbers, as applicable and the following information:
- (a) name of each Bidder who submitted a Bid;
 - (b) bid prices as read out at bid opening;
 - (c) name and evaluated prices of each Bid that was evaluated;
 - (d) name of Bidders whose Bids were rejected and the reasons for their rejection; and
 - (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

44. Signing of Contract

- 44.1 Promptly after notification, the Purchaser shall send to the successful Bidder the Contract Agreement.
- 44.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

- 45. Performance Security**
- 45.1 Within 28 days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC, subject to ITB 37, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Purchaser. If the bank issuing performance security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country.
- 45.2 Failure of the successful Bidder to submit the abovementioned performance security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Purchaser may award the Contract to the next Most Advantageous Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.
- 46. Bidding-Related Complaints**
- 46.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

Section 2: Bid Data Sheet

The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Purchaser must specify in the BDS only information that the Instructions to Bidders (ITB) request be specified in the BDS. All information shall be provided, and no clause shall be left blank.

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clauses. This guide provides information to the Purchaser on how to enter all required information, and includes a BDS format that summarizes all information to be provided.

A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is: <i>[insert identification number of the IFB]</i>
ITB 1.1	The Purchaser is: <i>[insert name of the purchaser]</i>
ITB 1.1	<p>The name of the open competitive bidding (OCB) is: <i>[insert the name of OCB]</i></p> <p>The identification number of the OCB is: <i>[insert identification number of the OCB]</i></p> <p>The number and identification of lots comprising this OCB is: <i>[if there are no lots, insert "None." If there are lots, insert a list of lots, identifying each lot by number and title]</i></p>
ITB 2.1	The Borrower is: <i>[insert name of the borrower]</i>
ITB 2.1	The name of the Project is: <i>[insert name of the project]</i>

B. Contents of Bidding Document

ITB 7.1	<p>For clarification purposes only, the Purchaser's address is: <i>[Insert details below as appropriate]</i></p> <p>Attention: <i>[insert full name of the person, if applicable]</i></p> <p>Street address: <i>[insert street address and number]</i></p> <p>Floor/Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of the city or town]</i></p> <p>ZIP code: <i>[insert postal (ZIP) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Telephone: <i>[insert telephone number including country and city codes]</i></p> <p>Fax: <i>[insert fax number with country and city codes]</i></p> <p>E-mail: <i>[insert e-mail address, if applicable]</i></p> <p>Web page: <i>[in case used, identify the website with free access where Bidding process information is published]</i></p>
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C. Preparation of Bids

ITB 10.1	The language of the Bid is: [insert “English” for OCB using international advertising]
ITB 11.1(k)	The Bidder shall submit with its Bid the following additional documents: [insert type of any additional documents not already listed in ITB 11.1 that must be submitted with the bid]
ITB 12.2	The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive.
ITB 13.1	<p>Alternative Bids [insert “shall” or “shall not”] be permitted</p> <p><i>[If alternative bids are permitted, insert the following or revise it as appropriate “Bidders may submit Alternative Bids that do not conform to the specifications of IT Products and Services but meet the performance prescribed in, or the objectives of, the specifications. However, only the Alternative Bids of the Bidder whose main Bid is the Most Advantageous Bid will be considered. If a Bidder wishes to have its Alternative Bid or Bids considered on an equal basis with all other main Bids, it shall submit a separate Bid Security or Bid-Securing Declaration for each Alternative Bid. All Alternative Bids submitted in this manner will be treated as main Bids. Alternative Bids must be submitted in a sealed envelope clearly marked “Alternative Bid”, separate from the main Bid.”</i></p> <p><i>Instead of permitting Alternative Bids, the Purchaser may incorporate alternative technical solutions in Section 6 (Schedule of Requirements) so that they may be assessed equivalently with other offered technical solutions under Criterion 1.2 (Technical Evaluation) in Section 3 (Evaluation and Qualification Criteria)]</i></p>
ITB 14.5	The Incoterms edition is: [insert incoterm edition]
ITB 14.6(b)(i)	For IT Products and Services offered from outside the Purchaser’s country, the Bidder shall quote prices using the following Incoterms:
ITB 14.6(b)(ii)	<p>In addition to the above, the Bidder shall quote prices for IT Products and Services offered from outside the Purchaser’s country using the following Incoterms:</p> <p><i>[Only if the Purchaser wishes to reserve transportation and insurance to domestic companies or other designated sources, insert: “FOB (...named port of shipment)” if CIF was specified under ITB 14.6(b)(i) above or “FCA (...named place)” if CIP was specified under ITB 14.6(b)(i) above. However, identification of the Most Advantageous Bid must be on the basis of the CIF or CIP price, but the Purchaser may sign the contract on FOB or FCA terms and make its own arrangement for transportation and/or insurance.]</i></p>
ITB 14.8	<p>The prices quoted by the Bidder [insert “shall” or “shall not”] be adjustable.</p> <p><i>[If prices are to be adjustable, insert “The formula for adjusting the prices and explanatory details are specified in the SCC Clause 15.2. Bidder shall fill out the Tables of Adjustment Data in Section 4 (Bidding Forms).”]</i></p> <p><i>[Use “Adjustable” where the contract period is of long duration (generally exceeds 18 months). Prices payable to the contractor shall be subject to price adjustment during the performance of the contract.]</i></p> <p><i>[If prices shall not be adjustable, the Tables of Adjustment Data in Section 4 (Bidding Forms) shall be removed”]</i></p>

ITB 14.9	<p>Prices quoted for each lot shall correspond at least to <i>[insert figure]</i> % of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond at least to <i>[insert figure]</i> % of the quantities specified for this item of a lot.</p>
ITB 19.2	<p>The Bidder shall include with its bid the Manufacturer's Authorization for the following item(s):</p> <p><i>[Insert the list, which should include only critical items]</i></p> <p>The Bidder is required to submit documentation to substantiate that it is an authorized dealer, distributor, or reseller of the IT products being procured.</p>
ITB 19.3	<p>The Bidder <i>[insert "is" or "is not"]</i> required to include with its bid, evidence that it will be represented by an Agent in the Purchaser's country.</p>
ITB 20.1	<p>The bid validity period shall be <i>[insert number of days]</i> days.</p> <p><i>[The period should be sufficient to permit completion of evaluation and comparison of bids, review of the recommended selection by ADB (if so required), acquire all necessary approvals, and notify the successful bidder of the award. Normally, the bid validity period should be 90 days. For procurement of commodities, validity could, in appropriate cases, be shorter. A realistic period should be specified.]</i></p>
ITB 21.1	<p><i>[Choose one of the following options as appropriate]</i></p> <p>Neither a bid security nor a Bid-Securing Declaration is required.</p> <p><i>[or]</i></p> <p>The Bidder shall furnish a bid security in the amount of <i>[insert amount and currency. The amount of the bid security should be stated as a fixed amount, normally computed as 1% to 2% of the estimated contract value. The amount may be reduced for very large contracts.]</i></p> <p><i>[or]</i></p> <p>The Bidder shall furnish a Bid-Securing Declaration.</p>
ITB 21.2	<p>The ineligibility period will be <i>[insert number of years]</i></p>
ITB 21.4	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>No further instruction.</p> <p><i>[or]</i></p> <p>Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Purchaser as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Purchaser shall request the Bidder to submit a compliant bid security within <i>[insert number of days; generally 14 days]</i> days of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.</p>

	<p>[or]</p> <p>Subject to the succeeding sentences, any bid not accompanied by Bid-Securing Declaration shall be rejected by the Purchaser as nonresponsive. If a Bidder submits a Bid-Securing Declaration that (i) deviates in form, content , and/or period of validity or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Purchaser shall request the Bidder to submit a compliant Bid-Securing Declaration within <i>[insert number of days; generally 7 days]</i> days of receiving such a request. Failure to provide a compliant Bid-Securing Declaration within the prescribed period of receiving such a request shall cause the rejection of the Bid.</p>
ITB 22.1	In addition to the original Bid, the number of copies is: <i>[insert number of copies required]</i>
ITB 22.2	<p>The written confirmation of Authorization to sign on behalf of the Bidder shall consist of:</p> <p><i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid. Purchaser may wish to consider the following language: “An organizational document, board resolution or its equivalent, or power of attorney specifying the representative’s authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 16.1 (b)”]</i></p>
ITB 22.2	The Bidder shall submit an acceptable authorization within <i>[insert number of days; generally 14 days]</i> days.
ITB 22.5	Electronic procedures for format and signing of the bid shall be: <i>[insert a description of the electronic procedures for format and signing of the bid]</i> .

D. Submission and Opening of Bids

ITB 23.1	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Bidders shall submit their Bids by mail or by hand.</p> <p>[or]</p> <p>Bidders shall submit their Bids electronically.</p>
ITB 23.1(b)	Electronic bidding submission procedures shall be: <i>[insert a description of the electronic bidding submission procedures if applied in accordance with ITB 23.1 above, otherwise state “Not applicable”]</i> .
ITB 23.2(c)	The additional identification marks are: <i>[insert the name and/or number that must appear on the bid envelope to identify this specific bidding process]</i> .

ITB 24.1	<p>For bid submission purposes only, the Purchaser's address is: <i>[insert details below or electronic portal as appropriate]</i></p> <p>Attention:</p> <p>Street address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>ZIP code:</p> <p>Country:</p>
ITB 24.1	<p>The deadline for bid submission is:</p> <p>Date:</p> <p>Time:</p>
ITB 26.4	<p>Electronic procedures for withdrawal, substitution, and modification shall be: <i>[. . . insert a description of the relevant electronic procedures if applied in accordance with ITB 23.1 above, otherwise state "Not applicable"]</i>.</p>
ITB 27.1	<p>The bid opening shall take place at: <i>[insert all required and applicable information]</i></p> <p>Street address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>Country:</p> <p>Date:</p> <p>Time:</p>
ITB 27.1	<p>The electronic bid opening procedure shall be as follows: <i>[if electronic bidding is permitted in accordance with ITB 23.1, insert here a description of the electronic bid opening procedures; otherwise, state "not applicable"]</i></p>
ITB 27.3	<p>The Letter of Bid and Price Schedules shall be initialed by <i>[insert number of initials]</i> representatives of the Purchaser attending Bid opening.</p>

E. Evaluation and Comparison of Bids

ITB 34.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: [insert the name of the currency]</p> <p>The source of the selling exchange rate shall be: [insert the name of the source of the exchange rates, which should be the Central Bank in the Purchaser’s country or specify another institution that carries out the function of a central bank]</p> <p>The date for the selling exchange rate shall be: [specify any date (day/month/year) not earlier than 28 days prior to the deadline for submission of the bids, nor later than the original date for the expiry of bid validity, which may, for example, be the date of the deadline for submission of bids]</p>																																														
ITB 35.1	<p>Domestic preference [insert “shall” or “shall not”]apply.</p> <p>[If a domestic preference applies, insert “The application methodology shall be as stipulated in Section 3 (Evaluation and Qualification Criteria).”]</p>																																														
ITB 36.4	<p>The Purchaser’s evaluation of responsive Bids will take into account the following technical factors, in addition to cost factors as specified in Section 3 (Evaluation and Qualification Criteria):</p> <p>The following is a hypothetical example of the description of technical factors, and the scoring method that can be used to assess them:</p> <table><tr><th rowspan="2">Category</th><th rowspan="2">Feature</th><th colspan="5">Scoring Scale and Points*</th></tr><tr><th>0</th><th>1</th><th>2</th><th>3</th><th>4</th></tr><tr><td>Experience (25%)</td><td>Bidder’s experience in successfully completing similar projects based on final acceptance certificates issued by the clients (10 points each, up to 4 projects)</td><td>0</td><td>10</td><td>20</td><td>30</td><td>40</td></tr><tr><td>Usability/ Functionality (30%)</td><td>Extent to which the offered IT products meet the “Mandatory” and “Desirable” technical requirements</td><td>0</td><td>15</td><td>20</td><td>25</td><td>30</td></tr><tr><td>Training (20%)</td><td>Extent to which the offered training meets requirements</td><td>0</td><td>30</td><td>30</td><td>40</td><td>50</td></tr><tr><td rowspan="2">Support Services (25%)</td><td>Extent to which the offered local support meets requirements (50%)</td><td>0</td><td>10</td><td>20</td><td>30</td><td>40</td></tr><tr><td>Extent to which the period the bidder commits to maintain critical consumable items meets the period required (50%)</td><td>0</td><td>20</td><td>30</td><td>40</td><td>40</td></tr></table> <p>* Except for the category “Experience,” features will be assessed following the 0 to 4 scoring method described in Section 3 (Evaluation and Qualification Criteria).</p>	Category	Feature	Scoring Scale and Points*					0	1	2	3	4	Experience (25%)	Bidder’s experience in successfully completing similar projects based on final acceptance certificates issued by the clients (10 points each, up to 4 projects)	0	10	20	30	40	Usability/ Functionality (30%)	Extent to which the offered IT products meet the “Mandatory” and “Desirable” technical requirements	0	15	20	25	30	Training (20%)	Extent to which the offered training meets requirements	0	30	30	40	50	Support Services (25%)	Extent to which the offered local support meets requirements (50%)	0	10	20	30	40	Extent to which the period the bidder commits to maintain critical consumable items meets the period required (50%)	0	20	30	40	40
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	<p><i>This example shows that the selection of categories and technical factors, and their relative weightings, is flexible based on the needs of the Purchaser provided that (i) the evaluation is described in sufficient detail for a bidder to be able to accurately calculate its score, and (ii) the evaluation addresses qualitative aspects of bids that cannot be adequately addressed by using only pass-fail criteria or price adjustments that reflect life cycle cost.</i></p> <p>The cutoff score for technical competence is [x] and bids scored below this score will not be further considered for evaluation.</p>
ITB 38.2	<p>[Choose one of the following options as appropriate.]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall not be permitted.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criterion 2.3.1 Contractual Experience and/or 2.3.2 Technical Experience in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criteria 2.4 Financial Situation in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criterion 2.3.1 Contractual Experience and/or 2.3.2 Technical Experience and criteria 2.4 Financial Situation in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[If permitted, add "The Bidder shall provide the Affiliate Company Guarantee Form included in Section 4 (Bidding Forms) filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Purchaser in determining its qualifications."]</p>

ITB 40.1	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Standstill provisions shall not apply.</p> <p><i>[or]</i></p> <p>Standstill provisions shall apply. The duration of standstill period will be <i>[insert number of days;]</i> days from the date of notice of intention for award of contract.</p> <p>The Purchaser shall, at the start of the standstill period, notify in writing each Bidder that submitted a bid, of its intention to award a contract to the successful Bidder at the end of standstill period. The notification using the form included in Section 9 (Contract Forms) shall include the following information:</p> <ul style="list-style-type: none"> (a) the name of each Bidder who submitted a Bid; (b) the bid prices as read out at bid opening; (c) the name and evaluated prices of each Bid that was evaluated; (d) the name of Bidders whose bids were rejected and the reasons for their rejection; (e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded; and (f) a statement of the reason(s) the bid of the unsuccessful Bidder to whom the notification is addressed was unsuccessful, unless the price information under (e) of this paragraph already reveals the reason
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F. Award of Contract

ITB 42.1	<p>The maximum percentage by which quantities may be increased is: <i>[insert percentage]</i></p> <p>The maximum percentage by which quantities may be decreased is: <i>[insert percentage, for example, 15%]</i></p>
ITB 46.1	<p>The procedures for Bidding-Related Complaints are referenced in the “Procurement Regulations for ADB Borrowers (Appendix 7).” The Bidder should submit its complaint following these procedures, in writing, to:</p> <p style="padding-left: 40px;">For the attention: <i>[insert full name of person receiving complaints]</i></p> <p style="padding-left: 40px;">Title/position: <i>[insert title/position]</i></p> <p style="padding-left: 40px;">Purchaser: <i>[insert name of purchaser]</i></p> <p style="padding-left: 40px;">E-mail address: <i>[insert e-mail address]</i></p> <p style="padding-left: 40px;">Fax number: <i>[insert fax number] delete if not used</i></p>

Section 3: Evaluation and Qualification Criteria

The purpose of the Evaluation and Qualification Criteria (EQC) is to specify the criteria that the Purchaser will use to evaluate the Bids and postqualify the lowest-evaluated Bidder. The Purchaser must prepare the EQC and include it as a part of the Bidding Document. The EQC is not a Contract document and, therefore, it is not a part of the Contract.

Table of Criteria

1. Evaluation Criteria.....	49
1.1 Combined Evaluation	49
1.2 Technical Evaluation.....	49
1.3 Price Evaluation	51
1.4 Domestic Preference.....	51
1.4.1 Method of Application	51
1.5 Economic Criteria	52
1.5.1 Adjustment for Scope.....	52
1.5.1.1 Local Handling and Inland Transportation	52
1.5.1.2 Minor Omissions or Missing Items	53
1.5.2 Adjustment for Deviations from the Terms of Payment.....	53
1.5.3 Adjustment for Deviations in the Delivery and Completion Schedule	53
1.5.4 Operation and Maintenance Costs.....	54
1.5.5 Spare Parts.....	54
1.5.6 Performance and Productivity of the IT Products.....	55
1.5.7 Other Criteria in Accordance with ITB 36.6(f)	55
1.6 Multiple Lots (Contracts)	55
2. Qualification Criteria	56
2.1 Eligibility	56
2.1.1 Nationality.....	56
2.1.2 Conflict of Interest	56
2.1.3 ADB Eligibility.....	56
2.1.4 Government-Owned Enterprise	56
2.1.5 United Nations Eligibility	56

2.2	Historical Contract Nonperformance	57
2.2.1	History of Nonperforming Contracts	57
2.2.2	Suspension Based on Execution of Bid-Securing Declaration	57
2.2.3	Pending Litigation and Arbitration.....	58
2.3	Experience and Technical Capacity	58
2.3.1	Contractual Experience.....	58
2.3.2	Technical Experience	59
2.3.3	Production Capacity	59
2.4	Financial Situation	60
2.4.1	Historical Financial Performance	60
2.4.2	Size of Operation (Average Annual Turnover).....	60
2.4.3	Cash Flow Capacity	61

1. Evaluation Criteria

1.1 Combined Evaluation

The Purchaser will evaluate and compare the Bids that have been determined to be substantially responsive, pursuant to ITB 36.

If indicated by the BDS, the Purchaser's evaluation of responsive Bids will take into account technical factors, in addition to cost factors.

In such a case, an Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

$$B \equiv \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

Where

C = Evaluated Bid Price

C_{low} = lowest of all Evaluated Bid Prices among responsive Bids

T = total technical score awarded to the Bid

T_{high} = technical score achieved by the Bid that was scored best among all responsive Bids

X = weight for the Price as specified in the BDS

The Bid with the best Evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid provided the Bidder was prequalified and/or it was found to be qualified to perform the Contract in accordance with ITB 38.

1.2 Technical Evaluation (ITB 36.3 and ITB 36.4)

If, in addition to the cost factors, the Purchaser has chosen to give weight to important technical factors (i.e., the price weight, X, is less than 1 in the evaluation), the total technical score assigned to each Bid in the Evaluated Bid Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical features of the bid, in accordance with the criteria set forth below.

- (a) The technical features to be evaluated are generally defined below and specifically identified in the BDS:
 - (i) Performance, capacity, or functionality features that either exceed levels specified as mandatory in Section 6 (Schedule of Requirements), and/or influence the life cycle cost and effectiveness of the IT products.

- (ii) Usability features, such as ease of use, ease of administration, or ease of expansion, which influence the life cycle cost and effectiveness of the IT products.
 - (iii) The quality of the Bidder's proposed arrangements for management and coordination, training, quality assurance, technical support, logistics, problem resolution, and transfer of knowledge, and other such activities as specified by the Purchaser in Section 6 (Schedule of Requirements).
 - (iv) Any sustainable procurement requirement if specified in Section 6 (Schedule of Requirements).
- (b) Feature scores will be grouped into a small number of evaluation categories, generally defined below and specifically identified in the BDS:
 - (i) The technical features that reflect how well the IT Products and Services meet the Purchaser's business requirements (including quality assurance and risk-containment measures associated with the implementation of the IT Products and Services).
 - (ii) The technical features that reflect how well the IT Products and Services meet the system's functional performance standards.
 - (iii) The technical features that reflect how well the IT Products and Services meet the general technical requirements for hardware, software, and services.
- (c) As specified in the BDS, each category will be given a weight and within each category each feature may also be given a weight.
- (d) During the evaluation, the evaluation committee will assign each desirable/preferred feature a whole number score from 0 to 4, where 0 means that the feature is absent, and 1 to 4 either represent (i) predefined values for desirable features amenable to an objective way of rating (as is the case for, e.g., extra memory, extra mass storage capacity, etc., if these extras would be conducive for the utility of the system); or (ii) a desirable functionality (e.g., of a software package) or a quality improving the prospects for a successful implementation (such as the strengths of the proposed project staff, the methodology, the elaboration of the project plan, etc., in the bid). The scoring will be 1 for the feature being present but showing deficiencies, 2 for meeting the requirements, 3 for marginally exceeding the requirements, and 4 for significantly exceeding the requirements.
- (e) The score for each feature (i) within a category (j) will be combined with the scores of features in the same category as a weighted sum to form the category technical score using the following formula:

$$S_j \equiv \sum_{i=1}^k t_{ji} * w_{ji}$$

where:

t_{ji} = technical score for feature "i" in category "j"

w_{ji} = weight of feature "i" in category "j"

k = number of scored features in category "j"

and $\sum_{i=1}^k w_{ji} = 1$

- (f) The category technical scores will be combined in a weighted sum to form the total Technical Bid Score using the following formula:

$$T \equiv \sum_{j=1}^n S_j * W_j$$

where:

S_j = category technical score of category “j”

W_j = weight of category “j” as specified in the BDS

n = number of categories

and $\sum_{j=1}^n W_j = 1$

1.3 Price Evaluation [100-X%]

The Purchaser will evaluate price bids, pursuant to ITB Clause 36, using the above weighting.

1.4 Domestic Preference

The borrower may, with the agreement of ADB, grant domestic preference in the evaluation of bids under open competitive bidding (OCB) procedure to bids offering certain IT Products manufactured in the country of the borrower, when compared to bids offering such IT Products manufactured elsewhere. The nationality of the manufacturer or supplier is not a condition for such eligibility. The method described below, as stipulated in the Financing Agreement, shall be followed in the evaluation and comparison of bids. For landlocked countries requiring multimodal transportation CIP (...point of entry) should be used instead of CIF (...port of destination).

1.4.1 Method of Application

1. For comparison, responsive bids shall be classified in one of the following three groups:
 - (a) **Group A:** bids exclusively offering IT products manufactured in the country of the borrower if the bidder establishes to the satisfaction of the borrower and ADB that (i) labor, raw material, and components from within the country of the borrower will account for 30% or more of the EXW price of the product offered, and (ii) the production facility in which those IT products will be manufactured or assembled has been engaged in manufacturing or assembling such IT products at least since the time of bid submission.
 - (b) **Group B:** all other bids offering IT products manufactured in the country of the Borrower.
 - (c) **Group C:** bids offering IT products manufactured abroad that have been already imported or that will be directly imported.
2. The price quoted for IT products in bids of groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for IT products in bids of group C shall be on CIF or CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.

3. In the first step, all evaluated Bids in each group shall be compared to determine the highest scoring in each group. Such Most Advantageous Bids shall be compared with each other and if, as a result of this comparison, a bid from group A or group B is the highest scoring, it shall be selected for the award.
4. If as a result of the comparison under para. 3 above, the Most Advantageous Bid is a Bid from group C, the Most Advantageous Bid from group C shall be further compared with the Most Advantageous Bid from group A after adding to the evaluated price of IT products offered in the Bid from group C, for the purpose of this further comparison only, an amount equal to 15% of the CIF or CIP bid price. The Most Advantageous Bid determined from this last comparison shall be selected.

1.5 Economic Criteria

Economic criteria are applied when evaluating a Bid to determine the Most Advantageous Bid. These criteria are the bid price and other factors expressed in monetary terms such as those related to characteristics, performance, and terms and conditions of the purchase of the IT products. The monetary values of the factors provide the adjustment of the bid price for comparison purposes. For energy-consuming equipment and facilities, adjustment for efficiency over and above the minimum functional guarantees specified in the specifications, losses, and future operating costs of the equipment may be taken into account in determining the evaluated Bid price. The financial cost for these adjustments (added to or deducted from the Bid Price as the case may be) shall be made only when it is specified in the Bidding Document that these functional guarantees and projected operating costs are factors in bid evaluation. The methods of calculation for these evaluation factors shall be clearly specified in the Bidding Document. Deviations from the specified manner of cost calculation shall not be introduced.

Examples of such criteria appear below.

1.5.1 Adjustment for Scope

1.5.1.1 Local Handling and Inland Transportation

If the Purchaser wishes to consider during bid evaluation the costs for inland transportation, insurance, and other services within the Purchaser's country incidental to delivery of the IT products to their final destination, then

- (a) the Purchaser must define these services in Section 6 (Schedule of Requirements), and
- (b) Bidders must be required to quote for these services as part of their bid price in the Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country provided in Section 4 (Bidding Forms).

In such case, the following provision should be used:

[Insert: "Costs for inland transportation, insurance, and other incidental costs for delivery of the IT products from the EXW premises, or port of entry, or border point to project site as defined in Section 6 (Schedule of Requirements), shall be quoted in the Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country provided In Section 4 (Bidding Forms). These costs will be taken into account during bid evaluation. If a Bidder fails to include such costs in its Bid, then these costs will be estimated by the Purchaser on the basis of published tariffs by the rail or road transport agencies, insurance companies, or other appropriate sources, and added to EXW or CIF or CIP price."]

1.5.1.2 “Minor Omissions or Missing Items”

The cost of minor omissions or missing items in the scope of supply, services, etc. should be added to the Bid Price to allow for Bid comparison on an equal basis. Only those technical features that are identified as ‘Mandatory’ (or implied as mandatory by the use of the word ‘must’) in Section 6 (Schedule of Requirements) are subject to such price adjustment. All other technical features are preferable features that can be included in, or excluded from, a bid at the Bidder’s option, and are not subject to such price adjustment. The price adjustment should be based on a reasonable estimate of the cost by the executing agency, engineer, consultant, or bid evaluation committee, taking into consideration the corresponding quoted prices from other conforming Bids. The price adjustment should be based on the fair price of the omitted item. The most frequently used method is to use the price equal to the highest price quoted for the same item by the other responsive Bidders.

[*Insert: “Pursuant to ITB 32.3, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated, including technical features identified as ‘Mandatory’ (or implied as mandatory by the use of the word ‘must’) in Section 6 (Schedule of Requirements) and for which nonconformance does not require rejection for non-responsiveness. The Purchaser will make its own assessment of the cost of any nonmaterial nonconformities and omissions, for the purpose of ensuring fair comparison of Bids.”]*

1.5.2 Adjustment for Deviations from the Terms of Payment

The Purchaser must state here whether deviations from the terms of payment as specified in Special Conditions of Contract (SCC) 16.1, are permitted or not. If permitted, the Purchaser shall evaluate deviations from the terms of payment in the following manner. The Purchaser shall first evaluate the Bids based on the terms of payment specified in SCC 16.1. The Purchaser shall then add an adjustment to the Bid Price to take into account the differences in cash flows. The adjustment shall be calculated as the discounted cash flow of the incremental payments of the alternative compared with those of the terms of payment specified by the Purchaser.

[*Alternative 1. Insert: “Deviations from the Terms of Payment as specified in SCC 16.1 are not permitted.”]*

[*Alternative 2. Insert: “Bids offering payment terms that differ from those specified in SCC 16.1 will be accepted but the Bids will be adjusted in the evaluation by adding the cost of the interest involved at the rate of (. . . specify commercial rate applicable).”]*

1.5.3 Adjustment for Deviations in the Delivery and Completion Schedule

Bidders are required to base their prices on the Delivery and Completion Schedule specified in Section 6 (Schedule of Requirements). The Purchaser must state here whether deviations from the specified Delivery and Completion Schedule are permitted or not. If permitted, the Purchaser shall evaluate deliveries by adding the corresponding price adjustment in accordance with the procedure outlined below.

[*Alternative 1. Insert: “Deviations from the Delivery and Completion Schedule specified in Section 6 (Schedule of Supply) are not permitted.”]*

[Alternative 2. Insert: “The IT products covered by this bidding process are required to be delivered in accordance with, and completed within, the Delivery and Completion Schedule specified in Section 6 (Schedule of Requirements). No credit will be given for earlier completion. Bids offering late contract performance schedules will be accepted but the Bids shall be adjusted in the evaluation by adding to the Bid Price at the rate of (. . . *specify percentage*) of the Bid Price for each day of delay. Bids offering delivery schedules beyond (. . . *specify time limit*) of the date specified in Section 6 (Schedule of Requirements), shall be rejected.”]

1.5.4 Operation and Maintenance Costs

The operation and maintenance (O&M) costs need to be taken into account for bid evaluation purposes when such costs over the life cycle of the IT products represent an important cost in relation to the capital or investment cost of the IT products. Different technologies may involve large variations in the capital cost of the IT products and the associated O&M costs. Normally, more elaborate technologies and materials used in the manufacturing of the IT products involve higher investment costs and lower O&M costs. O&M costs are evaluated at their present value over the life cycle of the IT products and then added to the price of the IT products. Use of unverifiable future O&M cost and consumption figures as a factor in economic evaluation should be avoided.

Typical O&M cost factors for calculation are as follows:

- (a) Number of years for initial period of operation. It is recommended that the initial period of operation does not exceed the usual period before a major overhaul of the IT products is required, usually between five (5) and ten (10) years. The load or working cycle (hourly, daily, monthly, seasonal) of the IT products shall be as specified by the Purchaser).
- (b) Operating costs such as electricity, spare parts, labor, and/or other inputs required for the operation of the IT products.
- (c) Rate, in percentage, to be used to discount to present value, all of the annual future costs calculated under (b) above for the period specified in (a).

[Insert procedures to be used]

1.5.5 Spare Parts

Only those spare parts and tools that are specified on an item-wise basis in the List of IT Products and Services (LITS) in Section 6 (Schedule of Requirements), shall be taken into account in the bid evaluation. Supplier-recommended spare parts for a specified operating requirement shall not be considered in bid evaluation.

[Insert: “The list of items and quantities of (. . . *specify spare parts, tools, major assemblies, and selected components*), likely to be required during the initial period (. . . *specify period*) of operation, is indicated in Section 6 (Schedule of Requirements). The total cost of these items at the unit prices quoted in each Bid shall be added to the Bid Price.”]

1.5.6 Performance and Productivity of the IT Products

The adjustment factor for the performance or productivity of the IT products shall be calculated based on the difference between the reference value or norm (i.e., the efficiency) as specified in Section 6 (Schedule of Requirements), and the corresponding value guaranteed by the Bidder in its Bid. The method of calculation shall be the following:

[Insert detailed description of the methodology]

1.5.7 Other Criteria in Accordance with ITB 36.6(f)

[Insert criteria and detailed description of the methodology]

1.6 Multiple Lots (Contracts)

If IT Products and Services are grouped in multiple lots, the following provision must be used:

[Insert: "IT Products and Services are grouped in lots. The Purchaser will evaluate and compare Bids on the basis of a lot, or a combination of lots, or as a total of lots to arrive at the highest scoring combination for the Purchaser by taking into account discounts offered by Bidders in case of award of multiple contracts."]

If a Bidder submits successful (Most Advantageous) Bids for multiple lots, the evaluation will also include an assessment of the Bidder's capacity to meet the aggregated qualifying requirements relating to *[Purchaser to list here the qualifying requirements set for individual contracts/lots, such as production capacity, size of operation]*.

2. Qualification Criteria

2.1 Eligibility

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		
		All Partners Combined	Each Partner	One Partner
				Submission Requirements

2.1.1 Nationality

Nationality in accordance with ITB 4.2.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid; Forms ELI - 1 and ELI - 2
---	-----------------------	-----------------------	-----------------------	----------------	--

2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
--	-----------------------	-----------------------	-----------------------	----------------	---------------

2.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
--	-----------------------	-----------------------	-----------------------	----------------	---------------

2.1.4 Government-Owned Enterprise

Bidder required to meet conditions of ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid; Forms ELI - 1 and ELI - 2
--	-----------------------	-----------------------	-----------------------	----------------	--

2.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB 4.8.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid
--	-----------------------	-----------------------	-----------------------	----------------	---------------

NOTE

It is the obligation of the Purchaser to confirm an entity's eligibility by checking ADB's complete Sanctions List (for all bidders) at various stages of bidding process including bid evaluation, prior to contract award, as well as during processing of contract variations, extensions or modifications. ADB has the right to monitor the Purchaser's compliance to this obligation.

ADB's Complete Sanctions List and the guide on how to get its access are available at <https://www.adb.org/who-we-are/integrity/sanctions>

2.2 Historical Contract Nonperformance

2.2.1 History of Nonperforming Contracts

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Nonperformance of a contract ^a did not occur as a result of contractor default since 1 January [insert year].	Must meet requirement	Must meet requirement	Must meet requirement ^b	Not applicable	Form CON-1

^a Nonperformance, as decided by the Purchaser, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Purchaser's decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

^b This requirement also applies to contracts executed by the Bidder as Joint Venture partner.

2.2.2 Suspension Based on Execution of Bid-Securing Declaration

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Not under suspension based on execution of a Bid-Securing Declaration pursuant to ITB 4.6.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

2.2.3 Pending Litigation and Arbitration

Pending litigation and arbitration criterion [shall/shall not] apply.^a

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
All pending litigation, arbitration or other material events impacting the net worth and/or liquidity of the bidder, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than . . . ^b percent of the Bidder's net worth calculated as the difference between total assets and total liabilities.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form CON – 1

^a The Purchaser may choose whether to apply or not to apply this criterion:

- 1) If the Purchaser chooses to apply this criterion, it should indicate “shall apply” and use the table in 2.2.3, or
- 2) If the Purchaser chooses not to apply this criterion, it should indicate “shall not apply” and delete the table in 2.2.3.

^b If the criterion is applied, the Purchaser should indicate a percentage within the range of 50%–100% of the Bidder's net worth.

2.3 Experience and Technical Capacity

2.3.1 Contractual Experience

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Successful completion as main supplier within the last ^a years, of at least ^b contracts each valued at ^c with nature, and complexity similar to the scope of requirements described in Section 6 (Schedule of Requirements).	Must meet requirement	Must meet requirement	Not applicable	Not applicable	Form EXP – 1 ^d

^a Indicate time period usually 3 years.

^b 1 to 3 depending on the scope of requirements.

^c Usually 80% of the estimated value of the subject contract.

^d In addition to the submission of Form EXP-1, the Bidder shall provide the Signed Contract Agreement.

2.3.2 Technical Experience

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
The Bidder shall demonstrate that the IT products offered have (i) been in production for at least ^a years, and (ii) been sold a minimum of. . . ^b units of similar type and specification over the last three (3) years; (iii) been in operation for a minimum of ^c years.	Must meet requirement	Must meet requirement	Not applicable	Not applicable	Form EXP – 2 ^d

^a Purchaser to indicate the number of years in production.

^b Purchaser to indicate the number of units sold of similar capacity.

^c Purchaser to indicate the number of years in operation.

^d In addition to the submission of Form EXP-2, the Bidder shall provide the Signed Contract Agreement.

2.3.3 Production Capacity

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
The Bidder or manufacturer shall demonstrate ^a that it can supply the type, size, and quantity of the IT products as required by Purchaser in accordance with the Delivery and Completion Schedule in Section 6 (Schedule of Requirements).	Must meet requirement	Must meet requirement	Not applicable	Not applicable	Form EXP – 3

^a Bidder or Manufacturer shall provide evidence of production output.

2.4 Financial Situation

2.4.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, for the last ^a years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form FIN – 1

Note: The financial information provided by the bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the bidder should be given on this basis. Any abnormal features that may lead to financial problems should alert the Purchaser to seek expert professional advice for further review and interpretation.

^a Indicate time period between 3 and 5 years.

2.4.2 Size of Operation (Average Annual Turnover)

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of \$ ^a calculated as total payments received by the Bidder for contracts completed or under execution over the last ^b years.	Must meet requirement	Must meet requirement	Must meet ^c of the requirement	Must meet ^d of the requirement	Form FIN – 2

^a The amount stated should normally not be less than two times the annualized value of the subject contract, expressed as $2 \times V/T$; where V is the purchaser's estimated cost (including contingencies), T is the contract duration in years. For contract duration of up to 1 year, T of "1" should be used. The multiplier of 2 may be reduced for very large contracts but should not be less than 1.5.

^b Insert number of years in words and figures and indicate time period between 3 and 5 years.

^c The Purchaser is to define this value based on the minimum amount required that all partners of the Joint Venture must meet, taking joint and several liability into account, usually at least 25%.

^d The Purchaser is to define this value based on the minimum amount required that one partner of the Joint Venture must meet, usually at least 40%.

2.4.3 Cash Flow Capacity

If the bid evaluation process and the decision for the award of the Contract takes more than 1 year from the date of bid submission, Bidders may be asked to resubmit their latest information on financial resources supported by latest audited accounts/audited financial statements, or if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, and the Bidders' financial capacity will be reassessed on this basis.

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Availability of or access to liquid assets, ^a lines of credit, and other finances sufficient to meet cash flow requirement which is \$. ^b	Must meet requirement	Must meet requirement	Must meet ^c of the requirement	Must meet ^d of the requirement	Form FIN – 3

^a Liquid assets mean cash and cash equivalents, short-term financial instruments, short-term available-for-sale-securities, marketable securities, trade receivables, short-term financing receivables, and other assets that can be converted into cash within one (1) year.

^b The Purchaser is to specify the cash flow requirement for the subject contract based on the estimated value of the initial delivery of the goods in accordance with the Delivery and Completion Schedule in Section 6 (Schedule of Requirements).

^c The Purchaser is to define this value based on the minimum amount required that all partners of the Joint Venture must meet, taking joint and several liability into account, usually at least 25%.

^d The Purchaser is to define this value based on the minimum amount required that one partner of the Joint Venture must meet, usually at least 40%.

Section 4: Bidding Forms

The Purchaser shall include in this Section all bidding forms that the Bidder must complete and include in its Bid.

Table of Forms

Letter of Bid	63
Price Schedules	67
Price Schedule for IT Products to Be Offered from Within the Purchaser's Country	68
Price Schedule for IT Products to Be Offered from Outside the Purchaser's Country	69
Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country	70
Price Schedule for Recurrent Costs	71
Grand Summary	72
Tables of Adjustment Data.....	73
Bid Security and Bid-Securing Declaration	74
Bid Security	75
Bid-Securing Declaration	76
Manufacturer's Authorization	77
Affiliate Company Guarantee.....	78
Bidder's Qualification.....	79
Form ELI – 1: Bidder's Information Sheet.....	80
Form ELI – 2: Joint Venture Information Sheet.....	82
Form LIT – 1: Historical Contract Nonperformance	84
Form EXP – 1: Contractual Experience	86
Form EXP – 2: Technical Experience	87
Form EXP – 3: Production Capacity	88
Form FIN – 1: Historical Financial Performance.....	89
Form FIN – 2: Size of Operation (Average Annual Turnover)	90
Form FIN – 3: Cash Flow Capacity	91

Letter of Bid

NOTES

1. The bidder must accomplish the Letter of Bid on its letterhead clearly showing the bidder's complete name and address.
2. To be used for Single-Stage: One-Envelope Bidding Procedure.

Date:

Open Competitive Bidding (OCB) No.:

Invitation for Bid (IFB) No.:

Alternative No.:

[Insert identification no. if this is an alternative bid;
if alternative bid is not permitted, delete this field]

To: [insert complete name of the purchaser]

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time.
- (c) We offer to supply in conformity with the Bidding Document and in accordance with Section 6 (Schedule of Requirements), the following IT Products and Services: [insert a brief description of the IT Products and Services]
- (d) The total price of our Bid, excluding any discounts offered in item (d) below, is

[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures]

The total bid price from the price schedules should be entered by the bidder inside this box. Absence of the total bid price in the Letter of Bid may result in the rejection of the bid.

- (e) The discounts offered and the methodology for their application are as follows:

Discounts: If our Bid is accepted, the following discounts shall apply. [specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies]

Methodology of Application of the Discounts: The discounts shall be applied using the following method: [specify in detail the method that shall be used to apply the discounts]

- (f) Our Bid shall be valid for a period of [insert validity period as specified in ITB 20.1 of the Bid Data Sheet (BDS)] days starts from the date fixed for the bid submission deadline in accordance with ITB 24.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (g) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Documents.

- (h) We undertake, if our bid is accepted, to commence work on the IT Products and Services and to achieve installation and acceptance within the respective times stated in the Bidding Documents.
- (i) We hereby certify that all the software offered in this bid and to be supplied under the Contract is either (i) owned by us or, (ii) covered by a valid license from the proprietor of the software.
- (j) Our firm, including any Subcontractors or Suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
- (k) We, our directors, key officers, key personnel, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

- (i) Parties involved in the conflict of interest:
- (ii) Details about the conflict of interest:
- (l) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers in accordance with the Bidding Documents.
- (m) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.¹
- (n) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not under ongoing investigation and/or sanctions proceedings by the Asian Development Bank or any multilateral development bank.

If under ongoing investigation and/or sanction proceedings by the Asian Development Bank or any multilateral development bank, please state details:

- (i) Name of the multilateral development bank: _____
- (ii) Reason for the ongoing investigation / allegations: _____
- (o) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the Contract, are not temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency.

¹ These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to para. 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check www.adb.org/integrity for updates.

If so temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency, please state details (as applicable to each Joint Venture partner, their respective direct or indirect shareholders, directors, key officers, key personnel, associate, parent company, affiliate, subsidiaries, Subcontractors, consultants, subconsultants, manufacturers, service providers and/or Suppliers):

- (i) Name of Institution:
 - (ii) Period of the temporary suspension, debarment, ineligibility, or national or international sanction [start and end date]:
 - (iii) Reason for the temporary suspension, debarment, ineligibility, or national or international sanction:
- (p) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers, Suppliers, key officers, directors, and key personnel have never been charged or convicted with any criminal offense (including felonies but excluding misdemeanors) or infractions and/or violations of ordinance; nor charged or found liable in any civil or administrative proceedings in the last 10 years; or undergoing investigation for such, or subject to any criminal, civil or administrative orders, monitorship or enforcement actions.
- If so charged, convicted/found liable, under ongoing investigation, or subject to orders, monitorship or enforcement actions, please state details:
- (i) Nature of the offense, violation, proceedings, investigation, and/or monitorship or enforcement actions: _____
 - (ii) Court, area of jurisdiction and/or the enforcement agency: _____
 - (iii) Resolution [i.e. dismissed; settled; or convicted/duration of penalty]: _____
 - (iv) Other relevant details [please specify]: _____
- (q) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, can make and receive electronic fund transfer payments through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer.
- If unable to make or receive funds through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer, please state the details:
- (i) Nature of the restriction: _____
 - (ii) Jurisdiction of the restriction: _____
 - (iii) Other relevant details: _____
- (r) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, key officers, directors and key personnel are not from a country which is prohibited to export goods or services to, or receive any payments from the Purchaser's country and/or are not prohibited to receive payments for particular goods or services by the Purchaser's country 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.
- (s) We understand that it is our obligation to notify the Purchaser of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (o), (p) and (t) of this Letter of Bid.

- (t) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].²
- (u) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid-Securing Declaration in accordance with ITB 4.6.
- (v) We have paid, or intend to pay, either directly or indirectly, the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:³

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

- (w) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed.
- (x) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.
- (y) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.
- (z) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records and other documents related to bid submission for at least 3 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.
- (aa) If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.
- (bb) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Purchaser of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

² Use one of the two options as appropriate.

³ If none has been paid or is to be paid, indicate "None."

Price Schedules

The Bidder shall complete and submit with its Bid the Price Schedules pursuant to ITB 12 and in accordance with Part 2 Supply Requirements, Section 6 (Schedule of Requirements). The list of items in column 1 of the Price Schedules shall coincide with the List of IT Products and Services specified by the Purchaser in the Schedule of Requirements. This Guide helps the Purchaser and Bidder fill out all the required information in the Price Schedule Form.

The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive. Any necessary alterations due to errors, etc., shall be signed by the Bidder.

Price Schedule for IT Products to Be Offered from Within the Purchaser's Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item	Description	Country of Origin	Domestic Value Added in Percentage	Quantity and Unit of Measurement	Unit Price EXW	Total EXW Price per Item	Sales and Other Taxes per Item	Total Price per Item including Taxes
1	2	3	4	5	6	7 = 5 x 6	8	9 = 7 + 8
Total Amount								

Notes:

Column 4: In accordance with domestic preference ITB 35, if applicable.

Domestic Value Added comprises domestic labor, the domestic content of materials, domestic overheads, and profits from the stage of mining the raw material until final assembly.

Column 6: Incoterm in accordance with ITB 14.

Currency in accordance with ITB 15.

Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the customs duties and sales and other taxes already paid on previously imported items.

Column 8: Payable in the Purchaser's country if Contract is awarded.

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

Price Schedule for IT Products to Be Offered from Outside the Purchaser's Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price CIF (...) or CIP (...)	Unit Price FOB (...) or FCA (...)	Total Price CIF or CIP per Item	Total Price FOB or FCA per Item
1	2	3	4	5	6	7 = 4 x 5	8 = 4 x 6
				Total Amount			

Notes:

Columns 5 and 6: Incoterm in accordance with ITB 14.
Currency in accordance with ITB 15.

Column 6: Only to be used if the Purchaser wishes to reserve transportation and insurance to domestic companies or other designated sources. Identification of the Most Advantageous Bid must be on the basis of the CIF or CIP price, but the Purchaser may sign the contract on FOB or FCA terms and make its own arrangement for transportation and/or insurance.

Name: [insert complete name of person signing the bid]

In the capacity of [insert legal capacity of person signing the bid]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the Bid for and on behalf of [insert complete name of the bidder]

Date: [insert date of signing]

Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item No.	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price		Total Price per Item	
				(a)	(b)	(a)	(b)
				Foreign Currency	Local Currency	Foreign Currency	Local Currency
1	2	3	4	5(a)	5(b)	6(a) = 4 x 5(a)	6(b) = 4 x 5(b)
				Total Amount			

Notes:

Columns 5 and 6: Currencies in accordance with ITB 15.

Prices are to be quoted inclusive of all customs duties, sales, and other similar taxes applicable in the Purchaser's country and payable on the Services, if the Contract is awarded to the Bidder.

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

Price Schedule for Recurrent Costs

Item	Recurrent Item	Maximum all-inclusive Costs							
		Warranty Period			Post-Warranty Service Period			Total Prices	
		Y1	Y2	Y3	Y4	Y5	Yn	Local Currency	Foreign Currency
Total Amount: Cumulative Recurrent (to be carried to Grand Summary Costs)									

Name: [insert complete name of person signing the bid]

In the capacity of [insert legal capacity of person signing the bid]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the Bid for and on behalf of [insert complete name of the bidder]

Date: [insert date of signing]

Grand Summary

Price Component	Total Price	
	Local Currency	Foreign Currency
Price Schedule for IT Products to Be Offered from Within the Purchaser's Country		
Price Schedule for IT Products to Be Offered from Outside the Purchaser's Country		
Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country		
Total Bid Price (to be carried forward to the Letter of Bid)		

Name: [insert complete name of person signing the bid]

In the capacity of [insert legal capacity of person signing the bid]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the Bid for and on behalf of [insert complete name of the bidder]

Date: [insert date of signing]

NOTE

Specify currency in accordance with Bid Data Sheet 15.1. Create and use as many columns for Foreign Currency requirement as there are foreign currencies.

Tables of Adjustment Data

Table A – Local Currency Payment

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	a: 0.05 to 0.15 b: _____ c: _____ d: _____ e: _____
Total					1.00

To be entered by the purchaser (points to Index Code and Base Value and Date)

To be entered by the bidder (points to Bidder's Local Currency Amount and Bidder's Proposed Weighting)

Table B – Foreign Currency Payment

Name of Currency: Insert name of currency. If the bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/ Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—		—	a: 0.05 to 0.15 b: _____ c: _____ d: _____ e: _____
Total						1.00

To be entered by the bidder (points to Bidder's Currency in Type/ Amount and Bidder's Proposed Weighting)

NOTE

The base date shall be the date 28 days prior to the deadline for submission of the bid.

Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 14.7.

Bid Security and Bid-Securing Declaration

When requested in the Bid Data Sheet, the Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a Bid Security.

In case of an unconditional guarantee issued by a bank, the Bidder shall use the Bid Security Form included in this section or another form acceptable to the Purchaser prior to bid submission pursuant to ITB 21.3. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for number of days as specified in the BDS beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 20.2.

If a Bid-Securing Declaration is specified pursuant to ITB 21.1 the Bidder shall use the form included in this section.

Bid Security

Bank Guarantee

[insert bank's name, and address of issuing branch or office]¹

Beneficiary: [insert name and address of the purchaser]

Date: [insert date]

Bid Security No.: [insert number]

We have been informed that [insert name of the bidder] (hereinafter called "the Bidder") has submitted to you its bid dated [insert date] (hereinafter called "the Bid") for the execution of [insert name of contract] under Invitation for Bids No. [insert IFB number] ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we [insert name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in words] [insert amount in figures] upon receipt by us of your first demand in writing accompanied by a written statement, stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Agreement; or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758.²

..... Authorized signature(s) and bank's seal (where appropriate)

¹ All italicized text is for use in preparing this form and shall be deleted from the final document.

² Or the purchaser may use "Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458" as appropriate.

Bid-Securing Declaration

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

Bid No.: [insert number of bidding process]

Alternative No.: [insert identification no. if this is a bid for an alternative]

To: [insert complete name of the purchaser]

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of [insert number of years indicated in ITB 21.2 of the BDS] starting on the date that we receive a notification from the Purchaser that our Bid-Securing Declaration is executed, if we are in breach of our obligation(s) under the bid conditions, because we

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) do not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter “the ITB”); or
- (c) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract Agreement, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) 28 days after the expiration of our Bid.

Signed: [insert signature of person whose name and capacity are shown]

In the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]

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

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

Dated on _____ day of _____, _____ [insert date of signing]

Corporate Seal [where appropriate]

Manufacturer's Authorization

Date: [insert date (as day, month, and year) of bid submission]
 OCB No.: [insert number of bidding process]

To: [insert complete name of the purchaser]

WHEREAS

We [insert complete name of the manufacturer], who are official manufacturers of [insert type of IT Products and Services manufactured], having factories at [insert full address of manufacturer's factories], do hereby authorize [insert complete name of the bidder] to submit a bid the purpose of which is to provide the following IT Products and Services, manufactured by us [insert name and/or brief description of the IT Products and Services], and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions, with respect to the IT Products and Services offered by the above firm.

Signed: [insert signature(s) of authorized representative(s) of the manufacturer]

Name: [insert complete name(s) of authorized representative(s) of the manufacturer]

Title: [insert title]

Duly authorized to sign this Authorization on behalf of [insert complete name of the manufacturer]

Dated on _____ day of _____, _____ [insert date of signing]

NOTE

All italicized text is for use in preparing this form and shall be deleted from the final document.

The bidder shall require the manufacturer to fill out this form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer. The bidder shall include it in its bid, if so indicated in the BDS.

Affiliate Company Guarantee

Name of Contract/Contract No.:

Name and address of Purchaser:
[together with successors and assigns].

We have been informed that [name of Contractor] (hereinafter called the “Contractor”) is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Purchaser, awarding the Contract to the Contractor, we [name of affiliated company] irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract, we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor’s satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract, we will indemnify the Purchaser against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Purchaser under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor’s obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Purchaser and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Purchaser to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Purchaser, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled under the [Rules or Arbitration provided in the Contract]. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by	Signed by:
(signature)	(signature)
.....	
(name)	(name)
.....	
(position in parent/subsidiary company)	(position in parent/subsidiary company)

Date

NOTE

If permitted in accordance with ITB 38.2 of the BDS, the Bidder shall provide the Affiliate Company Guarantee Form filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Purchaser in determining its qualifications.

Bidder's Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the following information requested in the corresponding Information Sheets.

Form ELI – 1: Bidder’s Information Sheet.

Bidder’s Information			
		Information of the Bidder	If the Bidder is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)		
	Full trading name(s) (if any)		
Addresses	Registered address(es)		
	Trading address(es)		
	Postal address(es) (if different from trading address)		
Type of organization			
Country of constitution/ incorporation/registration			
Year of constitution/incorporation/ registration			
Corporate or registration number			

In case of a Joint Venture, legal name of each partner	
Bidder's authorized representative (name, address, telephone number(s), fax number(s), and e-mail address)	
<p>Attached are copies of the following documents:</p> <ol style="list-style-type: none">1. In case of a single entity, articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.22. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 22.23. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.14. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5	

Form ELI – 2: Joint Venture Information Sheet

Each partner of the Joint Venture must fill out this form separately.

Joint Venture Information			
Bidder's legal name			
		Information of Joint Venture Partner	If any Joint Venture Partner is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)		
	Full trading name(s) (if any)		
Addresses	Registered address(es)		
	Trading address(es)		
	Postal address(es) (if different from trading address)		
Type of organization			
Country of constitution/ incorporation/ registration			

Year of constitution/incorporation/registration		
Corporate or registration number		
Joint Venture Partner's authorized representative information (name, address, telephone number(s), fax number(s), and e-mail address)		
<p>Attached are copies of the following documents:</p> <ol style="list-style-type: none">1. Articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.22. Authorization to represent the firm named above, in accordance with ITB 22.23. In the case of a government-owned enterprise, in accordance with ITB 4.5		

Form LIT – 1: Historical Contract Nonperformance

Each Bidder must fill out this form in accordance with Criteria 2.2.1 and 2.2.3 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Table 1: History of Nonperforming Contracts

Choose one of the following:

- ☐ No nonperforming contracts.
- ☐ Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Description	Amount of Nonperformed Portion of Contract (\$ equivalent)	Total Contract Amount (\$ equivalent)
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Purchaser: [insert full name] Address of Purchaser: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]	[insert amount]

Table 2: Pending Litigation and Arbitration

Choose one of the following:

- ☐ No pending litigation, arbitration or any other material events impacting the net worth and/or liquidity of the bidder.
- ☐ Below is a description of all pending litigation, arbitration against the Bidder or any other material events impacting the net worth and/or liquidity of the bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Matter in Dispute	Value of Pending Claim in \$ Equivalent	Value of Pending Claim as a Percentage of Net Worth
[insert year]	<p>Contract Identification, as applicable: [indicate complete contract name/number, and any other identification]</p> <p>Name of Purchaser, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert full name]</p> <p>Address of Purchaser, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert street/city/country]</p> <p>Matter of Dispute: [indicate full description of dispute]</p> <p>Party who initiated the dispute: [indicate "Purchaser" or "Contractor"]</p> <p>Status: [indicate status of dispute]</p>	[insert amount]	[insert amount]

Note: Table 2 of this form shall only be included if Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.

Form EXP – 1: Contractual Experience

Fill out one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement.

Contractual Experience			
Contract No of		Contract Identification	
Award Date		Completion Date	
Role in Contract	☐ Manufacturer	☐ Supplier	☐ Subcontractor
Total Contract Amount	\$		
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount	
Purchaser's name Address Telephone/Fax number E-mail			
Description of the Similarity in Accordance with Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria)			
<div style="background-color: #0070c0; color: white; padding: 5px; text-align: center;">NOTE</div> <div style="border: 1px solid black; padding: 10px; margin-top: 5px;"> <i>The purchaser should insert here contractual experience as described in Criterion 2.3.1 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.</i> </div>			
<i>Note: This form shall only be included if Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria) is applicable.</i>			

Form EXP – 2: Technical Experience

Fill out one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement.

Technical Experience	
Name of Product:	
Manufacturer:	Address and Nationality:
Requirements in Accordance with Criterion 2.3.2 of Section 3 (Evaluation and Qualification Criteria)	
(i) Product has been in production for at least^a years.	[^a Indicate production history requested.]
(ii) Product (or equipment) has been sold a minimum of^b units of similar type and specification over the last three (3) years.	[^b Indicate number sold and clients.]
(iii) Product has been in operation for a minimum of^c years.	[^c For equipment/product sold to clients mentioned above, indicate here number of years equipment/product has been in operation.]
<p><i>Note:</i> This form shall only be included if Criterion 2.3.2 of Section 3 (Evaluation and Qualification Criteria) is applicable. Add pages as necessary. Purchaser reserves the right to verify authenticity of Bidder submissions.</p>	

Form EXP – 3: Production Capacity

Fill out one (1) form per product and manufacturer.

Production Capacity	
Name of Product:	
Manufacturer:	Address and Nationality:
Requirements in Accordance with Criterion 2.3.3 of Section 3 (Evaluation and Qualification Criteria)	
Production facility 1 (include location):	<i>[Insert the production/supply capacity per month/year as required.]</i>
Production facility 2 (include location):	<i>[Insert the production/supply capacity per month/year as required.]</i>
Production facility 3 (include location):	<i>[Insert the production/supply capacity per month/year as required.]</i>
<p><i>Note:</i> This form shall only be included if Criterion 2.3.3 of Section 3 (Evaluation and Qualification Criteria) is applicable. Purchaser reserves the right to verify authenticity of bidder submissions.</p>	

Form FIN – 1: Historical Financial Performance

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

	Financial Data for Previous 3 Years ^a [\$ Equivalent]		
	Year 1:	Year 2:	Year 3:
Information from Balance Sheet			
Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA - TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA - CL			
Most Recent Working Capital		To be obtained for most recent year and carried forward to FIN – 3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner's FIN – 3.	
Information from Income Statement			
Total Revenues			
Profits Before Taxes			
Profits After Taxes			
☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last 3 years, ^b as indicated above, complying with the following conditions: <ol style="list-style-type: none"> 1) Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.^c 2) Historical financial statements must be audited by a certified accountant. 3) Historical financial statements must be complete, including all notes to the financial statements. 4) Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). 			

Note: This form shall only be included if Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria) is applicable.

^a If the time period indicated under Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria) is either 4 or 5 years, then the table columns above should be expanded accordingly.

^b The time period stated here should be the same as the time period indicated under Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria).

^c When financial qualifications of Bidder's parent companies, subsidiaries, or affiliates are permitted in accordance with ITB 38.2 of Section 2, replace the text of condition 1 with "As required by Section 3 of the Bidding Documents, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder, as well as standalone financial situation of such Bidder's parent companies, subsidiaries, or affiliates which are proposed by the Bidder for Criteria 2.4 Financial Situation in Section 3 for consideration of the Purchaser in determining its qualifications."

Form FIN – 2: Size of Operation (Average Annual Turnover)

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each partner of a Joint Venture for the total certified payments received from the clients for contracts in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Annual Turnover Data for the Last . . . Years ^a			
Year	Amount Currency	Exchange Rate	\$ Equivalent
Average Annual Turnover ^b			

Note: This form shall only be included if Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria) is applicable.

^a The purchaser should insert the period described in Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria).

^b To determine the average annual turnover, the purchaser shall divide the sum of each year's annual turnover by the number of years, for which such information was requested.

Form FIN – 3: Cash Flow Capacity

Specify proposed sources of financing, such as working capital, liquid assets,³ lines of credit, and other financial resources (other than any contractual advance payments) available to meet the cash flow requirements indicated under Criterion 2.4.3 of Section 3 (Evaluation and Qualification Criteria).

Financial Resources		
No.	Source of financing	Amount (\$ equivalent)
1		
2		
3		

Note: This form shall be included only if Criterion 2.4.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.

³ Liquid assets mean cash and cash equivalents, short-term financial instruments, short-term available-for-sale-securities, marketable securities, trade receivables, short-term financing receivables, and other assets that can be converted into cash within one (1) year.

Section 5: Eligible Countries

This section contains the list of eligible countries. Please choose one of the following cases and follow the instruction as appropriate.

NOTES

For Contracts to be financed by loans/grants from

1. OCR without cofinancing resources:

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in para. 2 below), *then please state* “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

2. Regular loan from OCR with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Investment Climate Facilitation Fund,
- (iv) Japan Fund for the Joint Credit Mechanism, and
- (v) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

3. Concessional loan from OCR with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Japan Fund for Public Policy Training,
- (iv) Japan Fund for Information and Communication Technology,
- (v) Investment Climate Facilitation Fund, and
- (vi) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

4. Regular loan from OCR with cofinancing resources other than those listed in para. 2 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

5. Concessional loan from OCR with cofinancing resources other than those listed in para. 3 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

6. ADF without cofinancing resources:

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB developed members that have contributed to ADF resources, and all ADB developing members.*

EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in para. 7 below), then please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

7. ADF with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Japan Fund for Public Policy Training,
- (iv) Japan Fund for Information and Communication Technology,
- (v) Investment Climate Facilitation Fund, and
- (vi) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB developed members that have contributed to ADF resources, and all ADB developing members.*

8. ADF with cofinancing resources other than those listed in para. 7 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

Section 6: Schedule of Requirements

The Schedule of Requirements shall provide sufficient information to enable Bidders to efficiently and accurately prepare realistic and competitive bids. The Schedule of Requirements is a Contract Document and, therefore, a part of the Contract. The Purchaser must prepare the Schedule of Requirements and include it as a part of the Bidding Document.

The Schedule of Requirements should be complete, precise, and clear. An incomplete, imprecise, or unclear Schedule of Requirements may prompt Bidders to require clarifications from the Purchaser or to submit conditional bids or bids that may be based on different understandings of the Purchaser's requirements. Depending on the nature of the clarifications, the Purchaser may need to amend the Bidding Document and eventually to extend the bid submission deadline. Conditional bids would have to be rejected. Bids that are not comparable cannot be evaluated.

The Purchaser shall assign experienced staff to draft the Schedule of Requirements in a manner permitting the widest possible competition, while at the same time clearly specifying the required standards of workmanship, the characteristics of materials and performance of the IT Products and Services, and the delivery and completion of the IT Products and Services. Only by following this approach will the Purchaser ensure that the objectives of economy, efficiency, fairness, transparency, quality, and value for money in procurement can be realized as envisaged under open competitive bidding (OCB) procedures.

The Schedule of Requirements consists of four parts:

1. List of IT Products and Services (LITS)
2. Delivery and Completion Schedule
3. Technical Specifications
4. Drawings

The following notes provide guidance on how to prepare each part.

NOTE

Input of information to be completed by the purchaser.

1. List of IT Products and Services

The Purchaser must prepare a List of IT Products and Services (LITS) and include it as a part of the Schedule of Requirements. The purpose of the LITS is to briefly describe and specify the quantity of each of the IT Products and Services that the Purchaser requires the Bidder to include in its Bid. As a part of the Schedule of Requirements, the LITS constitutes a Contract document and, therefore, it is a part of the Contract.

If the IT Products and Services are grouped in lots, the Purchaser must state whether Bidders are permitted to submit Bids for individual lots or not. For example,

[Alternative 1. Insert: “The IT Products and Services are grouped into lots. Bids on individual lots are not permitted. Only Bids for all of the lots will be accepted.”]

[Alternative 2. Insert: “The IT Products and Services are grouped into lots. Bidders shall have the option of submitting Bids for one, any combination, or all of the lots. Lots shall not be further subdivided for the purpose of bidding.”]

Lot No.: [if applicable]				
Lot Name: [if applicable]				
Item No.	Name of IT Products and Services	Description	Unit of Measurement	Quantity

Lot No.: [if applicable]				
Lot Name: [if applicable]				
Item No.	Name of IT Products and Services	Description	Unit of Measurement	Quantity

Lot No.: [if applicable]				
Lot Name: [if applicable]				
Item No.	Name of IT Products and Services	Description	Unit of Measurement	Quantity

2. Delivery and Completion Schedule

The purpose of the Delivery and Completion Schedule (DCS) is to specify the delivery dates and places for each of the IT products and the delivery places and completion dates for each of the services as listed in the LITS. The DCS, as part of the Schedule of Requirements, constitutes a Contract document and, therefore, it is a part of the Contract. The Purchaser must prepare the DCS and include it as a part of the Schedule of Requirements.

In preparing the DCS, the Purchaser should take into account the following:

- (a) The delivery and completion dates should be realistic. Unrealistically short delivery or completion expectations may result in restricted competition or may prompt complaints from prospective Bidders.
- (b) The date or period for delivery should be carefully specified, taking into account that the delivery terms stipulated must be consistent with
 - the Incoterms) EXW, CIF, CIP, CPT, FOB, FCR, FCA where delivery of IT products takes place when delivered to the custody of the first carrier, and not the place established as the “named place of destination,” and
 - the date specified in the Contract for the start of the Purchaser’s obligations (i.e., Notification of Award, date of signing the Contract Agreement, opening or confirmation of the letter of credit).

To determine the realistic arrival dates of the goods at their final destinations, the Purchaser has to take into account the additional time that will be needed for international or national transit to the project site or to another common place of destination.

Delivery may be specified for a single shipment, or for several partial shipments, for a specific date, or a range of acceptable delivery periods.

For example, the following provision may be used:

The delivery period shall start as of: [Insert: either “the date of the Notification of Award,” or “the date of signing the Contract Agreement,” or “the date of opening the letter of credit,” or “the date of confirmation of the letter of credit”]

Delivery shall take place in compliance with the dates, duration, and locations indicated below:

Item No.	Description of IT Products and Services	Delivery Schedule	Location	Required Arrival Date of IT Products or Completion Date for Services
<i>insert no. of item</i>	<i>insert name and brief description of the IT products and the services to be provided</i>	<i>insert date (dd/mm/yy) before which or duration (days/weeks/months) during which delivery must take place</i>	<i>insert place of destination for IT products or site where services shall be performed</i>	<i>insert envisaged arrival date of IT products at final destination or desired completion date for services</i>

3. Technical Specifications

The purpose of the Technical Specifications is to define the technical characteristics of the IT Products and Services required by the Purchaser. The Technical Specifications, as a part of the Schedule of Requirements, constitute a Contract document and are, therefore, a part of the Contract. The Purchaser must prepare the Technical Specifications and include them as a part of the Bidding Document, as applicable to each Contract.

In preparing the Technical Specifications, the Purchaser should take into account the following:

- (a) Well-prepared Technical Specifications will facilitate the examination, evaluation, and comparison of the Bids by the Purchaser, as Technical Specifications constitute the benchmarks against which the Purchaser will verify the technical responsiveness of Bids and subsequently evaluate the Bids.
- (b) The Technical Specifications should require that all goods and materials to be incorporated in the IT products be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless otherwise provided for in the Contract.
- (c) The Technical Specifications should make use of best practices: samples of specifications from successful similar procurement in the same country or sector may provide a sound basis for drafting the Technical Specifications.
- (d) Technical Specifications should be established bearing in mind the environmental impacts at all stages of a product's life cycle, from its source of origin through its transport, use, and disposal.
- (e) ADB encourages the use of metric units.
- (f) Standardizing Technical Specifications under General Technical Specifications may be advantageous, depending on the complexity of the products and the repetitiveness of the type of procurement. Technical Specifications must be broad enough to avoid restrictions on workmanship, materials, and equipment commonly involved in manufacturing similar kinds of goods, even if these may not necessarily apply to a particular procurement. Particular technical requirements for a particular procurement would be specified in each case through deletions or addenda to the General Technical Specifications.
- (g) Recognized international standards should be specified as much as possible. When other particular standards or codes of practice are referred to in the Technical Specifications, whether from the Borrower's or from other eligible countries, they must be followed by a statement that other authoritative standards that ensure at least a substantially equal quality to the standards mentioned in the Technical Specifications, will also be acceptable.
- (h) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words "or at least equivalent" shall always follow such references.
- (i) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:
 - standards of materials and workmanship required for the production and manufacture of the IT products;
 - detailed tests required (type and number);
 - other additional work and/or services required to achieve full delivery and completion;
 - detailed activities to be performed by the Supplier, and participation of the Purchaser therein; and
 - list of detailed functional guarantees covered by the Warranty, and details of the penalties to be applied in the event that such guarantees are not met.

- (j) The Technical Specifications shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. The Technical Specifications must clearly identify which are mandatory features (for which a bid's nonconformance might require rejection for non-responsiveness) and which are preferable or desirable features that can be included or excluded from a bid at the Bidder's option. To enhance the clarity of the specifications, the Purchaser is advised to use the word "MUST" (in bold capitals) in sentences describing mandatory requirements.
- (k) Whenever necessary, the Purchaser shall include an additional ad hoc bidding form (to be an Attachment to the Letter of Bid), where the Bidder shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.
- (l) When the Purchaser stipulates that the Bidder must provide in its Bid a part or all of the Technical Specifications, technical schedules, or other technical information, the Purchaser shall specify in detail the nature and extent of the required information and the manner in which it must be presented by the Bidder in its Bid.

The Technical Specifications should use the following format to clearly indicate whether a particular requirement is mandatory or desirable (preferable).

Serial No.	Requirement Summary	Technical Requirement Description		
		Item	Minimum Requirement	M or D
1.	[Example] Hardware and Software Requirements	The equipment provided shall support a minimum of the following:		

4. Drawings

The purpose of drawings is to specify locations, dimensions, materials to be used, stages of manufacturing, and other characteristics of the IT Products and Services. The Purchaser should prepare such drawings, as needed, and include them in the Bidding Document. Such drawings, as part of the Schedule of Requirements, are Contract documents and, therefore, shall be part of the Contract. Similarly, the Purchaser may request the Supplier to provide drawings either with its Bid or for approval during Contract execution.

It is essential that the Purchaser prepares a List of Drawings showing all drawings it supplied and issued as part of the Bidding Document.

Section 7: General Conditions of Contract

The General Conditions Contract (GCC) contain standard provisions that have been designed to remain unchanged and to be used without modifying their text. The GCC clearly identify the provisions that may normally need to be specified for a particular bidding process and require that such specification be introduced through the Special Conditions of Contract (SCC).

The GCC are a Contract document and, therefore, are a part of the Contract.

Table of Clauses

1. Definitions.....	101
2. Contract Documents	102
3. Fraud and Corruption	102
4. Interpretation	105
5. Language.....	106
6. Joint Venture.....	106
7. Eligibility	106
8. Notices	107
9. Governing Law	107
10. Settlement of Disputes	107
11. Scope of Requirements	107
12. Delivery.....	107
13. Supplier's Responsibilities	107
14. Purchaser's Responsibilities	107
15. Contract Price.....	107
16. Terms of Payment	108
17. Taxes and Duties	108
18. Performance Security.....	108

19. Copyright.....108

20. Confidential Information109

21. Subcontracting109

22. Specifications and Standards110

23. Packing and Documents110

24. Insurance.....110

25. Transportation.....110

26. Inspections and Tests.....111

27. Liquidated Damages.....112

28. Warranty.....112

29. Patent Indemnity113

30. Limitation of Liability114

31. Change in Laws and Regulations114

32. Force Majeure114

33. Change Orders and Contract Amendments.....115

34. Extensions of Time115

35. Termination.....116

36. Assignment117

37. Respectful Work Environment.....117

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendixes, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Delivery” means the transfer of the IT products from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (f) “Completion” means the fulfillment of the services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “Eligible Countries” means the countries and territories eligible as listed in Section 5.
- (h) “GCC” means the General Conditions of Contract.
- (i) “IT products” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (j) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (k) “Purchaser” means the entity purchasing the IT Products and Services, as specified in the SCC.
- (l) “Services” means the services incidental to the supply of the IT products, such as insurance, installation, training and initial maintenance, and other similar obligations of the Supplier under the Contract.
- (m) “SCC” means the Special Conditions of Contract.
- (n) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the IT products to be supplied or execution of any part of the Services is subcontracted by the Supplier.
- (o) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.

(p) “ADB” is the Asian Development Bank.

(q) “Site,” where applicable, means the place named in the SCC.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

3. Fraud and Corruption

3.1 If the Purchaser determines, based on reasonable evidence, that the Supplier has engaged in corrupt, fraudulent, collusive or coercive practices, or other integrity violations, including the failure to disclose any required information which constitutes a fraudulent practice, in competing for or in executing the Supplier, then the Purchaser may, after giving 14 days’ notice to the Supplier, terminate the Contract and expel him from the Site, and the provisions of Clause 35 shall apply as if such termination had been made under Sub-Clause 35.1 (iii) [Termination].

3.2 Should any employee of the Supplier be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice or other integrity violations during the supply of IT Products and Services then that employee shall be removed.

3.3 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB’s Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) “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;

(iii) “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;

(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

- (v) “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
 - (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
 - (vii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

¹ Whether as a Supplier, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.4 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
- (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
- (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
- (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's ICT resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
- (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
- (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.

3.5 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, subcontractors, and other third parties engaged or involved in ADB-related activities, such subconsultants, subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.

- 3.6 The Supplier shall permit ADB or its representative to inspect the Supplier's site, assets, accounts and records and other documents relating to the bid submission and contract performance of the Supplier and to have them audited by auditors appointed by ADB, if so required by ADB.
- 3.7 The Supplier undertakes that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution.²
- 3.8 ADB's right to inspect the Site and/or the Supplier's accounts and records relating to the performance of the Contract as stated in this Sub-Clause and GCC 3.3(e) shall survive termination and/ or expiration of this Contract.
- 3.9 The Supplier has the obligation to notify the Purchaser of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (o), (p) and (t) of the Letter of Bid.
- 3.10 If the Supplier is debarred or temporarily suspended by ADB, it shall inform the Purchaser of such debarment or suspension, and that the endorsement of ADB's Office of Anticorruption and Integrity is required for any variations, extensions or modifications to the Contract.

4. Interpretation

- 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
 - (a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
 - (b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.
- 4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.
- 4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

² The undertaking also applies during the period of performance of the contract.

4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

6. Joint Venture

- 6.1 If the Supplier is a Joint Venture, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Purchaser.

7. Eligibility

- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All IT Products and Services to be supplied under the Contract and financed by ADB shall have their origin in Eligible Countries. For the purpose of this clause, "country of origin" means the country where the IT products have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.

8. Notices	8.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt. 8.2 A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.
9. Governing Law	9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s country, unless otherwise specified in the SCC.
10. Settlement of Disputes	10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract. 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within 28 days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.
11. Scope of Requirements	11.1 Subject to the SCC, the IT Products and Services to be supplied shall be as specified in Section 6 (Schedule of Requirements). 11.2 Unless otherwise stipulated in the Contract, the Scope of Requirements shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the IT Products and Services as if such items were expressly mentioned in the Contract.
12. Delivery	12.1 Subject to GCC Sub-Clause 33.1, the Delivery of the IT products and Completion of the services shall be in accordance with the Delivery and Completion Schedule specified in the Section 6 (Schedule of Requirements). The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
13. Supplier’s Responsibilities	13.1 The Supplier shall supply all the IT Products and Services included in the Scope of Requirements in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
14. Purchaser’s Responsibilities	14.1 Whenever the supply of IT Products and Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner. 14.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.
15. Contract Price	15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract. 15.2 Prices charged by the Supplier for the IT products delivered and the services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.

16. Terms of Payment

- 16.1 The Contract Price shall be paid as specified in the SCC.
- 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the IT products delivered and services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, no later than 60 days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.
- 16.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

17. Taxes and Duties

- 17.1 For IT products supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.
- 17.2 For IT products supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted IT products to the Purchaser.
- 17.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

18. Performance Security

- 18.1 The Supplier shall, within 28 days of the receipt of notification of award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.
- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 The Performance Security shall be denominated in the currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the SCC, or in another form acceptable to the Purchaser.
- 18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than 28 days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

19. Copyright

- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that
- (a) the Purchaser or Supplier needs to share with ADB or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;
 - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

- 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

22. Specifications and Standards

22.1 Technical Specifications and Drawings

- (a) The Supplier shall ensure that the IT Products and Services comply with the technical specifications and other provisions of the Contract.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) The IT Products and Services supplied under this Contract shall conform to the standards mentioned in Section 6 (Schedule of Requirements) and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the IT products.

22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section 6 (Schedule of Requirements). During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.

23. Packing and Documents

23.1 The Supplier shall provide such packing of the IT products as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the IT products and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.

24. Insurance

24.1 Unless otherwise specified in the SCC, the IT products supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

25. Transportation

25.1 Unless otherwise specified in the SCC, obligations for transportation of the IT products shall be in accordance with the Incoterms specified in Section 6 (Schedule of Requirements).

26. Inspections and Tests

- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the IT Products and Services as are specified in Section 6 (Schedule of Requirements).
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the IT products, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the IT products comply with the technical specifications, codes, and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any IT products or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected IT products or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the IT products or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the IT products or perform the services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the IT products are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1, the Supplier further warrants that the IT products shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the SCC, the warranty shall remain valid for 12 months after the IT products, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for 18 months after the date of shipment or loading in the country of origin, whichever period concludes earlier.

28.4 The Purchaser shall give Notice to the Supplier, stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective IT products or parts thereof, at no cost to the Purchaser.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

29. Patent Indemnity 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of

- (a) the installation of the IT products by the Supplier or the use of the IT products in the country where the Site is located; and
- (b) the sale in any country of the products produced by the IT products.

Such indemnity shall not cover any use of the IT products or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the IT products or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

30. Limitation of Liability

- 30.1 Except in cases of gross negligence or willful misconduct,
- (a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

31. Change in Laws and Regulations

- 31.1 Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32. Force Majeure

- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33. Change Orders and Contract Amendments

- 33.1 The Purchaser may at any time order the Supplier through Notice in accordance with GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where IT products to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the services to be provided by the Supplier.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within 28 days from the date of the Supplier's receipt of the Purchaser's change order.
- 33.3 Prices to be charged by the Supplier for any Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

34. Extensions of Time

- 34.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the IT products or completion of services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part,
 - (i) if the Supplier fails to deliver any or all of the IT products within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or
 - (ii) if the Supplier fails to perform any other obligation under the Contract.
 - (iii) if the Supplier, in the judgment of the Purchaser has engaged in integrity violations, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, IT Products and Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar IT Products and Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

35.3 Termination for Convenience

- (a) The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The IT products that are complete and ready for shipment within 28 days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining IT products, the Purchaser may elect
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed IT Products and Services and for materials and parts previously procured by the Supplier.

- 36. Assignment** 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.
- 37. Respectful Work Environment** 37.1 The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct, and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.
- 37.2 The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Purchaser at their first written request.

Section 8: Special Conditions of Contract

The Special Conditions of Contract (SCC) contain provisions that the GCC requirements be specified for a particular bidding process. The Purchaser should include at the time of issuing the Bidding Document, all information or specifications that the GCC indicate shall be provided in the SCC. No SCC Clause should be left blank.

To facilitate the preparation of the SCC, its clauses are numbered with same numbers as the corresponding GCC clauses. This Guide helps the Purchaser to input all information required. It includes an SCC format that summarizes all information to be provided.

The SCC is a Contract document and, therefore, is a part of the Contract.

Special Conditions of Contract¹

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.	
GCC 1.1(j)	The Purchaser's country is: [insert name of country]
GCC 1.1(k)	The Purchaser is: [insert complete name] [The Purchaser should be the Executing Agency/Implementing Agency named in the Financing Agreement or the entity authorized to carry out the procurement activities under the Project Administration Manual]
GCC 1.1(q)	The Site is: [insert name and detailed information on the location of the site]
GCC 4.2(b)	The version of Incoterms shall be: [indicate current edition of Incoterms]
GCC 5.1	The language shall be: [insert "English"] Language for translation of supporting documents and printed literature is: [insert "English" for OCB].
GCC 8.1	For notices, the Purchaser's address is: Attention: [insert full name of the person, if applicable] Street address: [insert street address and number] Floor/Room number: [insert floor and room number, if applicable] City: [insert name of the city or town] ZIP code: [insert postal (ZIP) code, if applicable] Country: [insert name of country] Telephone: [insert telephone number including country and city codes] Fax: [insert fax number including country and city codes] E-mail: [insert e-mail address, if applicable]
GCC 9.1	The governing law shall be: [insert name of state or country]
GCC 10.2	The formal mechanism for the resolution of disputes shall be: [insert type and description] For a contract with a Foreign Supplier: Alternative 1: [insert: "In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by international arbitration conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. The arbitration procedure shall be administered by the Singapore International Arbitration Centre."] Alternative 2: [insert: "In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules."] Alternative 3: [insert: "In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators selected in accordance with said Rules."] Place of arbitration: [should be a neutral venue (i.e., not in the Purchaser's country)]

¹ Input of Information to be completed by the Purchaser.

	<p>For a contract with a Local Supplier:</p> <p>“In the case of a dispute between the Purchaser and the Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the local arbitration procedures in the Purchaser’s country.”</p> <p>Place of arbitration: in the Purchaser’s country.</p>
GCC 11.1	<p>The Scope of Requirements shall be defined in: [insert “Section 6 (Schedule of Requirements)” or indicate where the Scope of Requirements shall be defined. At the time of awarding the contract, the purchaser shall specify any change in the scope of requirements with respect to Section 6 (Schedule of Requirements) included in the Bidding Document. Such changes may be due, for instance, if the quantities of IT Products and Services are increased or decreased at the time of award.]</p>
GCC 12.1	<p>Details of shipping and documents to be furnished by the Supplier shall be:</p> <p>[For example, insert:</p> <p>“For IT products supplied from abroad as per Incoterms CIF or CIP:</p> <p>Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by telex or fax the full details of the shipment, including Contract number, description of IT Products, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall send the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> (a) ...copies of the Supplier’s invoice showing the description of the IT products, quantity, unit price, and total amount; (b) original and...copies of the negotiable, clean, on-board bill of lading marked “freight prepaid” and...copies of nonnegotiable bill of lading; (c) ...copies of the packing list identifying contents of each package; (d) insurance certificate; (e) Manufacturer’s or Supplier’s warranty certificate; (f) inspection certificate, issued by the nominated inspection agency, and the Supplier’s factory inspection report; and (g) certificate of origin. <p>The Purchaser shall receive the above documents at least one (1) week before arrival of the IT products at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p>For IT products from within the Purchaser’s country as per Incoterm EXW:</p> <p>Upon delivery of the IT products to the transporter, the Supplier shall notify the Purchaser and send the following documents to the Purchaser:</p> <ul style="list-style-type: none"> (a) copies of the Supplier’s invoice showing the description of the IT products, quantity, unit price, and total amount; (b) delivery note, railway receipt, or truck receipt; (c) Manufacturer’s or Supplier’s warranty certificate; (d) inspection certificate issued by the nominated inspection agency, and the Supplier’s factory inspection report; and (e) certificate of origin. <p>The Purchaser shall receive the above documents before the arrival of the IT products and, if not received, the Supplier will be responsible for any consequent expenses.]</p>

GCC 15.2

The price adjustments shall be: *[indicate if prices under the contract shall be adjusted and, if so, insert the methodology for adjustment. Price adjustment is used where the contract period is of long duration (generally exceeds 18 months). It is normal procedure that prices payable to the Supplier shall be subject to price adjustment during the performance of the Contract.]*

[For example insert: "Pursuant to GCC Sub-Clause 15.2, prices payable to the Supplier, as stated in the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components in accordance with the formula:

$$P_1 = P_0 \times \left(a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

The terms in the formula have the following meanings:

P_1 = Price adjustment payable to the Supplier

P_0 = Contract Price (base price)

a = fixed portion representing profit and overhead included in the Contract Price.
(Generally in the range of 5% to 15%)

b = estimated percentage of labor component in the Contract Price

c = estimated percentage of material component in the Contract Price

L_0, L_1 = labor indexes applicable to the appropriate industry in the country of origin of the products on the base date and on the date for adjustment, respectively

M_0, M_1 = material indexes for the major raw material on the base date and on the date for adjustment, respectively, in the country of origin of the products

The coefficients a, b , and c shall be specified by the Purchaser in the Bidding Document. The sum of the three coefficients should be one (1) in every application of the formula.

Base date = 28 days prior to the deadline for submission of the Bids

Date of adjustment = weeks prior to date of shipment (representing the mid-point of the period of manufacture)

The above price adjustment formula shall be invoked by either party subject to the following further conditions:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than _____ % of the Contract Price. (2% would be an acceptable percentage.)
- (b) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible. The Purchaser will, however, be entitled to any decrease in the prices of the IT Products and Services subject to adjustment.
- (c) If the currency in which the Contract Price (P_0) is expressed is different from the currency of origin of the labor and material indexes, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (d) No price adjustment shall be payable on the portion of the Contract Price paid to the Supplier as advance payment.]

GCC 16.1	<p>Payment of the Contract Price shall be made in the following manner:</p> <p>[For example insert:</p> <p>“For IT Products and Services supplied from outside the Purchaser’s country:</p> <ul style="list-style-type: none"> (a) Advance Payment: 10% of the Contract Price within 28 days of signing of the Contract. Payment shall be made provided the Supplier presents a request for payment accompanied by an Advance Payment Security in the form of a bank guarantee for an amount equal to the amount of the payment, and that shall be valid until the IT products are delivered. The security shall be in the form as specified in Section 9 (Contract Forms). (b) On Shipment: The Purchaser shall pay the Supplier 80% of the Contract Price of the IT products shipped through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country under the ADB commitment procedure, upon submission of documents specified in SCC Clause 12.1. (c) On Acceptance: 10% of the Contract Price of IT products received shall be paid within 28 days of receipt of the IT products upon submission of a claim supported by the acceptance certificate issued by the Purchaser. <p>For IT Products and Services supplied from within the Purchaser’s country:</p> <ul style="list-style-type: none"> (a) Advance Payment: 10% of the Contract Price within 28 days of signing of the Contract. Payment shall be made provided the Supplier presents a request for payment accompanied by an Advance Payment Security in the form of a bank guarantee for an amount equal to the amount of the payment, and that shall be valid until the IT products are delivered. The security shall be in the form as specified in Section 9 (Contract Forms). (b) On Delivery: The Purchaser shall pay the Supplier 80% of the Contract Price of the IT products shipped through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country under the ADB commitment procedure, upon submission of documents specified in SCC Clause 12.1. (c) On Acceptance: 10% of the Contract Price of IT products received shall be paid within 28 days of receipt of the IT products upon submission of a claim supported by the acceptance certificate issued by the Purchaser.”]
GCC 16.4	The currencies for payments shall be: [indicate the currencies of payment]
GCC 18.1	<p>The Supplier shall provide a Performance Security of [specify a figure between 5% and 10%, which should be consistent with that of Letter of Bid] percent of the Contract Price. The Performance Security shall be denominated in the following amounts and currencies:</p> <p>[Alternative 1: insert the amounts and currencies of the Performance Security, which shall be in proportion to the amounts and currencies of the contract price; or</p> <p>Alternative 2: specify one Performance Security amount in a freely convertible currency.</p> <p>Because of the above, the currencies and amounts of the Performance Security can only be specified at the time of awarding the contract.]</p> <p>[When additional Performance Security is required due to abnormally low bid, in accordance with ITB 37, the purchaser should specify the percentage of the Performance Security and the terms for its release.]</p>

GCC 18.3	<p>The forms of acceptable Performance Securities are: [insert the name and description of Performance Security acceptable to the purchaser and ADB.]</p> <p>[For example insert: “A bank guarantee issued by a reputable bank located in the Purchaser’s country or abroad, acceptable to the Purchaser, in the format included in Section 9 (Contract Forms), or a cashier’s or certified check, or cash.]</p>
GCC 18.4	<p>Discharge of the Performance Security shall take place: [insert (a) in accordance with GCC Sub-Clause 18.4; or (b) indicate how the Performance Security shall be discharged]</p> <p>[For example insert: “Pursuant to GCC Sub-Clause 18.4, after delivery and acceptance of the IT products, the Performance Security shall be reduced to (specify percentage figure, e.g., 5%) percent of the Contract to cover the Supplier’s warranty obligations in accordance with GCC Clause 28.3.”]</p>
GCC 23.2	<p>The packing, marking, and documentation within and outside the packages shall be: [insert in detail the type of packing, the markings, and all documentation required. Consideration should be given to whether, during sea transport, the IT products should be transported under deck. The provision must further expressly provide details for markings and documentation to be required within and outside the packing cases.]</p>
GCC 24.1	<p>The insurance coverage shall be in accordance with: [insert type of coverage, currency, and amount]</p> <p>[For example insert: “Pursuant to GCC, Sub-Clause 24.1, the Supplier must insure the IT products in an amount equal to 110% of the CIF, CIP or EXW price of the IT products from “Warehouse” to “Warehouse” on “All Risks” basis, including War Risks and Strikes.”]</p>
GCC 25.1	<p>Obligations for transportation of the IT products shall be in accordance with: [indicate whether the responsibility for transportation shall be in accordance with Incoterms or other trade terms.]</p>
GCC 26.2	<p>Tests and Inspections specified in Section 6 (Schedule of Requirements), shall be carried out at the following times or milestones, and places: [Depending on the type of IT products to be procured, there may be a need to provide for special inspections and/or tests to be carried out. In particular, this will be the case when the IT products are designed specifically for the purpose of the project in question or where due to the nature of the IT products, there is a need to ensure compliance with certain technical specifications and requirements at an early stage. If there is a need for such special inspections and/or tests, the SCC should mention specific testing methods and the timing or milestones and places where the tests and/or inspections are to be carried out. For example insert for each test:</p> <p>IT Products: _____</p> <p>Type of Test: _____</p> <p>Time or Milestone: _____</p> <p>Place: _____</p> <p>Address: _____</p> <p>Country: _____]</p>

GCC 27.1	<p>The applicable rate for liquidated damages for delay shall be: [insert rate, i.e., 0.5% of the contract price per week or part thereof.]</p> <p>The maximum amount of liquidated damages shall be [insert maximum amount for liquidated damages, i.e., 10% of the contract price]</p>
GCC 28.3	<p>The period of validity of the Warranty shall be: [insert the period of validity of the warranty]</p> <p>The place of final destination shall be:</p>
GCC 28.5	<p>The Supplier shall correct any defects covered by the Warranty within [insert period, i.e., number of days] of being notified by the Purchaser of the occurrence of such defects.</p>
GCC 30.1(b)	<p>The amount of aggregate liability shall be: [insert amount of aggregate liability i.e., 100% of the contract price]</p>

Section 9: Contract Forms

Section 9 of the Bidding Document contains forms for the Notice of Intention for Award of Contract, Notification of Award, Contract Agreement, the Performance Security, and the Advance Payment Security. Bidders shall not submit these forms with their Bids. After notification of award, the Purchaser shall prepare the Contract Agreement using the Contract Agreement Form and send it to the successful Bidder. The successful Bidder shall sign the Contract Agreement and return it to the Purchaser together with the Performance Security and, if applicable, the Advance Payment Security, using the respective forms provided in Section 9. Bidders shall note that the Advance Payment Security is submitted only when the Contract specifies that there will be an advance payment.

Table of Forms

Notice of Intention for Award of Contract	126
Notification of Award.....	127
Contract Agreement.....	128
Performance Security	129
Advance Payment Security	130

Notice of Intention for Award of Contract

[on letterhead paper of the Purchaser]

[date of notification]

To: [name of the Bidder]
Attention: [insert name of the Bidder’s authorized representative]
Address: [insert address of the Bidder’s authorized representative]
Telephone/Fax numbers: [insert telephone/fax numbers of the Bidder’s authorized representative]
E-mail Address: [insert e-mail address of the Bidder’s authorized representative]

This is to notify you of our intention to award the contract [insert name of the contract and identification number, as given in the Bid Data Sheet]. You have [insert number of days as specified in ITB 40.1 of the BDS] days, from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid, and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 46.1.

The summary of the evaluation are as follows:

1. List of Bidders [insert names of all bidders that submitted a bid together with the corresponding bid price at opening and evaluated bid price (if applicable)]

Name of Bidder	Bid Price as Read Out at Opening	Evaluated Bid Price

2. Reason/s Why Your Bid Was Unsuccessful
[Provide reasons separately to each unsuccessful bidder why its bid was unsuccessful]

3. The Successful Bidder

Name of Bidder:	
Address:	
Contract Price:	
Duration of Contract:	
Scope of the Contract Awarded:	
Amount Performance Security Required:	

Authorized Signature:
Name and Title of Signatory:.....
Name of Agency:

Note:
The Purchaser should send this notification simultaneously to each Bidder that submitted a bid. Notice of Intention for Award of Contract shall only be included if standstill provision is applicable in accordance with ITB 40.1

Notification of Award

[on letterhead of the Purchaser]

Letter of Acceptance

[date]

To: [name and address of the supplier]

Subject: Contract No. [please specify]

This is to notify you that your Bid dated [date] for execution of the [name of the contract and identification number, as given in the Bid Data Sheet] for the Accepted Contract Amount of the equivalent of [amount in words and figures and name of currency], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract and any additional security required as a result of the evaluation of your bid, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature:

Name and Title of Signatory:.....

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made on the [insert date] day of [insert month], [insert year], between [insert complete name of the purchaser] of [insert complete address of the purchaser] (hereinafter “the Purchaser”), of the one part, and [insert complete name of the supplier] of [insert complete address of the supplier] (hereinafter “the Supplier”), of the other part:

WHEREAS the Purchaser invited Bids for certain IT Products and Services, viz., [insert brief description of the IT Products and Services] and has accepted a Bid by the Supplier for the supply of those IT Products and Services in the sum of [insert currency or currencies and amount of contract price in words and figures] (hereinafter “the Contract Price”),

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) Letter of Acceptance;
 - (b) Letter of Bid and the Price Schedules submitted by the Supplier;
 - (c) Addenda Nos. [insert addenda numbers if any]¹
 - (d) Special Conditions of Contract;
 - (e) List of Eligible Countries that was specified in Section 5 of the Bidding Document;
 - (f) General Conditions of Contract;
 - (g) Schedule of Requirements; and
 - (h) any other documents shall be added here.²

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

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the IT Products and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the IT Products and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of [indicate name of country] on the day, month, and year indicated above.

Signed by [insert authorized signature for the Purchaser] (for the Purchaser)

Signed by [insert authorized signature for the Supplier] (for the Supplier)

¹ Information contained in the addenda and or addendum should preferably be included in the contract documents to avoid potential ambiguities during contract implementation. If however, unavoidable priority should be decided depending on the nature of information provided in the addenda/addendum.

² Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 15).

Performance Security

[Bank's name, and address of issuing branch or office]¹

Beneficiary: [Name and address of the purchaser]

Date:

Performance Guarantee No.:

We have been informed that [name of the supplier] (hereinafter called “the Supplier”) has entered into Contract No. [reference number of the contract] dated [date] with you, for the execution of [name of contract and brief description of IT products and related services] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Supplier, we [name of the bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in words]² [amount in figures] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Supplier is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the [date] day of [month], [year],³ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded⁴

.....
[Signature(s) and seal of bank (where appropriate)]

Note to Bidder

If the bank issuing performance security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country

- ¹ All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.
- ² The guarantor shall insert an amount representing the percentage of the contract price specified in the contract and denominated either in the currency(ies) of the contract or in any freely convertible currency acceptable to the Purchaser.
- ³ Insert the date 28 days after the expected completion date. The Purchaser should note that in the event of an extension of the time for completion of the contract, the Purchaser would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Purchaser might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Purchaser's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”
- ⁴ Or the purchaser may use “Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458 except that subparagraph (ii) of Sub-article 20(a) is hereby excluded” as appropriate.

Advance Payment Security

[insert complete name and number of contract]

To: *[insert complete name of the Purchaser]*

In accordance with the payment provision included in the Contract, in relation to advance payments, *[insert complete name of the Supplier]* (hereinafter called “the Supplier”) shall deposit with the Purchaser a security consisting of *[indicate type of security]*, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of *[insert currency and amount of guarantee in words and figures]*.

We, the undersigned *[insert complete name of the guarantor]*, legally domiciled in *[insert full address of the guarantor]* (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding *[insert currency and amount of guarantee in words and figures]*.

This security shall remain valid and in full effect from the date of the advance payment being received by the Supplier under the Contract until *[insert date (as day, month, year)]*.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.²

Name: *[insert complete name of person signing the Security]*

In the capacity of *[insert legal capacity of person signing the Security]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the security for and on behalf of *[insert seal (where appropriate) and complete name of the guarantor]*

Date: *[insert date of signing]*

Note to Bidder

If the bank issuing advance payment security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country.

¹ All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

² Or the purchaser may use “Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded” as appropriate.

SBD IT Products and Services— Two-Stage Bidding Procedure

Section 1: Instructions to Bidders

Table of Contents

- A. General135**
 - 1. Scope of Bid135
 - 2. Source of Funds.....135
 - 3. Fraud and Corruption.....135
 - 4. Eligible Bidders.....138
 - 5. Eligible IT Products and Services.....140
- B. Contents of Bidding Document.....140**
 - 6. Sections of the Bidding Document140
 - 7. Clarification of Bidding Document.....141
 - 8. Amendment of Bidding Document141
 - 9. Cost of Bidding141
 - 10. Language of Bid142
- C-1. First-Stage Bids—Preparation.....142**
 - 11. Documents Comprising the First-Stage Bid142
 - 12. Letter of First-Stage Bid and Attachments142
 - 13. Alternative Bids142
 - 14. Documents Establishing the Eligibility of the IT Products and Services143
 - 15. Documents Establishing the Eligibility and Qualifications of the Bidder.....143
 - 16. Documents Establishing the Conformity of the IT Products and Services.....143
 - 17. Format and Signing of First-Stage Bids144
- C-2. First-Stage Bids—Submission and Opening145**
 - 18. Submission, Sealing, and Marking of First-Stage Bids.....145
 - 19. Deadline for Submission of First-Stage Bids.....145
 - 20. Substitution and Modification of First-Stage Bids145
 - 21. Opening of First-Stage Bids by Purchaser146

C-3. First-Stage Bids—Evaluation.....	146
22. Confidentiality.....	146
23. Determination of Responsiveness of First-Stage Bids.....	146
24. Technical Evaluation of First-Stage Bids	147
25. Eligibility and Qualification of the Bidder	147
D. Clarification of First-Stage Bids	148
26. Clarification Procedures.....	148
27. Invitation to Submit Second-Stage Bids	149
E-1. Second-Stage Bids—Preparation	150
28. Documents Comprising Second-Stage Bid	150
29. Letter of Second-Stage Bid and Schedules.....	150
30. Bid Prices and Discounts	151
31. Currencies of Bid and Payment.....	153
32. Period of Validity of Second-Stage Bids	153
33. Bid Security/Bid-Securing Declaration	153
34. Format and Signing of Second-Stage Bid.....	154
E-2. Second-Stage Bids—Submission and Opening.....	155
35. Submission, Sealing, and Marking of Second-Stage Bids.....	155
36. Deadline for Submission of Second-Stage Bids	155
37. Late Bids	155
38. Withdrawal, Substitution, and Modification of Second-Stage Bids	156
39. Second-Stage Bid Opening	156
E-3. Second-Stage Bids—Evaluation and Comparison	157
40. Clarification of Second-Stage Bids.....	157
41. Deviations, Reservations, and Omissions	157
42. Determination of Responsiveness	158
43. Nonmaterial Nonconformities.....	158
44. Correction of Arithmetical Errors.....	159
45. Conversion to Single Currency.....	159
46. Domestic Preference.....	159

- 47. Evaluation and Comparison of Second-Stage Bids159
- 48. Unbalanced or Front-Loaded Bids162
- 49. Abnormally Low Bids162
- 50. Qualification of the Bidder.....163
- 51. Purchaser’s Right to Accept Any Bid, and to Reject Any or All Bids.....163
- 52. Notice of Intention for Award of Contract.....163

- F. Award of Contract 164**
- 53. Award Criteria164
- 54. Purchaser’s Right to Vary Quantities at Time of Award.....164
- 55. Notification of Award.....164
- 56. Signing of Contract.....164
- 57. Performance Security.....165
- 58. Bidding-Related Complaints.....165

A. General

1. Scope of Bid

- 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Purchaser, as indicated in the BDS, issues this Bidding Document for the supply of IT Products and Services incidental thereto as specified in Section 6 (Schedule of Requirements). The name, identification, and number of lots of the open competitive bidding (OCB) are provided in the BDS.
- 1.2 Throughout this Bidding Document,
 - (a) the term “in writing” means communicated in written (including electronic) form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.

2. Source of Funds

- 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “ADB”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
- 2.2 Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called the Financing Agreement), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.

3. Fraud and Corruption

- 3.1 ADB requires Borrowers (including beneficiaries of ADB-financed activity), and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB’s Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “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;

- (iii) “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;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “abuse” means theft, waste, or improper use of assets related to ADB- related activity, either committed intentionally or through reckless disregard;
 - (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
 - (vii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vii) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, -administered,

¹ Whether as a Contractor, Subcontractor, Consultant, Manufacturer, or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document)

or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers, and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
- (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
- (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
- (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communication Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
- (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
- (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.

- 3.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such subconsultants, Subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.
- 3.4 The Purchaser hereby puts the Bidder on notice that the Bidder or any Joint Venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint Venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.
- 3.5 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 6.1 of the General Conditions of Contract.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, or government-owned enterprise subject to ITB 4.5—or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture,
 - (a) all parties to the Joint Venture shall be jointly and severally liable; and
 - (b) the Joint Venture shall nominate a representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract, including related services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:
 - (a) they have controlling shareholders in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this Bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or

- (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 13. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)–(d) above, this does not limit the participation of a Bidder as a Subcontractor in another bid or of a firm as a subcontractor in more than one Bid; or
 - (f) a Bidder, Joint Venture partner, associates, parent company or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the IT Products and Services that are the subject of the Bid; or
 - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Purchaser or Borrower as Project Manager for the contract; or
 - (h) a Bidder would be providing goods, works, or nonconsulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - (i) A Bidder that has a financial or familial relationship with staff of the Purchaser including project implementing/executing agency, or of a recipient of a part of the loan who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ADB throughout the procurement process and execution of the contract.
- 4.4 A firm will not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporarily suspended or debarred firm will be rejected and such bid may be in breach of debarment conditions, thereby subject to further ADB's investigation.
- 4.5 Government-owned enterprises in the Purchaser's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Purchaser.
- 4.6 A Bidder shall not be under suspension from Bidding by the Purchaser as the result of the execution of a Bid-Securing Declaration.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

4.8 Bidders shall be excluded if, 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 Borrower’s country prohibits any import of goods from, or payments to, a particular country, person, or entity in respect of goods or services originating in that country. Where the Borrower’s country prohibits payments to a particular person or entity or for particular goods or services by such an act of compliance, that firm shall be excluded.

5. Eligible IT Products and Services

5.1 All IT Products and Services to be supplied under the Contract and financed by ADB, shall have their country of origin in eligible source countries as defined in ITB 4.2, and all expenditures under the Contract will be limited to such IT Products and Services.

5.2 For the purposes of these Bidding Documents, the IT Products and Services means all:

- (a) the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Bidder is required to supply and install under the Contract, plus all associated documentation, and all other materials and products to be supplied, installed, integrated, and made operational (collectively called “the products” in some clauses of the ITB); and
- (b) the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the products to be provided by the selected Bidder and as specified in the Contract.

5.3 For the purposes of ITB 5.1 above “origin” means the place where through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of the Bidding Document

6.1 The Bidding Document consists of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

PART I Bidding Procedures

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation and Qualification Criteria (EQC)
- Section 4 Bidding Forms (BDF)
- Section 5 Eligible Countries (ELC)

PART II Supply Requirements

- Section 6 Schedule of Requirements (SOR)

PART III Conditions of Contract and Contract Forms

- Section 7 General Conditions of Contract (GCC)
- Section 8 Special Conditions of Contract (SCC)
- Section 9 Contract Forms (COF)

6.2 The IFB issued by the Purchaser is not part of the Bidding Document.

6.3 The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Purchaser in the IFB.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.

7. Clarification of Bidding Document

7.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the BDS. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than 21 days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified in the BDS, the Purchaser shall also promptly publish its response at the web page identified in the BDS. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 8, ITB 19.2, and ITB 36.2.

8. Amendment of Bidding Document

8.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum on the Purchaser's web page in accordance with ITB 7.1.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 19.2 and/or ITB 36.2.

9. Cost of Bidding

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.

C-1. First-Stage Bids - Preparation

- 11. Documents Comprising the First-Stage Bid** 11.1 The First-Stage Bid submitted by the Bidder shall comprise the following:
- (a) The Letter of First-Stage Bid;
 - (b) alternative Bids in accordance with ITB 13;
 - (c) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 17.2;
 - (d) documentary evidence in accordance with ITB 14 that the IT Products and Services offered by the Bidder in its bid or in any alternative bid are eligible;
 - (e) documentary evidence in accordance with ITB 15, the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
 - (f) documentary evidence in accordance with ITB 16, that the IT Products and Services offered by the Bidder conform to the Bidding Document and/or details of deviations in accordance with ITB 16.2;
 - (g) list of subcontractors, in accordance with ITB 16.4;
 - (h) list of intellectual property as defined in GCC 15; and
 - (i) any other document required in the BDS.
- 11.2 In addition to the requirements under ITB 11.1, bids submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.
- 11.3 First-Stage Bids are unpriced proposals and shall contain no prices or price schedules or other reference to rates and prices for completing the facilities. First-Stage Bids containing such price information will be rejected.
- 12. Letter of First-Stage Bid and Attachments** 12.1 The Letter of First-Stage Bid and any attachment shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed as instructed in each form.
- 13. Alternative Bids** 13.1 Bidders shall note that they are permitted to propose technical alternatives or other alternative Bids with their First-Stage Bids in addition to or in lieu of the requirements specified in the Bidding Documents, provided they can document

that the proposed alternative Bids are to the benefit of the Purchaser, that they fulfill the principal objectives of the contract, and that they meet the basic performance and technical criteria specified in the Bidding Document.

- 13.2 Any alternative bid proposed by Bidders in their First-Stage Bid will be the subject of clarification with the Bidder, pursuant to ITB 26.

**14. Documents
Establishing the
Eligibility of IT
Products and
Services**

- 14.1 To establish the eligibility of the IT Products and Services in accordance with ITB 5, Bidders shall provide documentary evidence consisting of a statement on the country of origin of the IT Products and Services offered.

**15. Documents
Establishing the
Eligibility and
Qualifications
of the Bidder**

- 15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).
- 15.2 Domestic Bidders, individually or in Joint Ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 46.

**16. Documents
Establishing
Conformity of
the IT Products
and Services**

- 16.1 To establish the conformity of the IT Products and Services to the Bidding Document, the Bidder shall furnish as part of its Bid documentary evidence that the IT Products and Services conform to the requirements specified in Section 6 (Schedule of Requirements).
- 16.2 The documentary evidence may be in the form of literature, drawings, or data, and shall consist of a detailed item-by-item description of the essential technical and performance characteristics of the IT Products and Services, demonstrating substantial responsiveness of the IT Products and Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of Section 6 (Schedule of Requirements).
- 16.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in Section 6 (Schedule of Requirements), are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Section 6 (Schedule of Requirements).
- 16.4 For major items of IT Products and Services as listed by the Purchaser in Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Purchaser for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

- 16.5 Bidders shall give details of deviations, objections, or reservations, other than alternative Bids, from the requirements of the Bidding Document, that they would like the Purchaser to consider during the clarification of the First-Stage Bid with the Bidder, pursuant to ITB 26. In particular, deviations from objections to or reservations, if any, about critical provisions, such as those concerning GCC Clauses 5 (Governing Law), 14 (Taxes and Duties), 27 (Defect Liability), 28 (Functional Guarantees), 29 (Patent Indemnity), or 30 (Limitation of Liability); and related prescriptions in the Bidding Document, shall be explained. The Purchaser will consider all deviations, pursuant to ITB 24. Those accepted by the Purchaser will be incorporated either as an amendment to the Bidding Document, or into the “Changes Required Pursuant to First-Stage Evaluation,” pursuant to ITB 26.8. The deviations that will not be accepted by the Purchaser shall be withdrawn by the Bidder in its Second-Stage Bid, failing which the Bid will be rejected, pursuant to ITB 42.

**17. Format and
Signing of
First-Stage Bids**

- 17.1 The Bidder shall prepare one original set of the documents comprising the Bid as described in ITB 11 and clearly mark it “FIRST-STAGE BID – ORIGINAL.” Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked “FIRST-STAGE BID – ALTERNATIVE”. In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them “FIRST-STAGE BID – COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 17.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Purchaser shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Purchaser’s request shall cause the rejection of the Bid. If the Letter of First-Stage Bid is not signed, the Bid shall be rejected.
- 17.3 A Bid submitted by a Joint Venture shall be signed so as to be legally binding on all partners.
- 17.4 Any amendments such as interlineations, erasures, or overwriting, shall be valid only if they are signed or initialed by the person signing the Bid.
- 17.5 For electronic bid submission, procedures for format and signing of the bid shall be as specified in the BDS.

C-2. First-Stage Bids – Submission and Opening

18. Submission, Sealing, and Marking of First-Stage Bids

- 18.1 Bidders shall submit their Bids as specified in the BDS. Procedures for submission, sealing, and marking are as follows:
- (a) Bids by mail or by hand, shall enclose the original and each copy of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “FIRST-STAGE BID – ORIGINAL,” “FIRST-STAGE BID – ALTERNATIVE” and “FIRST-STAGE BID – COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 18.2 and ITB 18.3.
 - (b) If electronic bid submission is used, Bidders shall follow the procedures specified in the BDS. In such case, manual bid submission shall not be permitted.
- 18.2 The inner and outer envelopes shall
- (a) bear the name and address of the Bidder,
 - (b) be addressed to the Purchaser in accordance with ITB 19.1,
 - (c) bear the specific identification of this bidding process indicated in the BDS 1.1, and
 - (d) bear a warning not to open before the time and date for bid opening.
- 18.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Bid.

19. Deadline for Submission of First-Stage Bids

- 19.1 First-Stage Bids must be received by the Purchaser at the address (or electronic portal) and no later than the date and time indicated in the BDS. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 19.2 The Purchaser may, at its discretion, extend the deadline for the submission of First-Stage Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

20. Substitution and Modification of First-Stage Bids

- 20.1 In case a Bidder wishes to substitute or modify its First-Stage Bid after it has been submitted and prior to the deadline for First-Stage Bid submission, it may do so by sending a written notice, as per ITB 19.1 and its substituted or modified Bid will be opened as per ITB 21.2.
- 20.2 If electronic bid submission is used, Bidders shall follow the procedures for substitution and modification specified in the BDS.

21. Opening of First-Stage Bids by Purchaser

- 21.1 The Purchaser shall open the First-Stage Bids in public at the address, on the date, and time specified in the BDS in the presence of Bidders' designated representatives and anyone who chooses to attend. Any specific electronic bid opening procedure required if electronic bidding is permitted in accordance with ITB 18.1(b) shall be as specified in the BDS.
- 21.2 The names of all Bidders who submitted First-Stage Bids will be read out, and other such details as the Purchaser, at its discretion, may consider appropriate, will be announced at the opening.
- 21.3 The Purchaser shall prepare a record of the First-Stage Bid opening that shall include, as a minimum, the name of the Bidder, including any alternative bids. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted First-Stage Bids on time, and posted online when electronic bidding is permitted.

C-3. First-Stage Bids – Evaluation

22. Confidentiality

- 22.1 Information relating to the evaluation of First- and Second-Stage Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until the publication of Contract award.
- 22.2 Any attempt by a Bidder to influence the Purchaser in the evaluation of the First- and Second-Stage Bids or Contract award decisions may result in the rejection of its Bid.
- 22.3 Notwithstanding ITB 22.2, from the time of First-Stage Bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.

23. Determination of Responsiveness of First-Stage Bids

- 23.1 The Purchaser will examine the First-Stage Bids to determine whether they are substantially complete, whether the documents have been properly signed and whether the First-Stage Bids are generally in order. Any First-Stage Bids found to be nonresponsive or not meeting the minimum performance specifications, or not submitting the minimum information that is essential for the evaluation of the First-Stage Bid, may be rejected by the Purchaser and not included for further consideration. The Purchaser will also carry out examination of any alternative bids submitted by Bidders.
- 23.2 The Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial omissions in the Bid related to documentation requirements. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

24. Technical Evaluation of First-Stage Bids

- 24.1 The Purchaser will carry out a detailed technical evaluation of the First-Stage Bids to determine whether the technical aspects are in compliance with the Bidding Document. To reach such a determination, the Purchaser will examine and compare the technical aspects of the First-Stage Bids on the basis of the information supplied by the Bidders, taking into account the following:
- (a) overall completeness and compliance with the Purchaser's requirements; the technical merits of alternatives offered and deviations from the Purchaser's requirements; conformity of the IT Products and Services offered with specified performance criteria, including conformity with the specified minimum and/or maximum requirements corresponding to each functional guarantee, as indicated in the specifications and in Section 3 (Evaluation and Qualification Criteria); suitability of the IT Products and Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function, and operation of any process control concept included in the bid;
 - (b) compliance with the time schedule called for in the corresponding Appendix to the Contract Agreement and any alternative time schedules offered by Bidders, as evidenced by a milestone schedule provided in the bid;
 - (c) type, quantity, and long-term availability of mandatory and recommended spare parts and maintenance services;
 - (d) other relevant factors, if any, listed in Section 3 (Evaluation and Qualification Criteria); and
 - (e) any deviation to the commercial and contractual provisions stipulated in the Bidding Document.
- 24.2 The Purchaser will also review complete technical alternative bids, if any, offered by the Bidder, pursuant to ITB 13, to determine whether such alternatives may constitute an acceptable basis for a Second-Stage Bid to be submitted on its own merits.

25. Eligibility and Qualification of the Bidder

- 25.1 The Purchaser shall determine to its satisfaction whether Bidders determined as having submitted responsive First-Stage Bids are eligible and meet the qualification criteria specified in Section 3 (Evaluation and Qualification Criteria).
- 25.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15, and on any additional information, which the Purchaser may request from the Bidder to support such evidence. Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates.
- 25.3 An affirmative determination will be a prerequisite for the Purchaser to invite the Bidder to a clarification meeting in accordance with ITB 26. The Purchaser reserves the right to reject the bid of any bidder found to be in circumstances described in GCC 47.1(a). A negative determination will result in rejection of the Bidder's Bid.

- 25.4 The capabilities of the manufacturers and subcontractors proposed to be used by Bidders for Purchaser-identified major items of IT Products and Services will also be evaluated for acceptability in accordance with Section 3 (Evaluation and Qualification Criteria). Subject to ITB 23, should a Manufacturer or Subcontractor be determined to be unacceptable, the Purchaser, through the memorandum entitled “Changes Required Pursuant to First-Stage Evaluation” that is issued together with the invitation to submit a Second-Stage Bid, shall require the invited Bidder to substitute an acceptable Manufacturer, Subcontractor, or key item.

D. Clarification of First-Stage Bids

26. Clarification Procedures

- 26.1 The Purchaser may conduct clarification meetings with each or any Bidder to clarify any aspects of its First-Stage Bid that require explanation and to review a Bidder’s proposed deviations and alternative solutions.
- 26.2 The Purchaser may bring to the attention of the Bidder any amendments or changes that the Purchaser may require to be made to the First-Stage Bid; however, the Purchaser may not require amendments or changes at variance from the Purchasers’ requirements unless the Purchaser intends to amend the Bidding Document in accordance with ITB 27.1(a).
- 26.3 The Purchaser may also seek clarifications in writing. In case the Purchaser has not sought clarifications in writing or through a meeting, but the Bidder wishes to explain its technical proposal, particularly its deviations and reservations, the Bidder is allowed one opportunity to request the Purchaser for a clarification meeting.
- 26.4 The Bidder’s written request for a clarification meeting should be received by the Purchaser not later than 14 days prior to the submission deadline for Second-Stage Bids, and should provide an outline description of the particulars that the Bidder wishes to clarify with the Purchaser. Failure by a Bidder to meet these requirements may cause the Purchaser to decline the Bidder’s request for clarification meeting. The option to hold the clarification meeting, however, remains with the Purchaser, whose decision shall be communicated to the Bidder in writing.
- 26.5 Bidders shall ensure that they are represented in the clarification meetings by persons who are duly authorized to conduct business for the Bidders during the bidding process.
- 26.6 At the end of the clarification meeting, the Purchaser shall issue minutes of the clarification meeting, documenting all clarifications and agreements reached during the meeting.
- 26.7 No agreement reached between the Purchaser and the Bidder during the clarification meeting shall constitute an amendment to the Bidding Document or the Purchaser’s waiver of any requirement of the Bidding Document.

26.8 The Purchaser will issue a Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation,” documenting the clarifications made in writing and/or in a meeting, if any, and including an Annex listing all decisions, and required amendments or changes resulting from the clarification of the First-Stage Bid. The Memorandum will be communicated to the Bidder as part of the invitation to submit the Second-Stage Bid. Through this Memorandum, the Purchaser will

- (a) advise the Bidder of any exception or deviation to the technical, commercial, or contractual provisions of the Bidding Document in the First-Stage Bid, that are unacceptable and that are to be withdrawn in the Second-Stage Bid, and of such exceptions or deviations that the Purchaser finds acceptable;
- (b) advise the Bidder to submit for consideration in the Second Stage any subcontractor or manufacturer that is to be replaced pursuant to ITB 25.4; and
- (c) also advise the Bidder whether the proposed alternative Bid, if any, is acceptable, and will identify the degree (if any) to which such an alternative Bid may be incorporated in the Bidder’s Second-Stage Bid.

**27. Invitation
to Submit
Second-Stage
Bid**

27.1 At the end of the clarification process pursuant to ITB 26, conducted as necessary,

- (a) the Purchaser may need to issue an amendment to the Bidding Document resulting from the First-Stage evaluation and clarification process, with the objective of clarifying the requirements and improving competition without compromising essential project objectives, and/or
- (b) with regard to all Bidders, the Purchaser will either
 - (i) invite the Bidder to submit a final updated technical and a commercial Second-Stage Bid based on its First-Stage Bid taking into account the Bidding Document, if and as amended, and any other modifications as recorded in the Annex to the Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation.” Bidders will be allowed to submit only one Second-Stage Bid, or
 - (ii) notify the Bidder that its Bid has been rejected on the grounds of being substantially nonresponsive, or that the Bidder does not meet the minimum qualification requirements set forth in the Bidding Document.

27.2 The deadline for submission of Second-Stage Bids will be specified in the invitation to submit Second-Stage Bids, pursuant to ITB 36.1.

27.3 Bidders are not allowed to form Joint Venture(s) or consortium (consortia) with other Bidders, nor change the partner or structure of the Joint Venture or consortium if the Bidder in the First Stage was a Joint Venture or consortium.

27.4 If, as a result of the First-Stage evaluation, only one Bidder will be determined as substantially responsive, the Second-Stage bidding process shall be annulled due to a lack of competition in the submission of priced Bids. In such a case, all First-Stage Bids submitted shall be promptly returned to Bidders.

E-1. Second-Stage Bids – Preparation

- 28. Documents
Comprising
Second-Stage Bid**

28.1 The Second-Stage Bid submitted by the Bidder shall comprise the following:

 - (a) Letter of Second-Stage Bid;
 - (b) Completed schedules as required, including Price Schedules, in accordance with ITB 29 and ITB 30;
 - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 33;
 - (d) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 34.2;
 - (e) The updated First-Stage Bid, comprising any modifications required to the First-Stage Bid as recorded in the Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation;”
 - (f) Documentary evidence establishing in accordance with ITB 14, that any additional or varied IT Products and Services offered by the Bidder, and not included in the First-Stage Bid, are eligible;
 - (g) Documentary evidence regarding any changes that may have occurred between the time of submitting the First- and Second-Stage Bids that have any material effect on the Bidder’s eligibility and qualifications to perform the Contract;
 - (h) Documentary evidence establishing that any additional or varied facilities to be supplied and installed by the Bidder, in accordance with the requirements of the Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation,” are technically acceptable. The documentary evidence of the conformity of the IT Products and Services to the requirements of the Memorandum entitled “Changes Required Pursuant to First-Stage Evaluation” may be in the form of literature, drawings, and data;
 - (i) If, as a result of complying with the memorandum “Changes Required Pursuant to First-Stage Evaluation,” the Bidder proposes to engage any Subcontractors or Manufacturers additional to or different from those named in its First-Stage Bid for major items of IT Products and Services as listed by the Purchaser in Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including Manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Purchaser for these items; and
 - (j) Other documentation and information that may be specified in the BDS.
- 29. Letter of
Second-Stage
Bid and Schedules**

29.1 The Bidder shall complete the Letter of Second-Stage Bid and Schedules, including the appropriate Price Schedules, using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed as instructed in each form and as required in the BDS.

30. Bid Prices and Discounts

- 30.1 Unless otherwise specified in the BDS, bidders shall quote for the entire IT Products and Services on a “single responsibility” basis such that the total bid price covers all the Supplier’s obligations mentioned in or to be reasonably inferred from the Bidding Document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation, completion, acceptance, commissioning and support of the IT Products and Services as specified in Section 6 (Schedule of Requirements). This includes all requirements under the Supplier’s responsibilities for testing, pre-commissioning and commissioning of the IT Products and Services and, where so required by the Bidding Document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions of Contract. Items against which no price is entered by the Bidder will not be paid for by the Purchaser when executed and shall be deemed to be covered by the prices for other items. Unit rates and prices for all items in the Schedule of Requirements shall be expressed in positive values. If unit rates and prices are expressed in negative values, the bid will be rejected.
- 30.2 The price to be quoted in the Letter of Second-Stage Bid shall be the total price of the Bid excluding any discounts offered. Absence of the total bid price in the Letter of Second-Stage Bid may result in the rejection of the Bid.
- 30.3 The Bidder shall quote discounts and the methodology for their application in the Letter of Second-Stage Bid.
- 30.4 The terms EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 30.5 Prices shall be quoted as specified in each Price Schedule included in Section 4 (Bidding Forms). The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser’s right to contract on any of the terms offered
- (a) for IT products offered from within the Purchaser’s country:
- (i) the price of the IT products quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of IT products quoted ex works or ex factory, or on the previously imported IT products of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;
 - (ii) sales tax and all other taxes applicable in the Purchaser’s country and payable on the IT products if the Contract is awarded to the Bidder; and
 - (iii) the total price for the item.

- (b) for IT products offered from outside the Purchaser's country:
 - (i) the price of the IT products quoted CIF (named port of destination), or CIP (border point), or CIP (named place of destination), in the Purchaser's country, as specified in the BDS;
 - (ii) the price of the IT products quoted FOB port of shipment (or FCA, as the case may be), if specified in the BDS; and
 - (iii) the total price for the item.
- (c) for services whenever such are specified in the Schedule of Requirements:
 - (i) the local currency cost component of each item comprising the services; and
 - (ii) the foreign currency cost component of each item comprising the services, inclusive of all customs duties, sales, and other similar taxes applicable in the Purchaser's country, payable on the services, if the Contract is awarded to the Bidder.

Unless otherwise specified in the BDS, the prices must include all costs incidental to the performance of the services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. costs incidental to the delivery of the services but incurred by the Purchaser or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these Bidding Documents (as, e.g., a requirement for the Bidder to include the travel and subsistence costs of trainees).

- 30.6 Prices for recurrent costs beyond the scope of warranty services to be incurred during the Warranty Period shall be quoted as Service prices in accordance with ITB 30.5(c) on the Price Schedule for Recurrent Costs. Recurrent costs are all-inclusive of the costs of necessary items such as spare parts, software license renewals, labor, etc. for the continued and proper operation of the IT Products and Services and, if appropriate, of the Bidder's own allowance for price increases.
- 30.7 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 42. If in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract but a Bid submitted with no indexes identified in the Tables of Adjustment Data will also be treated as nonresponsive and be rejected.
- 30.8 If so indicated pursuant to ITB 1.1, Bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price discount for the award of more than one Contract shall specify in their bid the price discount applicable to each package, or alternatively, to individual Contracts within the package. Price discounts shall be submitted in accordance with ITB 30.3, provided the bids for all lots are submitted and opened at the same time

31. Currencies of Bid and Payment

31.1 Bid prices shall be quoted in the following currencies:

- (a) Bidders may express their bid price in any freely convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly.
- (b) If some of the expenditures for the services are to be incurred in the borrowing country, such expenditures should be expressed in the Bid and will be payable in the Purchaser's currency.

32. Period of Validity of Second-Stage Bids

32.1 Second-Stage Bids shall remain valid for the bid validity period specified in the BDS. The bid validity period starts from the date fixed for the bid submission deadline date prescribed by the Purchaser pursuant to ITB 36.1. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.

32.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Second-Stage Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 33, it shall also be extended 28 days beyond the deadline of the extended bid validity and bid security validity issued by the Purchaser. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.

33. Bid Security/ Bid-Securing Declaration

33.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, in original form, either a Bid-Securing Declaration or a bid security specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS.

33.2 If a Bid-Securing Declaration is required pursuant to ITB 33.1, it shall use the form included in Section 4 (Bidding Forms). The Purchaser will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if a Bid-Securing Declaration is executed.

33.3 If a bid security is specified pursuant to ITB 33.1, the bid security shall be, at the Bidder's option, in any of the following forms:

- (a) an unconditional bank guarantee (hard copy of the bank guarantee or in the form of SWIFT message MT760), or
- (b) an irrevocable letter of credit, or
- (c) a cashier's or certified check.

all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Purchaser. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 32.2.

- 33.4 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant bid security or bid-securing declaration, if one is required in accordance with ITB 33.1, shall be rejected by the Purchaser as nonresponsive.
- 33.5 If a bid security is specified pursuant to ITB 33.1, the bid security of unsuccessful Bidders shall be returned promptly upon signing of the contract with the successful Bidder pursuant to ITB 56.
- 33.6 If a bid security is specified pursuant to ITB 33.1, the bid security of the successful Bidder shall be returned promptly once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 33.7 The bid security may be forfeited or the Bid-Securing Declaration executed, if
- (a) notwithstanding ITB 38.3, a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Letter of Second-Stage Bid, except as provided in ITB 33.2; or
 - (b) the successful Bidder fails to
 - (i) sign the Contract Agreement in accordance with ITB 56,
 - (ii) furnish a Performance Security in accordance with ITB 57, or
 - (iii) accept the arithmetical corrections in accordance with ITB 44.
- 33.8 If the bid security is required as per ITB 33.1, the bid security of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security shall be in the name of any or all of the Joint Venture partners. If the Bid-Securing Declaration is required as per ITB 33.1, the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

**34. Format and
Signing of
Second-Stage Bid**

- 34.1 The Bidder shall prepare one original set of the documents comprising the bid as described in ITB 28 and clearly mark it "SECOND-STAGE BID – ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them "SECOND-STAGE BID – COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 34.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Purchaser shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Purchaser's request shall cause the rejection of the Bid. If either the Letter of Second-Stage Bid or the Bid-Securing Declaration (if applicable) is not signed, the Bid shall be rejected.

- 34.3 A bid submitted by a Joint Venture shall be signed so as to be legally binding on all partners.
- 34.4 Any amendments such as interlineations, erasures, or overwriting, shall be valid only if they are signed or initialed by the person signing the Bid.
- 34.5 For electronic bid submission, procedures for format and signing of the bid shall be as specified in the BDS.

E-2. Second-Stage Bids – Submission and Opening

35. Submission, Sealing, and Marking of Second-Stage Bids

- 35.1 Bidders shall submit their Bids as specified in the BDS. Procedures for submission, sealing, and marking are as follows:
 - (a) Bidders submitting Bids by mail or by hand shall enclose the original and each copy of the Bid, in separate sealed envelopes, duly marking the envelopes as “SECOND-STAGE BID – ORIGINAL,” and “SECOND-STAGE BID – COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 35.2 and ITB 35.3.
 - (b) If electronic bid submission is used, Bidders shall follow the procedures specified in the BDS. In such case, manual bid submission shall not be permitted.
- 35.2 The inner and outer envelopes shall
 - (a) bear the name and address of the Bidder,
 - (b) be addressed to the Purchaser in accordance with ITB 36.1,
 - (c) bear the specific identification of this bidding process indicated in the BDS 1.1, and
 - (d) bear a warning not to open before the time and date for bid opening.
- 35.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the Bid.

36. Deadline for Submission of Second-Stage Bids

- 36.1 Second-Stage Bids must be received by the Purchaser at the address (or electronic portal) and no later than the date and time indicated in the Letter of Invitation to submit Second-Stage Bids.
- 36.2 The Purchaser may, at its discretion, extend the deadline for the submission of Second-Stage Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

37. Late Bids

- 37.1 The Purchaser shall not consider any Second-Stage Bids that arrive after the deadline for submission of Second-Stage Bids, in accordance with ITB 36. Any Bid received by the Purchaser after the deadline for submission of Second-Stage Bids shall be declared late, rejected, and returned unopened to the Bidder.

38. Withdrawal, Substitution, and Modification of Second-Stage Bids

- 38.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 34.2, (except for withdrawal notices, which do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be
- (a) prepared and submitted in accordance with ITB 34 and ITB 35 (except for withdrawal notices, which do not require copies), and in addition, the respective envelopes shall be clearly marked “SECOND-STAGE BID – WITHDRAWAL,” “SECOND-STAGE BID – SUBSTITUTION,” “SECOND-STAGE BID – MODIFICATION”; and
 - (b) received by the Purchaser prior to the deadline prescribed for submission of Second-Stage Bids, in accordance with ITB 36.
- 38.2 Second-Stage Bids requested to be withdrawn in accordance with ITB 38.1 shall be returned unopened to the Bidders.
- 38.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Second-Stage Bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Second-Stage Bid or any extension thereof.
- 38.4 If electronic bid submission is used, Bidders shall follow the procedures for withdrawal, substitution, and modification specified in the BDS.

39. Second-Stage Bid Opening

- 39.1 The Purchaser shall open the Second-Stage bids in public at the address, on the date, and time specified in the Letter of Invitation to submit Second-Stage Bids in the presence of Bidders’ designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 35.1(b) shall be as specified in the BDS.
- 39.2 First, envelopes marked “SECOND-STAGE BID – WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SECOND-STAGE BID – SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “SECOND-STAGE BID – MODIFICATION” shall be opened and read out with the corresponding Bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

- 39.3 All other envelopes shall be opened one at a time, reading out the name of the Bidder and whether there is a modification; the Bid Price(s), including any discounts; the presence of a bid security, or a Bid-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate. Only discounts read out at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Second-Stage Bid and Price Schedules are to be initialed by at least three representatives of the Purchaser attending the bid opening. No Bid shall be rejected at bid opening except for late bids, in accordance with ITB 37.1.
- 39.4 The Purchaser shall prepare a record of the Bid opening that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts; and the presence or absence of a bid security or a Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted online when electronic bidding is permitted.

E-3. Second-Stage Bids – Evaluation and Comparison

40. Clarification of Second-Stage Bids

- 40.1 To assist in the examination, evaluation, and comparison of the Second-Stage Bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Second-Stage Bids, in accordance with ITB 44.1.
- 40.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.

41. Deviations, Reservations, and Omissions

- 41.1 During the evaluation of Second-Stage Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

42. Determination of Responsiveness

- 42.1 The Purchaser's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 28.
- 42.2 A substantially responsive Bid is one that meets the requirements of the Bidding Document and has properly incorporated all modifications listed in the Memorandum entitled "Changes Required Pursuant to First-Stage Evaluation," without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that
- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the IT Products and Services specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights, or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 42.3 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall not be considered further and be rejected by the Purchaser. The Bidder shall not be permitted to correct or withdraw material deviation, reservation, or omission once bids have been opened.

43. Nonmaterial Nonconformities

- 43.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the Bid that do not constitute a material deviation, reservation, or omission.
- 43.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 43.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or nonconforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

44. Correction of Arithmetical Errors

44.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected;
- (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

44.2 If the Bidder that submitted the Most Advantageous Bid does not accept the correction of errors, its Bid shall be disqualified and its bid security may be forfeited, or its Bid-Securing Declaration may be executed.

45. Conversion to Single Currency

45.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.

46. Domestic Preference

46.1 Unless otherwise specified in the BDS, domestic preference shall not apply.

47. Evaluation and Comparison of Bids

47.1 The Purchaser shall use the criteria and methodologies listed in this ITB and Section 3 (Evaluation and Qualification Criteria). No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Purchaser shall determine the Most Advantageous Bid.

Preliminary Examination

47.2 The Purchaser will examine the bids, to determine whether they have been properly signed, whether required securities have been furnished, whether any computational errors have been made, whether required sureties have been furnished and are substantially complete (e.g., not missing key parts of the bid or silent on excessively large portions of the Technical Requirements). In the case where a prequalification process was undertaken for the Contract(s) for which these bidding documents have been issued, the Purchaser will ensure that each bid is from a prequalified bidder and, in the case of a Joint Venture, that partners and structure of the Joint Venture are unchanged from those in the prequalification.

Technical Evaluation

- 47.3 The Purchaser will examine the information supplied by the Bidders pursuant to ITB 11 and ITB 16, and in response to other requirements in the Bidding document, taking into account the following factors:
- (a) overall completeness and compliance with; and deviations from the Section 6 (Schedule of Requirements);
 - (b) type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the IT Products and Services;
 - (c) suitability of the IT Products and Services offered in relation to the conditions prevailing at the site, and the suitability of the implementation and other services proposed, as described in the Preliminary Project Plan included in the bid;
 - (d) achievement of specified performance criteria by the IT Products and Services;
 - (e) compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Bidders, as evidenced by a milestone schedule provided in the Preliminary Project Plan included in the bid;
 - (f) any other relevant technical factors that the Purchaser deems necessary or prudent to take into consideration;
 - (g) any proposed deviations in the bid to the contractual and technical provisions stipulated in the bidding documents.
- 47.4 If specified in the BDS, the Purchaser's evaluation of responsive Bids will take into account technical factors, in addition to cost factors. An Evaluated Bid Score (B) will be calculated for each responsive Bid using the formula, specified in Section 3 (Evaluation and Qualification Criteria), which permits a comprehensive assessment of the Bid cost and the technical merits of each Bid.
- 47.5 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Purchaser will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

Economic Evaluation

47.6 To evaluate a Bid, the Purchaser shall consider the following:

- (a) the bid price as quoted in accordance with ITB 30;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 44.1;
- (c) price adjustment due to discounts offered in accordance with ITB 30.3;
- (d) adjustment for nonmaterial nonconformities in accordance with ITB 43.3;
- (e) assessment whether the bid is abnormally low in accordance with ITB 49;
- (f) price adjustment due to application of the evaluation criteria specified in Section 3 (Evaluation and Qualification Criteria), including factors related to the characteristics, performance, and terms and conditions of purchase of the IT Products and Services which have been expressed in monetary terms; and
- (g) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 45.

47.7 The Purchaser's evaluation of a bid will exclude and not take into account,

- (a) in the case of IT products offered from within the Purchaser's country, all sales tax and all other taxes, applicable in the Purchaser's country and payable on the IT products if the Contract is awarded to the Bidder;
- (b) in the case of IT products offered from outside the Purchaser's country, all customs duties, sales tax, and other taxes, applicable in the Purchaser's country and payable on the IT products if the Contract is awarded to the Bidder; and
- (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Bid.

47.8 If the Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the price combinations offering optimum value for money, including any discounts offered in the Bid Submission Sheet, is specified in Section 3 (Evaluation and Qualification Criteria).

47.9 The Purchaser shall compare all substantially responsive Bids to determine the Most Advantageous Bid.

48. Unbalanced or Front-Loaded Bids

- 48.1 If the first ranked Bid is seriously unbalanced or front loaded in the opinion of the Purchaser, the Purchaser may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed.
- 48.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Purchaser may as appropriate:
- (a) accept the Bid; or
 - (b) accept the Bid, but require that the total amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Purchaser against financial loss in the event of default of the successful Bidder under the Contract; or
 - (c) reject the Bid and make a similar determination for the next ranked bid.

49. Abnormally Low Bids

- 49.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.
- 49.2 When the offered bid price appears to be abnormally low, the Purchaser shall undertake a three-step review process as follows:
- (a) identify abnormally low costs and unit rates by comparing them with the engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;
 - (b) clarify and analyze the Bidder's resource inputs and pricing, including overheads, contingencies and profit margins; and
 - (c) decide whether to accept or reject the bid.
- 49.3 With regard to ITB 49.2 (b) above, the Purchaser shall seek written explanation of the reasons for proposed price or costs from the bidder, including a detailed analysis of its bid prices by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process, the services provided, or the Preliminary Project Plan; the technical solutions chosen or any exceptionally favorable conditions available to the bidder for the supply of the products or services or for the execution of the work; or the originality of the work, supplies, or services proposed.
- 49.4 After examining the explanation given and the detailed price analyses presented by the bidder, the Purchaser may
- (a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low;
 - (b) accept the bid, but require that the amount of the performance security be increased at the expense of the bidder to a level sufficient to protect the Purchaser against financial loss. The amount of the performance security shall generally be not more than 20% of the contract price; or
 - (c) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

50. Qualification of the Bidder

- 50.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the Most Advantageous Bid still meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).
- 50.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15 and ITB 28.1(g). Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates.
- 50.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. The Purchaser reserves the right to reject the bid of any bidder found to be in circumstances described in GCC 47.1(a). A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the next Most Advantageous Bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.
- 50.4 The participation of the manufacturers and subcontractors proposed in its Bid for the major items of IT Products and Services to be used by the Most Advantageous Bidder should be confirmed with a letter of intent between the parties, as needed. The capabilities of additional or different manufacturers and subcontractors proposed in its Bid to be used by the Most Advantageous Bidder in compliance with the memorandum "Changes Required Pursuant to First-Stage Evaluation" will also be evaluated for acceptability in accordance with Section 3 (Evaluation and Qualification Criteria). Should any such additional or substitute manufacturer or subcontractor as required by the memorandum "Changes Required Pursuant to First-Stage Evaluation" be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to propose, without changing its bid price, an acceptable substitute manufacturer or subcontractor meeting the minimum technical specifications stated in Section 6 (Schedule of Requirements) within a reasonable period prior to contract award. Failure to provide an acceptable substitute by the date and time set in the Purchaser's request for substitution will lead to rejection of the Second-Stage Bid.
- 50.5 Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved Manufacturers or Subcontractors for each item concerned.

51. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids

- 51.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

52. Notice of Intention for Award of Contract

- 52.1 If Standstill provisions apply as specified in the BDS, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful bidder can challenge the proposed award.

F. Award of Contract

53. Award Criteria	53.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined successful in line with ITB 47 to ITB 50 above.
54. Purchaser's Right to Vary Quantities at Time of Award	54.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of IT Products and Services originally specified in Section 6 (Schedule of Requirements), provided this does not exceed the percentages indicated in the BDS, and without any change in the unit prices or other terms and conditions of the Bid and the Bidding Document.
55. Notification of Award	55.1 Prior to the expiration of the period of bid validity and upon expiry of the standstill period specified in ITB 52.1, or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Purchaser shall transmit the Notification of Award (using the form included in Section 9 (Contract Forms)) to the successful Bidder, in writing, that its Bid has been accepted. At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding. 55.2 Unless standstill period applies, upon notification of award, unsuccessful Bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Purchaser shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing. 55.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract. 55.4 Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies, or, if a complaint has been filed within the standstill period, upon receipt of ADB's confirmation of satisfactory resolution of the complaint, the borrower shall publish in an English language newspaper or widely known and freely accessible website the results identifying the bid and lot or package numbers, as applicable and the following information: (a) name of each Bidder who submitted a Bid; (b) bid prices as read out at bid opening; (c) name and evaluated prices of each Bid that was evaluated; (d) name of Bidders whose Bids were rejected and the reasons for their rejection; and (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.
56. Signing of Contract	56.1 Promptly after notification, the Purchaser shall send the successful Bidder the Contract Agreement. 56.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

57. Performance Security

- 57.1 Within 28 days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the Conditions of Contract, subject to ITB 48 and ITB 49, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Purchaser. If the bank issuing performance security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country.
- 57.2 Failure of the successful Bidder to submit the abovementioned performance security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Purchaser may award the Contract to the next Most Advantageous Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

58. Bidding-Related Complaints

- 58.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

Section 2: Bid Data Sheet

The Bid Data Sheet (BDS) contains information and provisions that are specific to a particular bidding process. The Purchaser must specify in the BDS only information that the Instructions to Bidders (ITB) request be specified in the BDS. All information shall be provided, and no clause shall be left blank.

To facilitate the preparation of the BDS, its clauses are numbered with the same numbers as the corresponding ITB clauses. This guide provides information to the Purchaser on how to enter all required information, and includes a BDS format that summarizes all information to be provided.

A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is: <i>[insert identification number of the IFB]</i>
ITB 1.1	The Purchaser is: <i>[insert name of the purchaser]</i>
ITB 1.1	<p>The name of the open competitive bidding (OCB) is: <i>[insert the name of OCB]</i></p> <p>The identification number of the OCB is: <i>[insert identification number of the OCB]</i></p> <p>The number and identification of lots comprising this OCB is: <i>[if there are no lots, insert "None." If there are lots, insert a list of lots, identifying each lot by number and title]</i></p>
ITB 2.1	The Borrower is: <i>[insert name of the borrower]</i>
ITB 2.1	The name of the Project is: <i>[insert name of the project]</i>

B. Contents of Bidding Document

ITB 7.1	<p>For clarification purposes only, the Purchaser's address is: <i>[Insert details below as appropriate]</i></p> <p>Attention: <i>[insert full name of the person, if applicable]</i></p> <p>Street address: <i>[insert street address and number]</i></p> <p>Floor/Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of the city or town]</i></p> <p>ZIP code: <i>[insert postal (ZIP) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Telephone: <i>[insert telephone number including country and city codes]</i></p> <p>Fax: <i>[insert fax number with country and city codes]</i></p> <p>E-mail: <i>[insert e-mail address, if applicable]</i></p> <p>Web page: <i>[in case used, identify the website with free access where Bidding process information is published]</i></p>
ITB 10.1	The language of the Bid is: <i>[insert "English" for OCB]</i>

C-1. First-Stage Bids - Preparation

ITB 11.1(i)	The Bidder shall submit with its Bid the following additional documents: <i>[insert type of any additional documents not already listed in ITB 11.1 that must be submitted with the bid]</i>
ITB 17.1	In addition to the original Bid, the number of copies is: <i>[insert number of copies required]</i>

ITB 17.2	<p>The written confirmation of Authorization to sign on behalf of the Bidder shall consist of:</p> <p><i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid. Purchaser may wish to consider the following language: “An organizational document, board resolution or its equivalent, or power of attorney specifying the representative’s authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 16.1 (b)”]</i></p>
ITB 17.2	The Bidder shall submit an acceptable authorization within <i>[insert number of days; generally 14 days]</i> days.
ITB 17.5	Electronic procedures for format and signing of the bid shall be: <i>[insert a description of the electronic procedures for format and signing of the bid]</i> .

C-2. First-Stage Bids – Submissions and Opening

ITB 18.1	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Bidders shall submit their First-Stage Bids by mail or by hand.</p> <p><i>[or]</i></p> <p>Bidders shall submit their First-Stage Bids electronically.</p>
ITB 18.1(b)	Procedures for submitting the bid electronically shall be: <i>[insert a description of the electronic bidding submission procedures if applied in accordance with ITB 18.1 above, otherwise state “Not applicable”]</i> .
ITB 18.2(c)	The additional identification marks are: <i>[insert the name and/or number that must appear on the bid envelope to identify this specific bidding process]</i> .
ITB 19.1	<p>For First-Stage Bid submission purposes only, the Purchaser’s address is: <i>[insert details below or electronic portal as appropriate]</i></p> <p>Attention:</p> <p>Street address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>ZIP code:</p> <p>Country:</p>
ITB 19.1	<p>The deadline for First-Stage Bid submission is:</p> <p>Date:</p> <p>Time:</p>
ITB 20.2	Electronic procedures for substitution, and modification shall be: <i>[insert a description of the relevant electronic procedures if applied in accordance with ITB 18.1 above, otherwise state “Not applicable”]</i> .

ITB 21.1	<p>The First-Stage Bid opening shall take place at: <i>[insert all required and applicable information]</i></p> <p>Street address:</p> <p>Floor/Room number:</p> <p>City:</p> <p>Country:</p> <p>Date:</p> <p>Time:</p>
ITB 21.1	<p>The electronic bid opening procedure shall be as follows: <i>[if electronic bidding is permitted in accordance with ITB 18.1, insert here a description of the electronic bid opening procedures; otherwise, state “not applicable”]</i></p>

C-3. First-Stage Bids – Evaluation

ITB 25.2	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>The qualifications of other firms such as the Bidder’s subsidiaries, parent entities, or affiliates shall not be permitted.</p> <p><i>[or]</i></p> <p>The qualifications of other firms such as the Bidder’s subsidiaries, parent entities, or affiliates shall be permitted for criteria 2.3 Financial Situation in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p><i>[or]</i></p> <p>The qualifications of other firms such as the Bidder’s subsidiaries, parent entities, or affiliates shall be permitted for criterion 2.4.1 Contracts of Similar Size and Nature and/or 2.4.2 Construction Experience in Key Activities in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p><i>[or]</i></p> <p>The qualifications of other firms such as the Bidder’s subsidiaries, parent entities, or affiliates shall be permitted for criteria 2.3 Financial Situation and 2.4.1 Contracts of Similar Size and Nature and/or 2.4.2 Construction Experience in Key Activities in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p><i>[If permitted, add “The Bidder shall provide out the Affiliate Company Guarantee Form included in Section 4 (Bidding Forms) filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Purchaser in determining its qualifications.”]</i></p>
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E-1. Second-Stage Bids – Preparation

ITB 28.1(j)	<p>The Bidder shall submit with its Second-Stage Bid the following additional documents: <i>[insert a list of additional documents if so require]</i></p>
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ITB 29.1	The units and rates in figures entered into the Price Schedules should be typewritten or, if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive.
ITB 30.1	<p><i>[Use one of the following options as appropriate]</i></p> <p>Bidders shall quote for the entire IT Products and Services on a single responsibility basis.</p> <p>or</p> <p>Bidders shall quote for the following components or services on a single responsibility basis: <i>[insert list of components or services]</i></p> <p>and/or</p> <p>The following components or services will be provided under the responsibility of the Purchaser: <i>[insert list of components or services]</i></p>
ITB 30.4	The Incoterms edition is:
ITB 30.5(b) (i)	For IT Products and Services offered from outside the Purchaser's country, the Bidder shall quote prices using the following Incoterms:
ITB 30.5(b) (ii)	<p>In addition to the above, the Bidder shall quote prices for IT Products and Services offered from outside the Purchaser's country using the following Incoterms:</p> <p><i>[Only if the Purchaser wishes to reserve transportation and insurance to domestic companies or other designated sources, insert: "FOB (...named port of shipment)" if CIF was specified under ITB 14.6(b)(i) above or "FCA (...named place)" if CIP was specified under ITB 14.6(b)(i) above. However, identification of the Most Advantageous Bid must be on the basis of the CIF or CIP price, but the Purchaser may sign the contract on FOB or FCA terms and make its own arrangement for transportation and/or insurance.]</i></p>
ITB 30.7	<p>The prices quoted by the Bidder <i>[insert "shall" or "shall not"]</i> be adjustable.</p> <p><i>[If prices are to be adjustable, insert "The formula for adjusting the prices and explanatory details are specified in the SCC Clause 15.2. Bidder shall fill out the Tables of Adjustment Data in Section 4 (Bidding Forms)."]</i></p> <p><i>[Use "Adjustable" where the contract period is of long duration (generally exceeds 18 months). Prices payable to the contractor shall be subject to price adjustment during the performance of the contract.]</i></p> <p><i>[If prices shall not be adjustable, the Tables of Adjustment Data in Section 4 (Bidding Forms) shall be removed"]</i></p>
ITB 30.8	<p>Prices quoted for each lot shall correspond at least to <i>[insert figure]</i> % of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond at least to <i>[insert figure]</i> % of the quantities specified for this item of a lot.</p>
ITB 32.1	<p>The bid validity period shall be <i>[insert number of days]</i> days.</p> <p><i>[The period should be sufficient to permit completion of evaluation and comparison of bids, review of the recommended selection by ADB (if so required), acquire all necessary approvals, and notify the successful bidder of the award. Normally, the bid validity period should be 120 days. A realistic period should be specified.]</i></p>

ITB 33.1	<p>[Choose one of the following options as appropriate]</p> <p>Neither a bid security nor a Bid-Securing Declaration is required.</p> <p>[or]</p> <p>The Bidder shall furnish a bid security in the amount of [insert amount and currency. The amount of the bid security should be stated as a fixed amount, normally computed as 1% to 2% of the estimated contract value. The amount may be reduced for very large contracts.]</p> <p>[or]</p> <p>The Bidder shall furnish a Bid-Securing Declaration.</p>
ITB 33.2	<p>The ineligibility period will be [insert number of years]</p>
ITB 33.4	<p>[Choose one of the following options as appropriate.]</p> <p>No further instruction.</p> <p>[or]</p> <p>Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Purchaser as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Purchaser shall request the Bidder to submit a compliant bid security within [insert number of days; generally 14 days] days of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.</p> <p>[or]</p> <p>Subject to the succeeding sentences, any bid not accompanied by Bid-Securing Declaration shall be rejected by the Purchaser as nonresponsive. If a Bidder submits a Bid-Securing Declaration that (i) deviates in form, content, and/or period of validity or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Purchaser shall request the Bidder to submit a compliant Bid-Securing Declaration within [insert number of days; generally 7 days] days of receiving such a request. Failure to provide a compliant Bid-Securing Declaration within the prescribed period of receiving such a request shall cause the rejection of the Bid.</p>
ITB 34.1	<p>In addition to the original Bid, the number of copies is: [insert number of copies]</p>

ITB 34.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of <i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the bid. Purchaser may wish to consider the following language: “An organizational document, board resolution, or its equivalent, or power of attorney specifying the representative’s authority to sign the bid on behalf of, and to legally bind, the bidder. If the bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 11.2.”]</i>
ITB 34.2	The Bidder shall submit an acceptable authorization within <i>[insert number of days, generally 14 days]</i> days.
ITB 34.5	Electronic procedures for format and signing of the bid shall be: <i>[insert a description of the electronic procedures for format and signing of the bid]</i> .

E-2. Second-Stage Bids – Submission and Opening

ITB 35.1	<i>[Choose one of the following options as appropriate.]</i> Bidders shall submit their Second-Stage Bids by mail or by hand. <i>[or]</i> Bidders shall submit their Second-Stage Bids electronically.
ITB 35.1(b)	Procedures for submitting the bid electronically shall be: <i>[insert a description of the electronic bidding submission procedures if applied in accordance with ITB 35.1 above, otherwise state “Not applicable”]</i>
ITB 38.4	Electronic procedures for withdrawal, substitution, and modification shall be: <i>[insert a description of the relevant electronic procedures if applied in accordance with ITB 35.1 above, otherwise state “Not applicable”]</i>
ITB 39.1	Electronic bid opening procedure shall be as follows: <i>[if electronic bidding is permitted in accordance with ITB 35.1, insert here a description of the electronic bid opening procedures; otherwise, state “not applicable”]</i>
ITB 39.3	The Letter of Second-Stage Bid and Price Schedules shall be initialed by <i>[insert number of initials]</i> representatives of the Purchaser attending the Bid opening.

E-3. Second-Stage Bids - Evaluation and Comparison

ITB 45.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <i>[insert the name of the currency]</i></p> <p>The source of the selling exchange rate shall be: <i>[insert the name of the source of the exchange rates, which should be the Central Bank in the Purchaser’s country or specify another institution that carries out the function of a central bank]</i></p> <p>The date for the selling exchange rate shall be: <i>[specify any date (day/month/year) not earlier than 28 days prior to the deadline for submission of the bids, nor later than the original date for the expiry of bid validity, which may, for example, be the date of the deadline for submission of bids]</i></p>
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ITB 46.1	Domestic preference [insert “shall” or “shall not”] apply. [If a domestic preference applies, insert “The application methodology shall be as stipulated in Section 3 (Evaluation and Qualification Criteria).”]																																																											
ITB 47.4	<p>The Purchaser’s evaluation of responsive Bids will take into account the following technical factors, in addition to cost factors as specified in Section 3 (Evaluation and Qualification Criteria):</p> <p><i>The following is a hypothetical example of the description of technical factors, and the scoring method that can be used to assess them:</i></p> <table><tr><th rowspan="2">Category</th><th rowspan="2">Feature</th><th colspan="5">Scoring Scale and Points*</th></tr><tr><th>0</th><th>1</th><th>2</th><th>3</th><th>4</th></tr><tr><td>Experience (20%)</td><td>Bidder’s experience in successfully completing similar projects based on final acceptance certificates issued by the clients (10 pts each, up to 4 projects)</td><td>0</td><td>10</td><td>20</td><td>30</td><td>40</td></tr><tr><td>Usability / Functionality (25%)</td><td>Extent to which the offered IT products meet the “Mandatory” and “Desirable” technical requirements</td><td>0</td><td>15</td><td>20</td><td>25</td><td>30</td></tr><tr><td>Training (15%)</td><td>Extent to which the offered training meets requirements</td><td>0</td><td>30</td><td>30</td><td>40</td><td>50</td></tr><tr><td rowspan="2">Solution Capabilities (20%)</td><td>1. Extent to which the offered design, system architecture, coding methodology for the system meet the requirements (50%)</td><td>0</td><td>15</td><td>20</td><td>30</td><td>40</td></tr><tr><td>2. Extent to which the offered infrastructure development meets the requirements (50%)</td><td>0</td><td>20</td><td>30</td><td>35</td><td>40</td></tr><tr><td rowspan="2">Support Services (20%)</td><td>1. Extent to which the offered local support meets requirements (50%)</td><td>0</td><td>10</td><td>20</td><td>30</td><td>40</td></tr><tr><td>2. Extent to which the period the bidder commits to maintain critical consumable items meets the period required (50%)</td><td>0</td><td>20</td><td>30</td><td>40</td><td>40</td></tr></table> <p>* Except for the category “Experience,” features will be assessed following the 0 to 4 scoring method described in Section 3 (Evaluation and Qualification Criteria).</p>	Category	Feature	Scoring Scale and Points*					0	1	2	3	4	Experience (20%)	Bidder’s experience in successfully completing similar projects based on final acceptance certificates issued by the clients (10 pts each, up to 4 projects)	0	10	20	30	40	Usability / Functionality (25%)	Extent to which the offered IT products meet the “Mandatory” and “Desirable” technical requirements	0	15	20	25	30	Training (15%)	Extent to which the offered training meets requirements	0	30	30	40	50	Solution Capabilities (20%)	1. Extent to which the offered design, system architecture, coding methodology for the system meet the requirements (50%)	0	15	20	30	40	2. Extent to which the offered infrastructure development meets the requirements (50%)	0	20	30	35	40	Support Services (20%)	1. Extent to which the offered local support meets requirements (50%)	0	10	20	30	40	2. Extent to which the period the bidder commits to maintain critical consumable items meets the period required (50%)	0	20	30	40	40
Category	Feature			Scoring Scale and Points*																																																								
		0	1	2	3	4																																																						
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Solution Capabilities (20%)	1. Extent to which the offered design, system architecture, coding methodology for the system meet the requirements (50%)	0	15	20	30	40																																																						
	2. Extent to which the offered infrastructure development meets the requirements (50%)	0	20	30	35	40																																																						
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	<p><i>This example shows that the selection of categories and technical factors, and their relative weightings, is flexible based on the needs of the Purchaser provided that (i) the evaluation is described in sufficient detail for a bidder to be able to accurately calculate its score, and (ii) the evaluation addresses qualitative aspects of bids that cannot be adequately addressed by using only pass-fail criteria or price adjustments that reflect life cycle cost.</i></p> <p>The cutoff score for technical competence is [x] and bids scored below this score will not be further considered for evaluation.</p>
ITB 50.2	<p>[Choose one of the following options as appropriate.]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall not be permitted.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criteria 2.3 Financial Situation in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criterion 2.4.1 Contracts of Similar Size and Nature and/or 2.4.2 Construction Experience in Key Activities in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[or]</p> <p>The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates shall be permitted for criteria 2.3 Financial Situation and 2.4.1 Contracts of Similar Size and Nature and/or 2.4.2 Construction Experience in Key Activities in Section 3. The other firms must satisfy the criteria stated in 2.1 Eligibility in Section 3.</p> <p>[If permitted, add "The Bidder shall provide out the Affiliate Company Guarantee Form included in Section 4 (Bidding Forms) filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Purchaser in determining its qualifications."]</p>

ITB 52.1	<p><i>[Choose one of the following options as appropriate.]</i></p> <p>Standstill provisions shall not apply.</p> <p><i>[or]</i></p> <p>Standstill provisions shall apply. The duration of standstill period will be <i>[insert number of days]</i> days from the date of notice of intention for award of contract.</p> <p>The Purchaser shall, at the start of the standstill period, notify in writing each bidder that submitted a bid, of its intention to award a contract to the successful bidder at the end of standstill period. The notification using the form included in Section 9 (Contract Forms) shall include the following information:</p> <ul style="list-style-type: none"> (a) the name of each Bidder who submitted a Bid; (b) the bid prices as read out at bid opening; (c) the name and evaluated prices of each Bid that was evaluated; (d) the name of Bidders whose bids were rejected and the reasons for their rejection; (e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded; and (f) a statement of the reason(s) the bid of the unsuccessful bidder to whom the notification is addressed was unsuccessful, unless the price information under (e) of this paragraph already reveals the reason.
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F. Award of Contract

ITB 54.1	<p>The maximum percentage by which quantities may be increased is: <i>[insert percentage]</i></p> <p>The maximum percentage by which quantities may be decreased is: <i>[insert percentage]</i></p> <p><i>[Note: Insert percentages, for example, 15%]</i></p>
ITB 58.1	<p>The procedures for Bidding-Related Complaints are referenced in the Procurement Regulations for ADB Borrowers (Appendix 7). The Bidder should submit its complaint following these procedures, in writing, to:</p> <p>For the attention: <i>[insert full name of person receiving complaints]</i></p> <p>Title/position: <i>[insert title/position]</i></p> <p>Purchaser: <i>[insert name of purchaser]</i></p> <p>E-mail address: <i>[insert e-mail address]</i></p> <p>Fax number: <i>[insert fax number; delete if not used]</i></p>

Section 3: Evaluation and Qualification Criteria

NOTE

This section contains the criteria that the Purchaser shall use to evaluate bids and qualify bidders if the bidding was not preceded by a prequalification exercise and postqualification is applied. ADB requires bidders to be qualified by meeting predefined, precise minimum requirements. The method entails setting pass-fail criteria, which, if not met by the bidder, results in disqualification. It will therefore be necessary to ensure that a bidder’s risk of having its bid rejected on grounds of qualification is remote if due diligence is exercised by the bidder during bid preparation. For that purpose, clear-cut, pass-fail qualification criteria need to be defined and indicated in the Invitation for Bids and the Bidding Document to enable bidders to make an informed decision whether to pursue a specific contract and, if so, whether to pursue it as a single entity or in Joint Venture. The criteria adopted must relate to characteristics that are essential to ensure satisfactory execution of the contract, and must be stated in clear terms. In accordance with ITB 24, ITB 25, ITB 47, and ITB 50, no other methods, criteria, and factors shall be used. The bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

In case the bidding was preceded by a prequalification process, updating of information pertaining to a bidder’s eligibility, historical contract nonperformance, and financial situation will be necessary during bidding.

Table of Criteria

- A. First-Stage Evaluation 178**
 - 1. Evaluation..... 178
 - 1.1 Technical Evaluation..... 178
 - 1.2 Alternative Technical Bids..... 178
 - 2. Qualification..... 179
 - 2.1 Eligibility..... 179
 - 2.1.1 Nationality..... 179
 - 2.1.2 Conflict of Interest..... 179
 - 2.1.3 ADB Eligibility 179
 - 2.1.4 Government-Owned Enterprise..... 179
 - 2.1.5 United Nations Eligibility..... 179
 - 2.2 Historical Contract Nonperformance 180
 - 2.2.1 History of Nonperforming Contracts..... 180
 - 2.2.2 Suspension Based on Execution of Bid-Securing Declaration 180
 - 2.2.3 Pending Litigation and Arbitration 180
 - 2.3 Financial Situation 181
 - 2.3.1 Historical Financial Performance..... 181
 - 2.3.2 Average Annual Turnover..... 182
 - 2.3.3 Financial Resources..... 183

2.4 Bidder's Experience.....	185
2.4.1 Contracts of Similar Size and Nature	185
2.4.2 Experience in Key Activities.....	186
2.5 Subcontractors	187
B. Second-Stage Evaluation	188
1. Combined Evaluation.....	188
2. Technical Evaluation.....	188
3. Price Evaluation	190
4. Economic Evaluation	191
4.1 Quantifiable Deviations and Omissions.....	191
4.2 Operating and Maintenance Costs	191
4.3 Functional Guarantees of the Facilities.....	192
4.4 Work, Services, Facilities, etc., to Be Provided by the Purchaser	192
4.5 Specific Additional Criteria.....	192
4.6 Domestic Preference.....	193
5. Multiple Contracts.....	194

A. First-Stage Evaluation

1. Evaluation

1.1 Technical Evaluation

In addition to the criteria listed in ITB 24.1(a)–(c) other relevant factors are as follows:

Evaluation of the Bidder’s Technical Proposal will include an assessment of the Bidder’s technical capacity to mobilize key 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 stipulated in Section 6 (Schedule of Requirements).

Noncompliance with personnel requirements described in Section 6 (Schedule of Requirements) shall not normally be a ground for bid rejection and such noncompliance will be subject to clarification during bid evaluation and rectification prior to contract award.

NOTE

The Purchaser shall refer to the appropriate forms in Section 4 to be filled out, if provided. The Purchaser shall assess whether proposed site organization, method statement, mobilization, project schedule, proposed subcontractors for major items of IT Products and Services, and time schedule described in Section 4 (Bidding Forms) are presented in consistent manner and comply with requirements stipulated in Section 6 (Schedule of Requirements) without material deviation, reservation, or omission.

1.2 Alternative Technical Bids

Technical alternatives, if permitted under ITB 13, will be evaluated as follows:

NOTE

The Purchaser shall describe how this factor will be evaluated.

2. Qualification

2.1 Eligibility

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		
		All Partners Combined	Each Partner	One Partner
				Submission Requirements

2.1.1 Nationality

Nationality in accordance with ITB 4.2.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI – 1; ELI – 2 with attachments
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2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of First-Stage Bid
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2.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of First-Stage Bid
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2.1.4 Government-Owned Enterprise

Bidder required to meet conditions of ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI – 1; ELI – 2 with attachments
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2.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB 4.8.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of First-Stage Bid
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NOTE

It is the obligation of the Purchaser to confirm an entity's eligibility by checking ADB's complete Sanctions List (for all bidders) at various stages of bidding process including bid evaluation, prior to contract award, as well as during processing of contract variations, extensions or modifications. ADB has the right to monitor the Purchaser's compliance to this obligation.

ADB's Complete Sanctions List and the guide on how to get its access are available at <https://www.adb.org/who-we-are/integrity/sanctions>.

2.2 Historical Contract Nonperformance

2.2.1 History of Nonperforming Contracts

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Nonperformance of a contract ^a did not occur as a result of contractor default since 1st January [insert year].	Must meet requirement	Must meet requirement	Must meet requirement ^b	Not applicable	Form CON-1

^a Nonperformance, as decided by the Purchaser, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Purchasers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

^b This requirement also applies to contracts executed by the Bidder as Joint Venture partner.

2.2.2 Suspension Based on Execution of Bid-Securing Declaration

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Not under suspension based on execution of a Bid-Securing Declaration pursuant to ITB 4.6.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter First-Stage of Bid

2.2.3 Pending Litigation and Arbitration

Pending litigation and arbitration criterion [shall/shall not] not apply.^a

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
All pending litigation, arbitration or other material events impacting the net worth and/or liquidity of the bidder, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than ^b percent of the Bidder's net worth calculated as the difference between total assets and total liabilities.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form CON – 1

^a The Purchaser may choose whether to apply or not to apply this criterion:

- 1) If the Purchaser chooses to apply this criterion, it should indicate "shall apply" and use the table in 2.2.3, or
- 2) If the Purchaser chooses not to apply this criterion, it should indicate "shall not apply" and delete the table in 2.2.3

^b If the criterion is applied, the purchaser should indicate a percentage within the range of 50%–100% of the bidder's net worth.

2.3 Financial Situation

2.3.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, for the last ^a years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form FIN – 1 with attachments

^a Indicate time period between 3 and 5 years.

NOTE

The financial information provided by the bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the bidder should be given on this basis. Any abnormal feature that may lead to financial problems should alert the purchaser to seek expert professional advice for further review and interpretation.

2.3.2 Average Annual Turnover

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of \$ ^a calculated as total certified payments received for contracts in progress or completed, within the last ^b years.	Must meet requirement	Must meet requirement	Must meet ^c of the requirement	Must meet ^d of the requirement	Form FIN – 1 with attachments

^a The amount stated should normally not be less than two times the annualized value of the subject contract, expressed as $2 \times V/T$; where V is the purchaser's estimated cost (including contingencies), T is the contract duration in years. For contract duration of up to 1 year, T of "1" should be used. The multiplier of 2 may be reduced for very large contracts but should not be less than 1.5.

^b Insert number of years in words and figures and indicate time period between 3 and 5 years.

^c The Purchaser is to define this value based on the minimum amount required that all partners of the Joint Venture must meet taking joint and several liability into account, usually at least 25%.

^d The Purchaser is to define this value based on the minimum amount required that one partner of the Joint Venture must meet, usually at least 40%.

2.3.3 Financial Resources²

If the bid evaluation process and the decision for the award of the Contract takes more than 1 year from the date of bid submission, Bidders may be asked to resubmit their current contract commitments and latest information on financial resources supported by latest audited accounts or audited financial statements, or if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, and the Bidders' financial capacity will be reassessed on this basis.

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>For Single Entities:</p> <p>The Bidder must demonstrate that its financial resources defined in Form FIN – 3, less its financial obligations for its current contract commitments defined in Form FIN – 4, meet or exceed the total requirement for the Subject Contract of^a</p>	Must meet requirement	Not applicable	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4
<p>For Joint Ventures:</p> <p>(1) One partner must demonstrate that its financial resources defined in Form FIN – 3, less its financial obligations for its own current contract commitments defined in Form FIN – 4, meet or exceed its required share of^b from the total requirement for the Subject Contract.</p> <p>AND</p>	Not applicable	Not applicable	Not applicable	Must meet requirement	Form FIN – 3 and Form FIN – 4

² The Purchaser has the option to move this criterion from Section 3 (Evaluation and Qualification Criteria) to Section 6 (Schedule of Requirements), in which case,

- (a) the Purchaser shall confirm compliance with the financial resources criterion prior to award of contract in accordance with ITB 52.1 Award Criteria; and
- (b) in place of the financial resources criterion, the Purchaser may require the bidder to submit together with its bid, and for confirmation during bid evaluation, a letter of undertaking to comply with the financial resources given in Section 6 prior to award of contract.

(2) Each partner must demonstrate that its financial resources defined in Form FIN – 3, less its financial obligations for its own current contract commitments defined in Form FIN – 4, meet or exceed its required share of ^c from the total requirement for the Subject Contract. AND	Not applicable	Not applicable	Must meet requirement	Not applicable	Form FIN – 3 and Form FIN – 4
(3) The Joint Venture must demonstrate that the combined financial resources of all partners defined in Form FIN – 3, less all the partners' total financial obligations for the current contract commitments defined in Form FIN – 4, meet or exceed the total requirement for the Subject Contract of ^a	Not applicable	Must meet requirement	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4

^a The purchaser is to specify the total requirement for the Subject Contract based on the following calculation:

$$\frac{3 \text{ (or 4)} \times \text{Estimated Contract value (Inclusive of Taxes and Duties)}}{\text{Completion Period in Months}}$$

^b The purchaser is to define this value based on the minimum amount one partner of the Joint Venture must meet, usually at least 40% of the total requirement for the Subject Contract. This value is to be carried forward to Form FIN – 5B when it is used.

^c The purchaser is to define this value based on the minimum amount each partner of the Joint Venture must meet, usually at least 25% of the total requirement for the Subject Contract. This value is to be carried forward to Form FIN – 5B when it is used.

NOTE

Form FIN – 5 is made available for use by the bidder as a self-assessment tool, and by the purchaser as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 2.3.3. Failure to submit Form FIN – 5 by the Bidder shall not lead to bid rejection.

2.4 Bidder's Experience

2.4.1 Contracts of Similar Size and Nature³

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation as a contractor, Joint Venture partner, or Subcontractor, in at least one contract that has been satisfactorily and substantially performed within the last . . . ^a years and that is similar to the proposed contract, where the value of the Bidder's participation exceeds \$. . . ^b The similarity of the Bidder's participation shall be based on the physical size, nature and quality of IT Products and Services, complexity, methods, technology, or other characteristics as described in Section 6 (Schedule of Requirements).	Must meet requirement	Not applicable	Not applicable	Must meet requirement	Form EXP – 1 ^c

Or

Participation as a contractor, Joint Venture partner, or Subcontractor, in at least two contracts that have been satisfactorily and substantially performed within the last . . . ^a years and that are similar to the proposed contract, where the value of the Bidder's participation under each contract exceeds \$. . . ^b The similarity of the Bidder's participation shall be based on the physical size, nature and quality of IT Products and Services, complexity, methods, technology, or other characteristics as described in Section 6 (Schedule of Requirements).	must meet requirement	must meet requirement as follows: (i) Either one partner must meet requirement Or (ii) any two partners must each demonstrate one (1) satisfactorily and substantially performed contract of similar size and nature and quality	not applicable	Not applicable	Form EXP – 1 ^c
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^a Insert number of years in words and figures. The range is normally 5 to ten 10 years.

^b Usually 80% of the estimated value of the subject contract. In case of repetitive and contiguous works (e.g., transmission lines, water pipeline), the Purchaser has the option of specifying a value that is between 50% and 80% of the subject contract value.

^c Submission requirements: Form EXP – 1 shall be supported by Signed Contract Agreement.

³ The Purchaser has the option of requiring either one or two contracts of similar size and nature and should choose the appropriate language below.

2.4.2 Experience in Key Activities⁴

(Must be complied with by the Bidder. In case of a Joint Venture Bidder, at least one of the partners must have experience in the key activity. If the activity can be subcontracted, the requirement must be specified in Criterion 2.5 of Section 3.)

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For the above or other contracts executed during the period stipulated in 2.4.1 above, a minimum experience in the following key activities: [Insert key activities as appropriate.]	Must meet requirement	Not applicable	Not applicable	Must meet requirement	Form EXP – 2 ^a

^a Submission requirements: Form EXP – 2 shall be supported by Signed Contract Agreement.

⁴ Key activities criterion should confirm bidder’s experience in performing highly specialized design and IT-related activities.

2.5 Subcontractors

Subcontractors or Manufacturers for the following major items of IT Products and Services must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement will result in rejection of the subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met ^a	Documents Submission Requirements
1			Form EXP – 3
2			
3			
4			
5			

^a Subcontractor must have the experience of having completed at least one contract of size and complexity similar to the proposed subcontract within the last 3 or 5 years.

In the case of a Bidder who offers to supply and install major items of IT products under the contract, which the Bidder did not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section 4 (Bidding Forms), showing that the Bidder has been duly authorized by the Manufacturer or producer of the related IT product or component to supply and install that item in the Purchaser's country. Failure to submit the Manufacturer's authorization at the first instance is considered a minor, nonmaterial omission and shall be subject to clarification. However, failure of the Bidder to submit the omitted authorization shall lead to rejection of the Subcontractor or Manufacturer of the item under evaluation in accordance with ITB 50.4.

B. Second-Stage Evaluation

1. Combined Evaluation

The Purchaser will evaluate and compare the Bids that have been determined to be substantially responsive, pursuant to ITB 47.

If indicated by the BDS, the Purchaser’s evaluation of responsive Bids will take into account technical factors, in addition to cost factors.

In such a case, an Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

$$B \equiv \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

Where

- C = Evaluated Bid Price
- C_{low} = lowest of all Evaluated Bid Prices among responsive Bids
- T = total technical score awarded to the Bid
- T_{high} = technical score achieved by the Bid that was scored best among all responsive Bids
- X = weight for the Price as specified in the BDS

The Bid with the best Evaluated Bid Score (B) among responsive bids shall be the Most Advantageous Bid, provided the Bidder was prequalified and/or it was found to be qualified to perform the Contract in accordance with ITB 47.

2. Technical Evaluation (ITB 47.3 and ITB 47.4)

If, in addition to the cost factors, the Purchaser has chosen to give weight to important technical factors (i.e., the price weight, X, is less than 1 in the evaluation), the total technical Score assigned to each Bid in the Evaluated Bid Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical features of the Bid in accordance with the criteria set forth below.

- (a) The technical features to be evaluated are generally defined below and specifically identified in the BDS:
 - (i) Performance, capacity, or functionality features that either exceed levels specified as mandatory in Section 6 (Schedule of Requirements) or influence the life cycle cost and effectiveness of the IT Products and Services

- (ii) Usability features, such as ease of use, ease of administration, or ease of expansion, which influence the life cycle cost and effectiveness of the IT Products and Services
 - (iii) The quality of the Bidder's Preliminary Project Plan as evidenced by the thoroughness, reasonableness, and responsiveness of (a) the task and resource schedules, both general and specific; and (b) the proposed arrangements for management and coordination, training, quality assurance, technical support, logistics, problem resolution, and transfer of knowledge, and other such activities as specified by the Purchaser in Section 6 (Schedule of Requirements), or proposed by the Bidder based on the Bidder's experience.
 - (iv) Any sustainable procurement requirement if specified in Section 6 (Schedule of Requirements).
- (b) Feature scores will be grouped into a small number of evaluation categories, generally defined below and specifically identified in the BDS:
- (i) The technical features that reflect how well the IT Products and Services meet the Purchaser's business requirements (including quality assurance and risk-containment measures associated with the implementation of the IT Products and Services).
 - (ii) The technical features that reflect how well the IT Products and Services meet the system's functional performance standards.
 - (iii) The technical features that reflect how well the IT Products and Services meet the general technical requirements for hardware, network and communications, software, and services.
- (c) As specified in the BDS, each category will be given a weight, and within each category each feature may also be given a weight.
- (d) During the evaluation process, the evaluation committee will assign each desirable/preferred feature a whole number score from 0 to 4, where 0 means that the feature is absent, and 1 to 4 either represent (i) predefined values for desirable features amenable to an objective way of rating (as is the case for, e.g., extra memory, extra mass storage capacity, etc., if these extras would be conducive for the utility of the system); or (ii) a desirable functionality (e.g., of a software package) or a quality improving the prospects for a successful implementation (such as the strengths of the proposed project staff, the methodology, the elaboration of the project plan, etc., in the bid). The scoring will be 1 for the feature being present but showing deficiencies, 2 for meeting the requirements, 3 for marginally exceeding the requirements, and 4 for significantly exceeding the requirements.
- (e) The score for each feature (i) within a category (j) will be combined with the scores of features in the same category as a weighted sum to form the category technical score using the following formula:

$$S_j \equiv \sum_{i=1}^k t_{ji} * w_{ji}$$

where:

t_{ji} = technical score for feature “i” in category “j”

w_{ji} = weight of feature “i” in category “j”

k = number of scored features in category “j”

and $\sum_{i=1}^k w_{ji} = 1$

(f) The category technical scores will be combined in a weighted sum to form the total Technical Bid Score using the following formula:

$$T \equiv \sum_{j=1}^n S_j * W_j$$

where:

S_j = category technical score of category “j”

W_j = weight of category “j” as specified in the BDS

n = number of categories

and $\sum_{j=1}^n W_j = 1$

3. Price Evaluation [100-X%]

The Purchaser will evaluate price bids, pursuant to ITB Clause 47, using the above weighting.

4. Economic Evaluation

In addition to the criteria listed in ITB 47.3 (a)–(e), other relevant factors are as follows:

Adjustments in price that result from the procedures stated below shall be added, for purposes of comparative evaluation only, to arrive at an “Evaluated Bid Price.” Bid prices quoted by Bidders shall remain unaltered.

4.1 Quantifiable Deviations and Omissions

The cost of minor omissions or missing items in the scope of supply, services, etc. should be added to the Bid Price to allow for Bid comparison on an equal basis. Only those technical features that are identified as “mandatory” (or implied as mandatory by the use of the word “must”) in Section 6 (Schedule of Requirements) are subject to such price adjustment. All other technical features are preferable features that can be included in, or excluded from, a bid at the Bidder’s option, and are not subject to such price adjustment. The price adjustment should be based on a reasonable estimate of the cost by the executing agency, engineer, consultant, or bid evaluation committee, taking into consideration the corresponding quoted prices from other conforming bids. The price adjustment should be based on the fair price of the omitted item. The most frequently used method is to use the price equal to the highest price quoted for the same item by the other responsive Bidders.

[Insert: “Pursuant to ITB 43.3, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated, including technical features that are identified as “mandatory” (or implied as mandatory by the use of the word “must”) in Section 6 (Schedule of Requirements) and for which nonconformance does not require rejection for non-responsiveness. The Purchaser will make its own assessment of the cost of any nonmaterial nonconformities and omissions, for the purpose of ensuring fair comparison of Bids.”]

4.2 Operation and Maintenance Costs

Since the operation and maintenance (O&M) costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Purchaser or other Purchasers similarly placed. Such costs shall be added to the bid price for evaluation. The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation. Use of unverifiable future O&M cost and consumption figures as a factor in economic evaluation should be avoided.

NOTE

Use one of the two options given below.

The O&M cost factors for calculating of the life cycle cost are as follows:

- (a) Number of years for life cycle [*insert life cycle period in years. Usually, the period should not exceed the usual period before a major overhaul of the facilities becomes necessary*]
- (b) Operating costs [*insert fuel and/or other input, unit cost for annual and total operational requirements*]

- (c) Maintenance costs, including the cost of spare parts for the initial period of operation
- (d) A rate of *[insert rate in words and figures]* in percentage to be used to discount to present value all annual future costs calculated under (b) and (c) for the period specified in (a)

or

[insert a reference to the methodology specified in the specification or elsewhere in the bidding document]

4.3 Functional Guarantees of the Facilities

The minimum and/or maximum requirements stated in the Specification for functional guarantees required in the Specification are the following:

[insert appropriate reference to the functional guarantees, and use text suggested below]

Functional Guarantee [as required in the Specification, e.g., performance, efficiency, consumption, etc.]	Minimum and/or Maximum Requirements [as required in the Specification]
1.	
2.	
3.	
..	

For the purposes of evaluation, for each percentage point in performance or efficiency below the norm specified in the Specification but above the minimum acceptable levels also specified there, an adjustment of *[insert amount in the currency of bid evaluation]* will be added to the bid price.

4.4 Work, Services, Facilities, etc., to Be Provided by the Purchaser

Where Bids include the undertaking of work or the provision of services or facilities by the Purchaser in excess of the provisions allowed for in the Bidding Document, the Purchaser shall assess the costs of such additional work, services, and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

4.5 Specific Additional Criteria

The following additional criteria will be used in the evaluation:

[if applicable, insert a list of additional criteria or a reference to criteria specified elsewhere in the Bidding Document]

4.6 Domestic Preference

Domestic preference will be granted to eligible domestically produced IT products in accordance with the following provisions:

- (a) The preference margin shall not be applied to the whole facility but only to the eligible domestically produced IT products within the contract.
- (b) IT products and Mandatory Spare Parts supplied from abroad shall be quoted CIP (Section 4, Bidding Forms, Price Schedules for IT Products to Be Offered from Outside the Purchaser's Country) and IT products and Mandatory Spare Parts supplied from within the Purchaser's country shall be quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable) free of sales and similar taxes (Section 4, Bidding Forms, Price Schedules for IT Products to Be Offered from Within the Purchaser's Country).
- (c) All other cost components for services and works, such as costs for design, local handling, transportation, storage, installation, and commissioning, shall be quoted separately (Section 4, Bidding Forms, Price Schedules for IT Products to Be Offered from Outside and Within the Purchaser's Country).
- (d) In the comparison of Bids, only the CIP price component of each Bid for the IT products offered from outside the Purchaser's country shall be increased by 15%.
- (e) No domestic preference shall be applied to any of the services or works included in the contract.
- (f) Bidders shall not be permitted or required to modify the mix of local and foreign IT products after bid opening.

5. Multiple Contracts

IT Products and Services are grouped into multiple contracts, and pursuant to ITB 47.4, the Purchaser will evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts to arrive at the highest scoring combination for the Purchaser by taking into account discounts offered by Bidders in case of award of multiple contracts.

If a Bidder submits several successful (Most Advantageous) Bids, the evaluation will also include an assessment of the Bidder's capacity to meet the following aggregated requirements as presented in the Bid:

- Average annual turnover,
- Financial resources, and
- Personnel to be fielded.

NOTE

The Purchaser shall refer to the applicable qualification requirement(s) for each contract in Part A of this section.

The Purchaser may also refer to the evaluation methodologies for Multiple Contracts specified in the ADB-published Prequalification: Guidance Note on Procurement (2018), and modify this section appropriately.

Section 4: Bidding Forms

This section contains the forms to be completed by the Bidder and submitted as part of its Bid.

Table of Forms

Letter of First-Stage Bid	197
Country of Origin Declaration Form	201
Letter of Second-Stage Bid	202
Price Schedules	206
Price Schedule for IT Products to Be Offered from Within the Purchaser's Country	207
Price Schedule for IT Products to Be Offered from Outside the Purchaser's Country	208
Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country	209
Price Schedule for Recurrent Costs	210
Grand Summary	211
Tables of Adjustment Data	212
Bid Security	213
Bid-Securing Declaration	214
Technical Proposal	215
Site Organization	216
Method Statement	217
Mobilization Schedule	218
Delivery and Completion Schedule	219
IT Products	220
Personnel	221
Form PER – 1: Proposed Personnel	221
Form PER – 2: Resume of Proposed Personnel	222
Proposed Subcontractors/Manufacturers for Major Items of Products and Services	223
Proposed Subcontractors for Major Items of IT Products and Services	224

Manufacturer’s Authorization..... 225

Affiliate Company Guarantee 226

 Preliminary Project Plan 227

 Alternative Technical Bids 228

 Functional Guarantee of the Proposed Facilities..... 229

 Software List 230

 List of Customs Documentation..... 231

Bidder’s Qualification.....232

 Form ELI – 1: Bidder’s Information Sheet..... 233

 Form ELI – 2: Joint Venture Information Sheet..... 235

 Form CON – 1: Historical Contract Nonperformance 237

 Form FIN – 1: Historical Financial Performance 239

 Form FIN – 2: Average Annual Turnover 240

 Form FIN – 3: Availability of Financial Resources 241

 Form FIN – 4: Financial Requirements for Current Contract Commitments 242

 Form FIN – 5: Self-Assessment Tool for Bidder’s Compliance to Financial Resources..... 243

 Form EXP – 1: Contracts of Similar Size and Nature244

 Form EXP – 2: Experience in Key Activities245

 Form EXP – 3: Subcontractors246

Letter of First-Stage Bid

NOTE

The bidder must accomplish the Letter of First-Stage Bid on its letterhead clearly showing the Bidder's complete name and address.

Date:

OCB No.:

Invitation for Bid No.:

To: *[insert complete name of the Purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time.
- (c) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Bidding Documents the following IT Products and Services: *[insert narrative]*
- (d) We undertake, if our bid is accepted, to commence work on the IT Products and Services and to achieve installation and acceptance within the respective times stated in the Bidding Documents.
- (e) We hereby certify that all the software offered in this bid and to be supplied under the Contract is either (i) owned by us or, if not owned by us, (ii) covered by a valid license from the proprietor of the software.
- (f) We, including any Subcontractor or Manufacturer for any part of the contract, have or will have nationalities from eligible countries, in accordance with ITB 4.2.
- (g) We, our directors, key officers, key personnel, including any Subcontractor, consultants, subconsultants, manufacturers, service providers or Supplier for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

- (i) Parties involved in the conflict of interest:
- (ii) Details about the conflict of interest:
- (h) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.

- (i) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.¹

- (j) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not under ongoing investigation and/or sanctions proceedings by the Asian Development Bank or any multilateral development bank.

If under ongoing investigation and/or sanction proceedings by the Asian Development Bank or any multilateral development bank, please state details:

(i) Name of the multilateral development bank:

(ii) Reason for the ongoing investigation / allegations:

- (k) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the Contract, are not temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency.

If so temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency, please state details (as applicable to each Joint Venture partner, their respective direct or indirect shareholders, directors, key officers, key personnel, associate, parent company, affiliate, subsidiaries, Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers):

(i) Name of Institution:

(ii) Period of the temporary suspension, debarment, ineligibility, or national or international sanction [start and end date]:

(iii) Reason for the temporary suspension, debarment, ineligibility, or national or international sanction:

- (l) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers, Suppliers, key officers, directors, and key personnel have never been charged or convicted with any criminal offense (including felonies but excluding misdemeanors) or infractions and/or violations of ordinance; nor charged or found liable in any civil or administrative proceedings in the last 10 years; or undergoing investigation for such, or subject to any criminal, civil or administrative orders, monitorship or enforcement actions.

¹ These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to para. 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check www.adb.org/integrity for updates.

If so charged, convicted/found liable, under ongoing investigation, or subject to orders, monitorship or enforcement actions, please state details:

- (i) Nature of the offense, violation, proceedings, investigation, and/or monitorship or enforcement actions:
 - (ii) Court, area of jurisdiction and/or the enforcement agency:
 - (iii) Resolution [*i.e. dismissed, settled, or convicted; duration of penalty*]:
 - (iv) Other relevant details [*please specify*]:
- (m) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, can make and receive electronic fund transfer payments through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer.

If unable to make or receive funds through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer, please state the details:

- (i) Nature of the restriction:
 - (ii) Jurisdiction of the restriction:
 - (iii) Other relevant details:
- (n) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, key officers, directors and key personnel are not from a country which is prohibited to export goods or services to, or receive any payments from the Purchaser's country and/or are not prohibited to receive payments for particular goods or services by the Purchaser's country 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.
- (o) We have paid, or intend to pay, either directly or indirectly, the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract.²

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

- (p) We understand that it is our obligation to notify the Purchaser of any changes in connection with the matters described in paragraphs (g), (i), (j), (k), (l), (m), (n) and (o) of this Letter of First-Stage Bid.
- (q) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].³
- (r) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid-Securing Declaration in the Purchaser's Country in accordance with ITB 4.6.
- (s) We further undertake, if invited to do so by you, and at our own cost, to attend a clarification meeting at a place of your choice, for the purpose of reviewing our First-Stage Bid and duly noting all amendments and additions thereto, and noting omissions therefrom that you may require.

² If none has been paid or is to be paid, indicate "None."

³ Use one of the two options as appropriate.

- (t) We further undertake, upon receiving your written invitation, to proceed with the preparation of our Second- Stage Bid, updating our First-Stage Bid in accordance with the requirements from the Memorandum “Changes Required Pursuant to First-Stage Evaluation”, and completing our Second-Stage Bid for supplying the Products and Services.
- (u) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.
- (v) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records and other documents related to bid submission for at least 3 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.
- (w) If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.
- (x) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Purchaser of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB’s Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

Country of Origin Declaration Form

Name of Bidder

IFB Number

Page ____ of ____

Item	Description	Country

Letter of Second-Stage Bid

NOTE

The bidder must accomplish the Letter of Second-Stage Bid on its letterhead clearly showing the bidder's complete name and address.

Date:

OCB No.:

Invitation for Bid No.:

To: *[insert complete name of the Purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 8, and your requirements incorporated in the Memorandum "Changes Required Pursuant to First-Stage Evaluation" issued after the clarification meeting held between us on *[insert date]*.
- (b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Integrity Principles and Guidelines (2015), both as amended from time to time.
- (c) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Bidding Document the following IT Products and Services: *[insert narrative]*
- (d) The total price of our Bid, excluding any discounts offered in item (d) below is the sum of

[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures]

The total bid price from the grand summary should be entered by the bidder inside this box. Absence of the total bid price in the Letter of Second-Stage Bid may result in rejection of the bid.

- (e) The discounts offered and the methodology for their application are as follows: *[insert discounts and methodology for their application, if any]*
- (f) Our bid shall be valid for a period of *[insert bid validity period as specified in ITB 32.1 of the BDS]* days starts from the date fixed for the submission deadline for the Second-Stage bids as stipulated in the Letter of Invitation to submit a Second-Stage Bid, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (g) If our bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Documents.
- (h) We, including any Subcontractor or Manufacturer for any part of the Contract, have or will have nationalities from eligible countries, in accordance with ITB 4.2.

- (i) We, our directors, key officers, key personnel, including any Subcontractor, consultants, subconsultants, manufacturers, service providers or Supplier for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

- (i) Parties involved in the conflict of interest:
- (ii) Details about the conflict of interest:
- (j) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.

- (k) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.¹

- (l) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract, are not under ongoing investigation and/or sanctions proceedings by the Asian Development Bank or any multilateral development bank.

If under ongoing investigation and/or sanction proceedings by the Asian Development Bank or any multilateral development bank, please state details:

- (i) Name of the multilateral development bank:
- (ii) Reason for the ongoing investigation / allegations:
- (m) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the Contract, are not temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency.

If so temporarily suspended, debarred, declared ineligible, or subject to any national and/or international sanctions by any country, any international organization, any multilateral development bank and other donor agency, please state details (as applicable to each Joint Venture partner, their respective direct or indirect shareholders, directors, key officers, key personnel, associate, parent company, affiliate, subsidiaries, Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers):

- (i) Name of Institution:

¹ These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to para. 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check www.adb.org/integrity for updates.

- (ii) Period of the temporary suspension, debarment, ineligibility, or national or international sanction
[start and end date]:
- (iii) Reason for the temporary suspension, debarment, ineligibility, or national or international sanction:
- (n) Our firm, Joint Venture partners, our respective direct and indirect shareholders, directors, key officers, key personnel, associates, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, can make and receive electronic fund transfer payments through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer.
- If unable to make or receive funds through the international banking system or otherwise discharge the Purchaser's obligation upon initiation of wire transfer, please state the details:
- (i) Nature of the restriction:
- (ii) Jurisdiction of the restriction:
- (iii) Other relevant details:
- (o) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers, key officers, directors and key personnel are not from a country which is prohibited to export goods or services to, or receive any payments from the Purchaser's country and/or are not prohibited to receive payments for particular goods or services by the Purchaser's country 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.
- (p) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers, Suppliers, key officers, directors, and key personnel have never been charged or convicted with any criminal offense (including felonies but excluding misdemeanors) or infractions and/or violations of ordinance; nor charged or found liable in any civil or administrative proceedings in the last 10 years; or undergoing investigation for such, or subject to any criminal, civil or administrative orders, monitorship or enforcement actions.
- If so charged, convicted/found liable, under ongoing investigation, or subject to orders, monitorship or enforcement actions, please state details:
- (i) Nature of the offense, violation, proceedings, investigation, and/or monitorship or enforcement actions:
- (ii) Court, area of jurisdiction and/or the enforcement agency:
- (iii) Resolution [*i.e. dismissed, settled, or convicted; duration of penalty*]:
- (iv) Other relevant details [*please specify*]:
- (q) We understand that it is our obligation to notify the Purchaser of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (p) and (t) of this Letter of Second-Stage Bid.
- (r) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].²
- (s) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid-Securing Declaration in the Purchaser's Country in accordance with ITB 4.6.

² Use one of the two options as appropriate.

- (t) We have paid, or intend to pay, either directly or indirectly, the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:³

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

- (u) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (v) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.
- (w) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (x) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Schedule of Requirements) and our technical proposal, or as otherwise agreed with the Purchaser.
- (y) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records and other documents related to bid submission for at least 3 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.
- (z) If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.
- (aa) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Purchaser of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).
- (ab) We confirm and stand by our commitments and other declarations made in connection with the submission of our Letter of First-Stage Bid.

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

³ If none has been paid or is to be paid, indicate "None."

Price Schedules

The Bidder shall complete and submit with its Bid the Price Schedules pursuant to ITB 29 and in accordance with Part 2 Supply Requirements, Section 6 (Schedule of Requirements). The list of items in column 1 of the Price Schedules shall coincide with the List of IT Products and Services (LITS) specified by the Purchaser in the Schedule of Requirements (SOR). This Guide helps the Purchaser and Bidder fill out all the required information in the Price Schedule Form.

The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive. Any necessary alterations due to errors, etc., shall be signed by the Bidder.

Price Schedule for IT Products to Be Offered from Within the Purchaser's Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item	Description	Country of Origin	Domestic Value Added in Percentage	Quantity and Unit of Measurement	Unit Price EXW	Total EXW Price per Item	Sales and Other Taxes per Item	Total Price per Item including Taxes
1	2	3	4	5	6	7 = 5 x 6	8	9 = 7 + 8
Total Amount								

Notes:

- Column 4: In accordance with domestic preference ITB 46, if applicable.
Domestic Value Added comprises domestic labor, the domestic content of materials, domestic overheads, and profits from the stage of mining the raw material until final assembly.
- Column 6: Incoterm in accordance with ITB 30.
Currency in accordance with ITB 31.
Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the customs duties and sales and other taxes already paid on previously imported items.
- Column 8: Payable in the Purchaser's country if Contract is awarded.

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

Price Schedule for IT Products to Be Offered from Outside the Purchaser’s Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price CIF (...) or CIP (...)	Unit Price FOB (...) or FCA (...)	Total Price CIF or CIP per Item	Total Price FOB or FCA per Item
1	2	3	4	5	6	7 = 4 x 5	8 = 4 x 6
				Total Amount			

Notes:

Columns 5 and 6: Incoterm in accordance with ITB 30.
Currency in accordance with ITB 31.

Column 6: Only to be used if the Purchaser wishes to reserve transportation and insurance to domestic companies or other designated sources. Identification of the Most Advantageous Bid must be on the basis of the CIF or CIP price, but the Purchaser may sign the contract on FOB or FCA terms and make its own arrangement for transportation and/or insurance.

Name: [insert complete name of person signing the bid]

In the capacity of [insert legal capacity of person signing the bid]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the Bid for and on behalf of [insert complete name of the bidder]

Date: [insert date of signing]

Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country

Name of Bidder _____ IFB Number _____ Page _____ of _____

Item No.	Description	Country of Origin	Quantity and Unit of Measurement	Unit Price		Total Price per Item	
				(a)	(b)	(a)	(b)
				Foreign Currency	Local Currency	Foreign Currency	Local Currency
1	2	3	4	5(a)	5(b)	6(a) = 4 x 5(a)	6(b) = 4 x 5(b)
				Total Amount			

Notes:

Columns 5 and 6: Currencies in accordance with ITB 31.

Prices are to be quoted inclusive of all customs duties, sales, and other similar taxes applicable in the Purchaser's country and payable on the Services, if the Contract is awarded to the Bidder.

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

Price Schedule for Recurrent Costs

		Maximum All-Inclusive Costs							
Item	Recurrent Item	Warranty Period			Post-Warranty Service Period			Total Prices	
		Y1	Y2	Y3	Y4	Y5	Yn	Local Currency	Foreign Currency
Total Amount: Cumulative Recurrent (to be carried to Grand Summary Costs)									

Name: [insert complete name of person signing the bid]

In the capacity of [insert legal capacity of person signing the bid]

Signed: [insert signature of person whose name and capacity are shown above]

Duly authorized to sign the Bid for and on behalf of [insert complete name of the bidder]

Date: [insert date of signing]

Grand Summary

Price Component	Total Price	
	Local Currency	Foreign Currency
Price Schedule for IT Products to Be Offered from Within the Purchaser's Country		
Price Schedule for IT Products to Be Offered from Outside the Purchaser's Country		
Price Schedule for Services to Be Offered from Outside and Within the Purchaser's Country		
Price Schedule for Recurrent Costs		
Total Bid Price (to be carried forward to the Letter of Bid)		

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the bidder]*

Date: *[insert date of signing]*

NOTE

Specify currency in accordance with Bid Data Sheet 31.1. Create and use as many columns for Foreign Currency requirement as there are foreign currencies.

Tables of Adjustment Data

Table A – Local Currency

To be entered by the purchaser

To be entered by the bidder

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	a: 0.05 to 0.15 b: _____ c: _____ d: _____ e: _____
Total					1.00

Table B – Foreign Currency

Name of Currency: [Insert name of currency. If the bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency]

To be entered by the bidder

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/ Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—		—	a: 0.05 to 0.15 b: _____ c: _____ d: _____ e: _____
Total						1.00

NOTE

The base date shall be the date 28 days prior to the deadline for submission of the bid.

Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 30.7.

Bid Security

Bank Guarantee

[insert bank's name, and address of issuing branch or office]¹

Beneficiary: [insert name and address of the purchaser]

Date: [insert date]

Bid Security No.: [insert number]

We have been informed that [insert name of the bidder] (hereinafter called “the Bidder”) has submitted to you its Bid dated [insert date] (hereinafter called “the Bid”) for the execution of [insert name of contract] under Invitation for Bids No. [insert IFB number] (“the IFB”).

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we [insert name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert amount in words][insert amount in figures] upon receipt by us of your first demand in writing accompanied by a written statement, stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Second-Stage Bid; or
- (b) does not accept the correction of errors in accordance with the Instruction to Bidders (hereinafter “the ITB”); or
- (c) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758.²

[Authorized signature(s) and bank's seal (where appropriate)]

¹ All italicized text is for use in preparing this form and shall be deleted from the final document.

² Or the Purchaser may use “Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458” as appropriate.

Bid-Securing Declaration

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

Bid No.: [insert number of bidding process]

Alternative No.: [insert identification no. if this is a bid for an alternative]

To: [insert complete name of the purchaser]

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of [insert number of years as indicated in ITB 33.2 of the BDS] starting on the date that we receive a notification from the Purchaser, if we are in breach of our obligation(s) under the bid conditions, because we

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Second-Stage Bid; or
- (b) do not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter “the ITB”); or
- (c) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required; or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) 28 days after the expiration of our Bid.

Signed: [insert signature of person whose name and capacity are shown]

In the capacity of [insert legal capacity of person signing the bid-securing declaration]

Name: [insert complete name of person signing the bid-securing declaration]

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

Dated on _____ day of _____, _____ [insert date of signing]

Corporate Seal [where appropriate]

Technical Proposal

Site Organization

Method Statement

Mobilization Schedule

Delivery and Completion Schedule

IT Products

Personnel

Proposed Subcontractors for Major Items of IT Products and Services

Manufacturer's Authorization

Affiliate Company Guarantee

Preliminary Project Plan

Functional Guarantee of the Proposed Facilities

Site Organization

Method Statement

Mobilization Schedule

Delivery and Completion Schedule

IT Products

Personnel

Form PER – 1: Proposed Personnel

Bidders should provide the details of proposed personnel and their experience record in the relevant Information Forms below for each of the candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name

Note: All titles of positions will be as listed in Section 6 (Schedule of Requirements).

The Bidder shall provide all the information requested below. Use one form for each position.

Position		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of purchaser	
	Address of purchaser	
	Telephone	Contact (manager/personnel officer)
	Fax	E-mail
	Job title	Years with present purchaser

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

[illegible]

Proposed Subcontractors and/or Manufacturers for Major Items of IT Products and Services

The following Subcontractors and/or Manufacturers are proposed for carrying out the item of the facilities indicated based on Criterion 2.5 of Section 3 (Evaluation and Qualification Criteria). Bidders are free to propose more than one for each item.

Major Items of IT Products and Services	Proposed Subcontractors and/or Manufacturers	Nationality

Proposed Subcontractors for Major Items of IT Products and Services

Manufacturer's Authorization

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

OCB No.: [insert number of bidding process]

To: [insert complete name of the Purchaser]

WHEREAS

We [insert complete name of the manufacturer or manufacturer's authorized agent], who are official Manufacturers or agent authorized by the Manufacturer of [insert type of IT products manufactured], having factories at [insert full address of manufacturer's factories], do hereby authorize [insert complete name of the bidder] to submit a Bid the purpose of which is to provide the following IT products manufactured by us [insert name and/or brief description of the IT products], and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the IT products offered by the above firm.

Signed: [insert signature(s) of authorized representative(s) of the manufacturer]

Name: [insert complete name(s) of authorized representative(s) of the manufacturer]

Title: [insert title]

Duly authorized to sign this Authorization on behalf of [insert complete name of the manufacturer]

Dated on _____ day of _____, _____ [insert date of signing]

NOTE

The bidder shall require the manufacturer to fill out this form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer. The bidder shall include it in its bid, if so indicated in the BDS.

Affiliate Company Guarantee

Name of Contract/Contract No.:

Name and address of Purchaser:

[together with successors and assigns].

We have been informed that [name of Contractor] (hereinafter called the “Contractor”) is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Purchaser, awarding the Contract to the Contractor, we [name of affiliated company] irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract, we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor’s satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract, we will indemnify the Purchaser against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Purchaser under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor’s obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Purchaser and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Purchaser to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Purchaser, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled under the [Rules or Arbitration provided in the Contract]. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by.....

(signature)

.....

(name)

.....

(position in parent/subsidiary company)

Signed by:

(signature)

.....

(name)

.....

(position in parent/subsidiary company)

Date

NOTE

If permitted in accordance with ITB 25.2 (First-Stage Bid) or ITB 50.2 (Second-Stage Bid) of the BDS, the Bidder shall provide out the Affiliate Company Guarantee Form filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Purchaser in determining its qualifications.

Preliminary Project Plan

Alternative Technical Bids

To be used by Bidder when alternative technical bids are invited in ITB 13.

Functional Guarantee of the Proposed Facilities

Form FUNC

The Bidder shall copy on the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Purchaser in EQC 3.3 of Section 3 (Evaluation and Qualification Criteria), and on the right column, provide the corresponding value for each functional guarantee of the proposed IT products and equipment.

Functional Guarantee [as required by the Purchaser in Section 3]	Functional Guarantee Value Offered by the Bidder
1.	
2.	
3.	
...	

[illegible]

[illegible]

Bidder's Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the following information requested in the corresponding Information Sheets.

Form ELI – 1: Bidder's Information Sheet

Bidder's Information		
	Information of the Bidder	If the Bidder is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)	
	Full trading name(s) (if any)	
Addresses	Registered address(es)	
	Trading address(es)	
	Postal address(es) (if different from trading address)	
Type of organization		
Country of constitution/ incorporation/registration		
Year of constitution/ incorporation/ registration		
Corporate or registration number		
In case of a Joint Venture, legal name of each partner		
Bidder's authorized representative (name, address, telephone number(s), fax number(s), e-mail address)		

Attached are copies of the following documents:

1. In case of a single entity, articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2
2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 17.2 and ITB 34.2
3. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1
4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5

Form ELI – 2: Joint Venture Information Sheet

Each partner of the Joint Venture must fill out this form separately. Subcontractor must fill out this form.

Joint Venture/Subcontractor Information		
Bidder's legal name		
	Information of Joint Venture Partner	If any Joint Venture Partner is a subsidiary or branch, information of any parent company/ companies
Names	Full legal name(s)	
	Full trading name(s) (if any)	
Addresses	Registered address(es)	
	Trading address (es)	
	Postal address (es) (if different from trading address)	
Type of organization		
Country of constitution/ incorporation/ registration		
Year of constitution/ incorporation/ registration		
Corporate or registration number		
Joint Venture Partner's or Subcontractor's authorized representative information (name, address, telephone number(s), fax number(s), e-mail address)		

Attached are copies of the following documents:

1. Articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2
2. Authorization to represent the firm named above, in accordance with ITB 17.2 and ITB 34.2
3. In the case of a government-owned enterprise, in accordance with ITB 4.5

Subcontractors are those listed in Technical Proposal – Proposed Subcontractors and/or Manufacturers for Major Items of IT Products and Services.

Form CON – 1: Historical Contract Nonperformance

Each Bidder must fill out this form in accordance with Criteria 2.2.1 and 2.2.3 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Table 1: History of Nonperforming Contracts

Choose one of the following:

- ☐ No nonperforming contracts.
- ☐ Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Description	Amount of Nonperformed Portion of Contract (\$ equivalent)	Total Contract Amount (\$ equivalent)
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Purchaser: [insert full name] Address of Purchaser: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]	[insert amount]

Table 2: Pending Litigation and Arbitration

Choose one of the following:

☐ No pending litigation, arbitration or any other material events impacting the net worth and/or liquidity of the bidder.

☐ Below is a description of all pending litigation, arbitration against the Bidder or any other material events impacting the net worth and/or liquidity of the bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Matter in Dispute	Value of Pending Claim in \$ Equivalent	Value of Pending Claim as a Percentage of Net Worth
[insert year]	Contract Identification, as applicable: [indicate complete contract name/number, and any other identification] Name of Purchaser, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert full name] Address of Purchaser, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [insert street/city/country] Matter of Dispute: [indicate full description of dispute] Party who initiated the dispute: [indicate "Purchaser" or "Contractor"] Status: [indicate status of dispute]	[insert amount]	[insert amount]

NOTE

Table 2 of this form shall only be included if Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.

Form FIN – 1: Historical Financial Performance

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Financial Data for Previous 3 Years ^a [\$ Equivalent]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet			
Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA – CL			

Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA – CL			

Most Recent Working Capital		To be obtained for most recent year and carried forward to FIN – 3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner's FIN – 3.
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Information from Income Statement			
Total Revenues			
Profits Before Taxes			
Profits After Taxes			
☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three (3) years, ^b as indicated above, complying with the following conditions: <ol style="list-style-type: none"> 1) Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.^c 2) Historical financial statements must be audited by a certified accountant. 3) Historical financial statements must be complete, including all notes to the financial statements. 4) Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). 			

Total Revenues			
Profits Before Taxes			
Profits After Taxes			
☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three (3) years, ^b as indicated above, complying with the following conditions: <ol style="list-style-type: none"> 1) Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.^c 2) Historical financial statements must be audited by a certified accountant. 3) Historical financial statements must be complete, including all notes to the financial statements. 4) Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted). 			

Note: This form shall only be included if Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria) is applicable.

^a If the time period indicated under Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria) is either four (4) or five (5) years, then the table columns above should be expanded accordingly.

^b The time period stated here should be the same as the time period indicated under Criterion 2.3.1 of Section 3 (Evaluation and Qualification Criteria).

^c When financial qualifications of Bidder's parent companies, subsidiaries, or affiliates are permitted in accordance with ITB 25.2 (First-Stage Bid) or ITB 50.2 (Second-Stage Bid) of Section 2, replace the text of condition 1 with "As required by Section 3 of the Bidding Documents, all such documents reflect the standalone financial situation of the legal entity or entities comprising the Bidder, as well as standalone financial situation of such Bidder's parent companies, subsidiaries, or affiliates which are proposed by the Bidder for Criteria 2.4 Financial Situation in Section 3 for consideration of the Purchaser in determining its qualifications."

Form FIN – 2: Average Annual Turnover

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each partner of a Joint Venture for the total certified payments received from the clients for contracts in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner’s name:

Joint Venture Partner: _____

Annual Turnover Data for the Last . . . Years ^a			
Year	Amount Currency	Exchange Rate	\$ Equivalent
Average Annual Turnover ^b			

^a The purchaser should insert the period described in Criterion 2.3.2 of Section 3 (Evaluation and Qualification Criteria).

^b To determine the average annual turnover, the purchaser shall divide the sum of each year’s annual turnover by the number of years for which such information was requested.

Form FIN – 3: Availability of Financial Resources

Bidders must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Bidder's financial requirements for

- (a) its current contract commitments, and
- (b) the subject contract.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Financial Resources		
No.	Source of financing	Amount (\$ equivalent)
1	Working Capital (to be taken from FIN – 1)	
2	Credit Line ^a	
3	Other Financial Resources	
Total Available Financial Resources		

^a To be substantiated by a letter from the bank issuing the line of credit.

Form FIN – 4: Financial Requirements for Current Contract Commitments

Bidders (or each Joint Venture partner) should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner’s name:

Joint Venture Partner: _____

Current Contract Commitments						
No.	Name of Contract	Purchaser’s Contact (Address, Tel, Fax)	Contract Completion Date	Outstanding Contract Value (X) ^a	Remaining Contract Period in Months (Y) ^b	Monthly Financial Resources Requirement (X/Y)
1						
2						
3						
4						
Total Monthly Financial Requirement for Current Contract Commitments						\$

^a Remaining outstanding contract values to be calculated from 28 days prior to the bid submission deadline (\$ equivalent based on the foreign exchange rate as of the same date).

^b Remaining contract period to be calculated from 28 days prior to bid submission deadline.

Form FIN – 5: Self-Assessment Tool for Bidder’s Compliance to Financial Resources (Criterion 2.3.3 of Section 3)

This form requires the same information submitted in Forms FIN – 3 and FIN – 4. All conditions of “Available Financial Resources Net of CCC $\geq$ Requirement for the Subject Contract” must be satisfied to qualify.

Form FIN – 5A: For Single Entities

For Single Entities: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
_____ (Name of Bidder)				 ^a	

Form FIN – 5B: For Joint Ventures

For Joint Ventures: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
One Partner:					
_____ (Name of Partner)				 ^b	
Each Partner:					
_____ (Name of Partner 1)				 ^c	
_____ (Name of Partner 2)				 ^c	
_____ (Name of Partner 3)				 ^c	
All partners combined	$\Sigma D =$ Sum of available financial resources net of current contract commitments for all partners		$\Sigma D =$	 ^a	

^a The purchaser should insert here the total requirement for the Subject Contract (for both, single entity and all partners combined) as defined in Criterion 2.3.3 of Section 3.

^b The purchaser should insert here the required share for one partner as defined in Criterion 2.3.3 of Section 3.

^c The purchaser should insert here the required share for each partner as defined in Criterion 2.3.3 of Section 3.

NOTE

Form FIN – 5 is made available for use by the bidder as a self-assessment tool, and by the purchaser as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 2.3.3. Failure to submit Form FIN – 5 by the Bidder shall not lead to bid rejection.

Form EXP – 1: Contracts of Similar Size and Nature

Fill out one (1) form per contract. Each contract shall be supported by Signed Contract Agreement.

Contract of Similar Size and Nature		
Contract No. of	Contract Identification	
Award Date		Completion Date
Role in Contract	☐ Supplier ☐ Management Supplier ☐ Subcontractor	
Total Contract Amount	\$	
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Purchaser's name Address Telephone number Fax number E-mail		
Description of the Similarity in Accordance with Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria)		
<div style="background-color: #0070c0; color: white; padding: 5px; text-align: center; font-weight: bold;">NOTE</div> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p><i>The purchaser should insert here contract size, complexity, nature and quality of IT Products and Services, methods, technology, or other characteristics as described in Criterion 2.4.1 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.</i></p> </div>		

Form EXP – 2: Experience in Key Activities

Fill out one (1) form per contract. Each contract shall be supported by Signed Contract Agreement.

Contract with Similar Key Activities		
Contract No. of	Contract Identification	
Award Date		Completion Date
Role in Contract	☐ Supplier ☐ Management Supplier ☐ Subcontractor	
Total Contract Amount	\$	
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Purchaser's name Address Telephone number Fax number E-mail		
Description of the Key Activities in Accordance with Criterion 2.4.2 of Section 3 (Evaluation and Qualification Criteria)		
<div style="background-color: #0070c0; color: white; padding: 5px; text-align: center; font-weight: bold;">NOTE</div> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p><i>The purchaser should insert here the highly specialized activities listed under Criterion 2.4.2 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.</i></p> </div>		

Form EXP – 3: Subcontractors

Fill out one (1) form per contract.

Contract for the Major Items		
Contract No. of		Contract Identification
Award Date		Completion Date
Role in Contract	☐ Supplier ☐ Management Supplier ☐ Subcontractor	
Total Contract Amount	\$	
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Purchaser's name Address Telephone number Fax number E-mail		
Description of the Major Items in accordance with Criterion 2.5 of Section 3 (Evaluation and Qualification Criteria)		
<div>NOTE</div> <div>The purchaser should insert here the major items of IT Products and Services and services listed under Criterion 2.5 of Section 3 against which the bidder demonstrates similarity in the box on the right-hand side.</div>		

Section 5: Eligible Countries

This section contains the list of eligible countries. Please choose one of the following cases and follow the instructions as appropriate.

NOTES

For Contracts to be financed by loans/grants from

1. OCR without cofinancing resources:

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in para. 2 below), *then please state* “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

2. Regular loan from OCR with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Investment Climate Facilitation Fund,
- (iv) Japan Fund for the Joint Credit Mechanism, and
- (v) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

3. Concessional loan from OCR with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Japan Fund for Public Policy Training,
- (iv) Japan Fund for Information and Communication Technology,
- (v) Investment Climate Facilitation Fund, and
- (vi) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, *please insert the most recent list of ADB members obtainable from www.adb.org/about/members.*

4. Regular loan from OCR with cofinancing resources other than those listed in para. 2 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

5. Concessional loan from OCR with cofinancing resources other than those listed in para. 3 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

6. ADF without cofinancing resources:

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of ADB developed members that have contributed to ADF resources, and all ADB developing members.

EXCEPTION: If any other contract under the project is financed by cofinancing resources that are administered by ADB (other than those listed in para. 7 below), *then please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”*

7. ADF with cofinancing resources from any one of the following funds:

- (i) Asian Clean Energy Fund,
- (ii) Japan Fund for Poverty Reduction,
- (iii) Japan Fund for Public Policy Training,
- (iv) Japan Fund for Information and Communication Technology,
- (v) Investment Climate Facilitation Fund, and
- (vi) e-Asia and Knowledge Partnership Fund,

Unless a waiver of ADB member procurement eligibility restrictions was approved by the ADB Board of Directors, please insert the most recent list of *ADB developed members that have contributed to ADF resources, and all ADB developing members.*

8. ADF with cofinancing resources other than those listed in para. 7 above:

Please state “No nationality restrictions apply, other than any restrictions arising from ITB 4.8.”

Section 6: Schedule of Requirements

Table of Contents

Notes on Preparing the Requirement of the IT Products and Services	250
A. Abbreviations Used in the Technical Requirements.....	252
B. Functional, Architectural, and Performance Requirements	253
C. Service Specifications – Supply and Install Items.....	255
D. Technology Specifications – Supply and Install Items	257
E. Testing and Quality Assurance Requirements	261
F. Service Specifications – Recurrent Cost Items	262

Notes on Preparing the Requirements of the IT Products and Services

The Requirements of the IT Products and Services comprise four significant and closely related subsections:

- o Technical Requirements
- o Implementation Schedule
- o System Inventory Tables
- o Background and Informational Materials

Each subsection is presented and discussed separately.

Technical Requirements

Notes on Preparing the Technical Requirements

The Technical Requirements, in combination with the Implementation Schedule and the supporting System Inventory Tables, states the Supplier's obligations to design, supply, and install the IT Products and Services, and, as such, should be "voiced" to the Supplier (i.e., "The System MUST .." "The Supplier MUST .."). They form the contractual basis for the Purchaser-Supplier interactions on technical matters (in combination with refinements introduced through the Supplier's bid, the project plan, and any change orders).

When describing a specific requirement or requirements to be met by the Bidder, the Purchaser shall use the following phrase "shall support a minimum of." When a description of the solution that meets a specific requirement is sought from the Bidder, the Purchaser shall use the following phrase "describe how the proposed solution shall meet a minimum of." The Purchaser in preparation of this section should replace questions/statements with a concise statement of requirement.

The Technical Requirements also must include all the technical details that Bidders will need to prepare realistic, responsive, and competitive bids (i.e., covering all their obligations under the Contract if so awarded).

Often Technical Requirements are based on either consultant's project proposals (voiced to the Purchaser's management) or bids from previous procurements (voiced to the Purchaser). In both instances, care needs to be taken in converting these materials into Technical Requirements (voiced to the Supplier). Otherwise, substantial ambiguity will be introduced into the Technical Requirements from, among other things, "aspirational" text suggesting the benefits (to the Purchaser), which are often not obligations that the Supplier can deliver on or be held to deliver upon. Bid-based language will often include "sales pitches" such as "expandability up to sixteen processors," whereas the Technical Requirements need to be stated as threshold values to be cleared by the Supplier (e.g., "expandability to at least sixteen processors").

Any sustainable procurement Technical Requirements shall be clearly specified. The sustainable procurement requirements may be specified to enable evaluation of such a requirement on a pass-fail basis and/or rated criteria (point system), as appropriate.

To the greatest extent possible, the Technical Requirements should be expressed in terms of the Purchaser's business activities, rather than a technological design. This leaves it up to the market to determine what specific information technologies can best satisfy these business needs. This is particularly relevant where the IT Products and Services will embody complex business logic in the form of application software.

Even in the case of a relatively straightforward IT Products and Services, where the business needs can be clearly linked to technological and methodological requirements known in advance of any bidding, the requirements must still be vendor-neutral and admit the widest possible range of technical responses.

Accordingly, references to brand names, catalogue numbers, or other details that limit the source of any item or component to a specific Manufacturer should be avoided. Where such references are unavoidable, the words “or substantially equivalent” should be added to permit Bidders to bid equivalent or superior technologies. (The Purchaser will need to be ready to indicate how this equivalence will be assessed.)

Similarly, where national standards or codes of practice are specified, the Purchaser should include a statement that other national or international standards “that are substantially equivalent” will also be acceptable.

To help ensure comparable bids and ease contract execution, the Purchaser’s requirements must be stated as clearly as possible, with minimum room for differing interpretations. Thus, wherever possible, Technical Requirements should include definitive characteristics and quantifiable measures. If technical characteristics in a specific range, or above or below specific thresholds, are required, then these should be clearly specified. For example, the expandability of a server should be stated as “no less than four processors.” Technical Requirements that state only “four processors” create unnecessary uncertainty for Bidders regarding whether, for example, a server that could be expanded up to six processor boards would be technically responsive.

Quantitative technical specifications must, however, be employed with care. They can dictate technical architectures and, thus, be unnecessarily restrictive. For example, a quantitative requirement for the minimum width of the data path in a processor may be unnecessarily restrictive. Instead, a specification of a required level of standard performance benchmark test is more appropriate, allowing different technical approaches to achieving the Purchaser’s functional and performance objectives. In general, the Purchaser should try to use widely accepted direct measures of performance and functionality whenever possible and carefully review specifications for those that might dictate technical architectures.

It is important that the Technical Requirements clearly identify which are mandatory features (for which a bid’s nonconformance might require rejection for non-responsiveness) and which are preferable features that can be included or excluded from a bid at the Bidder’s option. To enhance the clarity of the specifications, Purchasers are advised to use the word “**MUST**” (in bold capitals) in sentences describing mandatory requirements. A clear requirements numbering scheme is also essential.

The following presents a sample outline format for the Technical Requirements Section. This should be adapted to meet the Purchaser’s needs for the specific IT Products and Services to be procured.

A. Abbreviations Used in the Technical Requirements

0.1 Abbreviations Table

Note: Compile a table of organizational and technical acronyms used in the Technical Requirements. This can be done, for example, by extending the following table.

Term	Definition
bps	bits per second
cps	characters per second
DBMS	database management system
DOS	disk operating system
dpi	dots per inch
GB	gigabyte
Hz	hertz (cycles per second)
IEEE	Institute of Electrical and Electronics Engineers
ISO	International Organization for Standardization
KB	kilobyte
kVA	kilovolt-ampere
LAN	local area network
lpi	lines per inch
lpm	lines per minute
MB	megabyte
MTBF	mean time between failures
NIC	network interface card
NOS	network operating system
ODBC	Open Database Connectivity
OLE	Object Linking and Embedding
OS	operating system
PCL	Printer Command Language

ppm	pages per minute
PS	PostScript (Adobe page description language)
RAID	redundant array of inexpensive disks
RAM	random access memory
RISC	reduced instruction set computer
SCSI	Small Computer System Interface
SNMP	Simple Network Management Protocol
SQL	Structured Query Language
TCP/IP	Transmission Control Protocol/Internet Protocol
V	volt
WLAN	wireless LAN

B. Functional, Architectural, and Performance Requirements

1.1 Legal and Regulatory Requirements to Be Met by the IT Products and Services

1.1.1 The IT Products and Services MUST comply with the following laws and regulations:

1.1.1.1 *[as appropriate, summarize each relevant legal code and regulations that govern the business processes and procedures that will be automated with the IT Products and Services]*

1.1.1.2 ...

Note: If appropriate, prepare a subsection with the relevant legal codes and regulations to be included in the Background and Informational Materials and reference these materials.

1.2 Business Function Requirements to Be Met by the IT Products and Services

1.2.1 The IT Products and Services MUST support the following business functions:

1.2.1.1 *[describe, at the appropriate level of detail for the IT Products and Services being supplied and installed, each specific business processes and procedures that will be automated by the IT Products and Services.]*

1.2.1.2 ...

Note: These business process descriptions may be textual as well as presented in a formal system analysis formats (e.g., process model and data model, use-case model, entity-relation diagrams, swim-lane diagrams, etc.).

As appropriate, prepare a subsection for the Background and Informational Materials with samples of existing standardized reports, data entry forms, data formats, data coding schemes, etc. that the IT Products and Services will need to implement. Reference these materials.

1.3 Architectural Requirements to Be Met by the IT Products and Services

1.3.1 The IT Products and Services MUST be supplied and configured to implement the following architecture:

1.3.1.2 Software Architecture: *[specify features (use diagrams as appropriate)]*

1.3.1.2 Hardware Architecture: *[specify features (use diagrams as appropriate)]*

1.4 Systems Administration and Management Functions Required to Be Met by the IT Products and Services

1.4.1 The IT Products and Services MUST provide for the following management, administration, and security features at the overall system level in an integrated fashion:

1.4.1.2 Installation, Configuration, and Change Management: *[specify features]*

1.4.1.3 Operational Monitoring, Diagnostics, and Troubleshooting: *[specify features]*

1.4.1.4 User Administration and Access Control; User and Usage Monitoring and Audit Trails: *[specify features]*

1.4.1.5 System and Information Security and Security Policies: *[specify features]*

1.4.1.6 Backup and Disaster-Recovery: *[specify features]*

1.4.1.7 ...

1.5 Performance Requirements of the IT Products and Services

1.5.1 The IT Products and Services MUST reach the following performance levels:

1.5.1.1 *[Describe, at the appropriate level of detail for the particular IT Products and Services being supplied and installed: each relevant throughput and/or response times for specific business processes and procedures automated by the system. Also describe in business process terms the relevant conditions under which the system must achieve these performance standards (e.g., the number of concurrent users, type of transactions, type and quantity of business data that the system must process in achieving these performance standards, etc.).]*

1.5.1.2 ...

Note: Whenever feasible, business functions should be stated and used as the basis for performance specifications. Relying solely on technological requirements can inadvertently restrict competition.

C. Service Specifications – Supply and Install Items

2.1 System Analysis, Design, and Customization/Development

2.1.1 The Supplier MUST perform the following analysis and design activities using a formal system analysis/development methodology with the following key activities and design deliverables:

2.1.1.1 Detailed Analysis: [e.g., specify System Design Document, System Requirements Specification, Interface Requirements Specification, Software/System Test Descriptions, Software/System Test Plan, etc.]

2.1.1.2 Physical Design: [e.g., specify Software Design Description, Interface Design Document, Database Design Document, etc.]

2.1.1.3 Integrated System: [e.g., specify User's Manual, Operations Manual, Source Code, CASE Files, etc.]

2.2 Software Customization/Development

2.2.1 The Supplier MUST perform Software Customization/Development using a formal software development methodology with the following characteristics and/or technologies and tools:

2.2.1.1 [For example, describe Software Development Method (e.g., Cascade, Rapid Application Development); Open Standards (e.g., Java, XML, etc.); and/or CASE tools, etc.]

2.3 System Integration (to Other Existing Systems)

2.3.1 The Supplier MUST perform the following integration services [e.g., describe existing IT Products and Services (as appropriate, reference the relevant subsection of the Background and Informational Materials Section containing any detailed description of existing systems); and specify technical and functional level of integration with the IT Products and Services].

2.4 Training Services and Training Materials

2.4.1 The Supplier MUST provide the following Training Services and Training Materials:

2.4.1.1 User: [For example, specify minimum curricula, modes of training, modes of testing, and training materials for the introduction to computers, the operation of the relevant equipment incorporated in the system, as well as the operation of the software applications incorporated in the system. As appropriate, reference the relevant subsection in the Background and Informational Material Section containing any detailed information regarding the available training facilities, etc.]

2.4.1.2 Technical: [For example, specify minimum curricula, modes of training, modes of testing (e.g., certification levels), training materials, and training locations for the key technology and methodology components of the IT Products and Services, etc.]

- 2.4.1.3 Management: *[For example, specify minimum curricula, modes of training, modes of testing, training materials, and training locations for the familiarization with the functionality, technology, and methodology components of the IT Products and Services, corporate management of IT Products and Services, etc.]*

2.5 Data Conversion and Migration Services

- 2.5.1 The Supplier MUST provide services and tools to perform the following Data Conversion and Migration Services: *[For example, specify volume of data; type, structure, and media of data; timing of conversion; quality assurance and validation methods; etc.]*

2.6 Documentation Requirements

- 2.6.1 The Supplier MUST prepare and provide the following Documentation Requirements:
 - 2.6.1.1 End-User Documents: *[For example, specify type(s) of end-user documents, language, content, formats, quality control and revision management, medium, reproduction and distribution methods, etc.]*
 - 2.6.1.2 Technical Documents: *[For example, specify type(s) of technical documents, language, content, formats, quality control and revision management, medium, reproduction and distribution methods, etc.]*

2.7 Requirements of the Supplier's Technical Team

- 2.7.1 The Supplier MUST maintain a technical team of the following roles and skill levels during the supply and installation activities under the Contract:
 - 2.7.1.1 Project Team Leader: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
 - 2.7.1.2 Business Area Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
 - 2.7.1.3 System Analyst: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
 - 2.7.1.4 Database Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
 - 2.7.1.5 Programming Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
 - 2.7.1.6 System Administration/Security Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*

- 2.7.1.7 Computer Hardware Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
- 2.7.1.8 Network and Communications Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
- 2.7.1.9 Training Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
- 2.7.1.10 Documentation Specialist: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*
- 2.7.1.11 ...

D. Technology Specifications – Supply and Install Items

3.0 General Technical Requirements

- 3.0.1 Language Support: All information technologies must provide support for the *[insert either national or business language(s) of the end-user(s)]*. Specifically, all display technologies and software must support the International Organization for Standardization character set *[insert character set number]* and perform sorting according to *[insert appropriate standard method]*.
- 3.0.2 Electrical Power: All active (powered) equipment must operate on *[specify voltage range and frequency range, e.g., 220 V +/- 20 V, 50 Hz +/- 2 Hz]*. All active equipment must include power plugs standard in *[insert Purchaser's country]*.
- 3.0.3 Environmental Requirement: Unless otherwise specified, all equipment must operate in environments of *[specify temperature, humidity, and dust conditions, e.g., 10°C–30°C, 20%–80% relative humidity, and 0–40 grams per cubic meter of dust]*.
- 3.0.4 Safety
 - 3.0.4.1 Unless otherwise specified, all equipment must operate at noise levels no greater than *[insert maximum number]* decibels.
 - 3.0.4.2 All electronic equipment that emits electromagnetic energy must be certified as meeting *[insert emission standard, e.g., US FCC class B, END 55022, END 50082-1, or equivalent emission standards]*.

3.1 Computing Hardware Specifications

- 3.1.1 Processing Unit Type 1: *[Specify name of processing unit and technical function (e.g., Central Database Server)]*
 - 3.1.1.1 Processing unit performance: As configured for the bid, the processing unit **MUST**, at a minimum,

- (a) achieve [specify standard benchmark test or tests and minimum performance levels, e.g., “SPEC CPU2006 rating”]

(Or, for Particular Conditions [PCs])

achieve a minimum performance equal to a score of [specify score] under the benchmark [specify benchmark, e.g., “Sylmar 2007 Rating”]; and

- (b) provide input-output performance, as follows: [specify minimum input-output performance levels (e.g., data bus transfer rates, standard peripheral interfaces, minimum number of concurrent terminal sessions, etc.)]

3.1.1.2 Processor expandability: [For example, specify minimum acceptable number of processors; minimum acceptable levels of performance; minimum acceptable degree of expandability for processors or performance, relative to bid configuration; minimum acceptable number of internal subsystem expansion slots; etc.].

3.1.1.3 Processor memory and other storage: [For example, specify main memory, cache memory, disk storage, tape storage, optical drives, etc.].

Note: If the upgrade requirements over the next few years for processing power, memory, etc. are reasonably well known at the time the Bidding Documents are to be issued, the Purchaser may wish to incorporate these requirements in the Recurrent Cost Table and possibly include them in the Contract Price. This will subject them to competition and provide a way contractually to control future price increases. This approach reserves for the Purchaser the option of including upgrades in the Contract, even if upgrades are not needed in the end. Special Conditions of Contract (SCC) need to be included clarifying how upgrades will be treated in the final Contract.

3.1.1.4 Processing unit fault tolerance: [For example, specify error checking; failure detection, prediction, reporting, and management; redundant power supplies and other modules; “hot-swappable modules”; etc.].

3.1.1.5 Processing unit management features: [For example, specify features and supported standards; local and remote management; etc.].

3.1.1.6 Processing unit input and output devices: [For example, specify network interfaces and controllers; display; keyboard; mouse; bar-code, smart-card, and identification-card readers; modems; audio and video interfaces and devices; etc.].

3.1.1.7 Other processing unit features: [For example, specify power-saving features, battery life for portable equipment, etc.]

3.1.2 Processing Unit Type 2: [Specify name of processing unit and technical function (e.g., General Purpose Workstation)].

3.1.2.1 ...

3.2 Network and Communications Specifications

3.2.1 Local Area Network

- 3.2.1.1 Equipment and software: *[For example, specify the following, as appropriate, for each type of equipment and software: protocols supported; performance levels; expandability, fault tolerance, administration, management, and security features; etc.].*
- 3.2.1.2 Cabling: *[For example, specify cable type(s); topology(ies); cable protectors, channels, and other installation standards (e.g., ANSI, EIA, TIA 598); cable labeling schemes; references to premises drawings; etc.].*

3.2.2 Wide-Area Network

- 3.2.2.1 Equipment and software: *[For example, specify protocols supported; performance levels; expandability; fault tolerance; administration, management, and security features; etc.].*
- 3.2.2.2 Telecommunications services: *[For example, specify media; capacity; protocols supported; performance levels; expandability; fault tolerance; administration, management, and security features; etc.].*

3.2.3 Other Communications Equipment: *[For example, specify modems, facsimile devices, modem and facsimile servers, etc.].*

3.2.4 Videoconferencing/Congress Equipment:

3.2.5. ...

3.3 Ancillary Hardware Specifications

3.3.1 Shared Data Storage Devices: *[Specify disk; tape; optical storage devices, including capacities, interfaces, hardware-based administration/diagnostics/failover; etc.].*

3.3.2 Shared Output and Input Devices

- 3.3.2.1 General Requirements: Unless otherwise specified, all shared output and input devices must be capable of handling standard A4 paper.
- 3.3.2.2 Printers: *[For example, specify high-speed, high-quality printer; standard-speed, high-quality printer; high-speed, large-format (A3) printer; color, high-quality printer; video and output devices; etc.].*
- 3.3.2.3 Scanners: *[For example, specify scanner resolution; paper- or film-handling features; speed; etc.].*

3.3.3 Power Conditioning Devices

- 3.3.3.1 Uninterruptable Power Supplies: *[For example, specify output power delivery and duration capacity, power filtering capacity, battery features, interfaces, device management diagnostics and failover features, etc.].*

3.3.4 Specialized Furnishing/Equipment

- 3.3.4.1 Equipment Cabinets/Racks: *[For example, specify size, capacity, physical access and access control, ventilation and environmental control features, etc.]*.
- 3.3.4.2 Environment Control Equipment: *[For example, specify air-conditioning units, humidity control equipment, etc.]*.
- 3.3.4.3 Physical Access Control Equipment: *[For example, specify door entry controls, intrusion detection, video surveillance, etc.]*.
- 3.3.4.3 Logical Access Control Equipment: *[For example, specify secure identity tokens, token readers, etc.]*.

3.4 Standard Software Specifications

3.4.1 System Software and System Management Utilities

- 3.4.1.1 Processing Unit Type 1: *[For example, specify operating system; backup, optimization, anti-virus, and other utilities; systems administration, maintenance, and troubleshooting tools; etc.]*.
- 3.4.1.2 Processing Unit Type 2: *[For example, specify operating system; backup, optimization, anti-virus, and other utilities; systems administration, maintenance, and troubleshooting tools; etc.]*.
- 3.4.1.3 Etc...

3.4.2 Networking and Communications Software: *[For example, specify protocols, media, and equipment to be supported; network services, management, and administration features; security and failure management features; etc.]*.

3.4.3 General-Purpose Software: *[For example, specify office automation software, programming tools and libraries, etc.]*.

3.4.4 Database Software and Development Tools: *[For example, specify database and database management feature, development tools and environments, etc.]*.

3.4.5 Business Application Software: *[For example, specify specific business functions to be supported in native code, application management feature, customization options and tools, etc.]*.

3.5 Consumables

3.5.1 Printer Ink / Toner – Printer Type 1:

3.6 Other Non-IT Goods

3.6.1 Workstation Desks:

3.6.2 Photocopiers:

3.6.3 Specialized Mechanical Systems – Datacenter: *[For example, specify raised floor system, electrical distribution subsystem, etc.]*.

E. Testing and Quality Assurance Requirements

4.1 Inspections

- 4.1.1 Factory Inspections: *[If any, specify the items, criteria, and methods to be employed by the Purchaser, or its agent, during factory inspections of the information technologies and other goods prior to their shipment to the site(s).]*
- 4.1.2 Inspections following Delivery: *[If any, specify the items, criteria, and methods to be employed by the Purchaser, or its agent, upon delivery and unpacking of the information technologies and other goods to the site(s).]*

4.2 Pre-Commissioning Tests

- 4.2.0 In addition to the Supplier's standard check-out and set-up tests, the Supplier (with the assistance of the Purchaser) must perform the following tests on the system and its subsystems before installation will be deemed to have occurred and the Purchaser will issue the Installation Certificate(s) (pursuant to GCC Clause 26 and related SCC clauses).
- 4.2.1 *[Specify Subsystem 1 (as defined in the site table[s] attached to the Implementation Schedule): tests, test conditions, success criteria, etc.]*
- 4.2.2 *[Specify Subsystem 2 (as defined in the site table[s]): tests, test conditions, success criteria, etc.]*
- 4.2.3 Entire System: Pre-commissioning tests for the entire system are *[specify tests, test conditions, success criteria, etc.]*.

4.3 Operational Acceptance Tests

- 4.3.0 Pursuant to GCC Clause 27 and related SCC clauses, the Purchaser (with the assistance of the Supplier) will perform the following tests on the system and its subsystems following installation to determine whether the system and the subsystems meet all the requirements mandated for operational acceptance.
- 4.3.1 *[Specify Subsystem 1 (as defined in the Implementation Schedule): tests, test conditions, success criteria, etc.]*
- 4.3.2 *[Specify Subsystem 2 (as defined in the Implementation Schedule): tests, test conditions, success criteria, etc.]*
- 4.3.3 Entire System: Pre-commissioning tests for the entire system are *[specify tests, test conditions, success criteria, etc.]*.

Note: The complexity of the Operational Acceptance Testing needed will vary in accordance with the complexity of the system being procured. For simpler IT Products and Services, Operational Acceptance Testing may simply consist of requiring a specified period of trouble-free system or subsystem operation under normal operating conditions. For more complex systems, Operational Acceptance Testing will require extensive, clearly defined tests under either production or mock-production conditions.

F. Service Specifications – Recurrent Cost Items

5.1 Warranty Defect Repair

5.1.1 The Supplier MUST provide the following services under the Contract or, as appropriate, under separate contracts (as specified in the Bidding Documents):

5.1.1.1 Warranty Defect Repair Service: *[For example, specify coverage period; response time and problem-resolution performance standards; modes of service, such as on-site, on-call, or return to warehouse; etc. Indicate how these may vary among hardware, software, network technologies, etc.]*.

5.1.1.2 ...

5.2 Technical Support

5.2.1 The Supplier MUST provide the following services under the Contract or, as appropriate under separate contracts (as specified in the Bidding Documents).

5.2.1.1 User Support or Hotline: *[For example, specify coverage period, response time and problem resolution performance standards, etc.]*.

5.2.1.2 Technical Assistance: *[For example, specify categories of technical staff required, anticipated tasks and objectives, response-time performance standards, etc. Indicate how these may vary among hardware, software, network technologies, etc.]*.

5.2.1.3 Post-Warranty Maintenance Services: *[For example, specify coverage period; response time and problem-resolution performance standards; modes of service, such as on-site, on-call, or return to warehouse; etc. Indicate how these may vary among hardware, software, network technologies, etc.]*.

5.2.1.4 ...

5.3 Requirements of the Supplier's Technical Team

5.3.1 The Supplier MUST provide a technical team to cover the Purchaser's anticipated Post-Operational Acceptance Technical Assistance Activities Requirements (e.g., modification of the IT Products and Services to comply with changing legislation and regulations) with the roles and skill levels that are specified below. The minimum expected quantities of inputs by the Supplier's technical support team are specified in the relevant System Inventory Tables for recurrent cost items.

5.3.1.1 System Analyst: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*.

5.3.1.2 Database Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.]*.

5.3.1.3 Programming Expert: *[For example, specify education/certifications, years' experience in, demonstrated successful experience in, etc.].*

5.3.1.4 ...

Note: The Technical Assistance Team specification may be used to develop bid prices for technical support recurrent costs. These may be included in the main Contract or be subject to separate contracts. In either regard, to obtain meaningful and comparable bid prices, the Purchaser will need to specify the roles of the technical support team members in this section and indicate the quantities of the corresponding inputs in the Systems Inventory Tables for recurrent cost items.

Section 7: General Conditions of Contract

Table of Contents

A. Contract and Interpretation.....	266
1. Definitions	266
2. Contract Documents	272
3. Interpretation	273
4. Communications	274
5. Law and Language.....	274
6. Fraud and Corruption.....	275
B. Subject Matter of Contract	278
7. Scope of Facilities	278
8. Time for Commencement and Completion.....	279
9. Supplier's Responsibilities	279
10. Purchaser's Responsibilities.....	280
C. Payment	282
11. Contract Price	282
12. Terms of Payment.....	282
13. Securities.....	283
14. Taxes and Duties.....	284
D. Intellectual Property	285
15. Intellectual Property and Copyright.....	285
16. Software Services and License Agreements.....	285
17. Confidential Information.....	287
E. Execution of the Facilities.....	288
18. Representatives	288
19. Project Planning and Performance	290
20. Subcontracting.....	290
21. Design and Engineering.....	291

22. Transport and Delivery	294
23. Product Upgrades.....	295
24. IT Products and Services	296
25. Inspection and Testing.....	296
26. Completion	298
27. Commissioning and Operational Acceptance.....	298
F. Guarantees and Liabilities.....	301
28. Completion Time Guarantee.....	301
29. Defect Liability.....	302
30. Functional Guarantees	304
31. Intellectual Property Rights Warranty	305
32. Intellectual Property Rights Indemnity	305
33. Limitation of Liability.....	307
34. Criminal Charges and Convictions	308
G. Risk Distribution	308
35. Transfer of Ownership.....	308
36. Care of IT Products and Services	308
37. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification.....	310
38. Insurance.....	311
39. Unforeseen Conditions	314
40. Change in Laws and Regulations.....	314
41. Force Majeure	315
42. War Risks.....	316
H. Change in Contract Elements	317
43. Change in the Facilities.....	317
44. Extension of Time for Completion	320
45. Suspension	321
46. Termination for Purchaser's Convenience	323
47. Termination for Supplier's Default.....	324
48. Termination by Supplier.....	326
49. Assignment.....	328
50. Export Restrictions.....	328
I. Claims, Disputes, and Arbitration.....	328
51. Supplier's Claims	328
52. Disputes and Arbitration	330

A. Contract and Interpretation

1. Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) “ADB” means the Asian Development Bank.
 - (b) “Adjudicator” means the person named in Appendix 2 (Adjudicator) of the Contract, or otherwise appointed by agreement between the Purchaser and the Supplier to make a decision on, or to settle any, dispute or difference between the Purchaser and the Supplier referred to him or her by the parties, pursuant to GC Clause 52 (Disputes and Arbitration).
 - (c) “Agreed and Finalized Project Plan” means the project plan that has been approved by the Purchaser in accordance with GC Clause 19 (Project Planning and Performance) and is included at Appendix 8 of the Contract.
 - (d) “Arbitration” means the application of judicial methods to the settlement of disputes.
 - (e) “Bank” means ADB as defined in the Particular Conditions (PC).
 - (f) “Bidding Documents” refers to the collection of documents issued by the Purchaser to instruct and inform potential Suppliers of the processes for bidding, selection of the winning bid, and contract information, as well as the contractual conditions governing the relationship between the Purchaser and the Supplier.
 - (g) “Borrower” means the government of the Purchaser’s Country and includes the Purchaser.
 - (h) “Commissioning” means the operation of the IT Products and Services or any part thereof by the Supplier following completion, where operation is to be carried out by the Supplier, as provided in GC Sub-Clause 27.1 (Commissioning) hereof for the purpose of carrying out Operational Acceptance Test(s).
 - (i) “Completion” means that the facilities (or parts specified in the Contract) have been completed operationally, that all work in respect of pre-commissioning and installation of the facilities or such specific part thereof has been completed, that all documentation has been supplied, and that the facilities or specific part thereof are ready for commissioning, as provided in GC Clause 26 (Completion) hereof.
 - (j) “Contract” means the Contract entered into between the Purchaser and the Supplier, and constituted by the Contract Documents.
 - (k) “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Contract (including any amendments thereto).

- (l) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Purchaser and Supplier in relation to the IT Products and Services, as specified in the PC.
- (m) “Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (n) “Coverage Period” means the days of the week and the hours of those days during which maintenance, operational, and/or technical support services (if any) must be available.
- (o) “Customs Documentation” means documentation identified as such in Appendix 5 of the Contract and such other documentation as the parties may agree in writing to be Customs Documentation.
- (p) “Custom Software” means software identified as such in Appendix 4 of the Contract and such other software as the parties may agree in writing to be Custom Software.
- (q) “Day” means calendar day.
- (r) “Defect” means an imperfection or flaw that impairs worth or utility of the product.
- (s) “Defect Liability Period” means the period of validity of the warranties given by the Supplier commencing at commissioning of the facilities or a part thereof, during which the Supplier is responsible for defects with respect to the facilities (or the relevant part thereof) as provided in GC Clause 29 (Defect Liability) hereof.
- (t) “Delivery” means the transfer of the products from the Supplier to the Purchaser in accordance with the current edition International Commercial Terms (Incoterms) specified in the Contract.
- (u) “Designated Operating Environment” means the particular hardware and software environment in which the software is designed to be used, where environment is specified in the Schedule of Requirements (SOR).
- (v) “Documentation” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium provided to the Purchaser under the Contract. See also Standard Documentation and Customs Documentation.
- (w) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date) of the Contract, from which the Time for Completion shall be counted.

- (x) “Eligible Country” means the countries and territories eligible for participation in procurements financed by ADB as defined in the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time).
- (y) “Facilities” means the products to be supplied and installed, as well as all installation services to be carried out by the Supplier under the Contract.
- (z) “Functional Guarantees” means the guarantees specified in the Appendix 10 of the Contract.
- (aa) “GC” means General Conditions.
- (ab) “General-Purpose Software” means software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract and such other software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- (ac) “Hardware” means all equipment, furnishings, and other tangible items outlined in the SOR that the Supplier is required to supply or to supply and install under the Contract, including, without limitation, the products and services and documentation, but excluding the Supplier’s equipment.
- (ad) “Implementation Schedule” means the Implementation Schedule as specified in the Agreed and Finalized Project Plan.
- (ae) “Installation” means the preparation and placement of the system for use.
- (af) “Installation Services” means all services required to achieve installation.
- (ag) “Intellectual Property Rights” means any and all copyright, moral rights, 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.
- (ah) “Month” means calendar month.

- (ai) “Operational Acceptance” means the acceptance by the Purchaser of the facilities (or any part of the facilities where the Contract provides for acceptance of the facilities in parts), which certifies the Supplier’s fulfillment of the Contract in respect of Functional Guarantees of the facilities (or the relevant part thereof) in accordance with the provisions of GC Clause 30 (Functional Guarantees) hereof, and shall include deemed acceptance in accordance with GC Clause 27 (Commissioning and Operational Acceptance) hereof.
- (aj) “Operational Acceptance Certificate” or “Operational Acceptance Certification” means the written certification provided by the Purchaser to the Supplier after operational acceptance.
- (ak) “Operational Acceptance Test” and “Operational Acceptance Testing” mean the process of determining whether the criteria for operational acceptance have been satisfied.
- (al) “Origin” means the place where the Products were produced or from which the services are supplied. Products are produced when, through manufacturing, processing, software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The origin of products and services is distinct from the nationality of the Supplier and may be different.
- (am) “Packaged Software” means the software product, the subject of the license, specified in the SOR, including any updates or new releases, modifications, enhancements, documentation, flowcharts, logic diagrams, and listings.
- (an) “Party” means the Purchaser or the Supplier, as the context requires, and “Parties” means both of them.
- (ao) “PC” means Particular Conditions.
- (ap) “Pre-commissioning” means testing, checking, and other requirements specified in the SOR that are to be carried out by the Supplier in preparation for commissioning as provided in GC Clause 8 (Time for Commencement and Completion) hereof.
- (aq) “Preventative Maintenance” means the care and servicing by personnel for the purpose of maintaining hardware in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects. Preventative maintenance is usually costed as a fixed fee over the maintenance period.
- (ar) “Post-Warranty Services Period” means the number of years defined in the PC (if any), following the expiration of the warranty period during which the Supplier is obligated to provide software licenses, maintenance, and/or technical support services for the system, either under this Contract or under separate contract(s).

- (as) “Product” means a product deliverable specified in the SOR that is to be supplied to the Purchaser by or on behalf of the Supplier, including but not limited to all information processing and communications-related hardware, software, consumable items, plans and/or any supporting documentation, and including such integrations and configurations as are required to perform its function.
- (at) “Project Manager” means the person appointed by the Purchaser in the manner provided in GC Clause 18.1 (Representatives) hereof and named as such in the PC to perform the duties delegated by the Purchaser.
- (au) “Project Plan” means the set of tasks required to achieve completion, operational acceptance, and commissioning, as described in the Agreed and Finalized Project Plan.
- (av) “Project Site(s)” means the place(s) specified in the PC for delivery of the IT Products and Services.
- (aw) “Purchaser” means the person named as such in the PC and includes the legal successors or permitted assigns of the Purchaser.
- (ax) “Purchaser’s Country” means the country named in the PC.
- (ay) “Rental Items” means the hardware rented or leased by the Purchaser from the Supplier under a lease agreement for a rental fee.
- (az) “Schedule of Requirements (SOR)” means the Schedule of Requirements Section of the Bidding Documents as amended and appended to the Contract including to the extent relevant, but not limited to, the following:
 - (i) Background and Procurement Objectives;
 - (ii) Scope of Works, including Technical Requirements;
 - (iii) Agreed and Finalized Project Plan;
 - (iv) Implementation Schedule; and
 - (v) Service Level Agreement.
- (ba) “Services” means all technical, logistical, management, consultancy and any other services as specified in the SOR to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the products provided. Such services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, pre-commissioning, commissioning, maintenance, and technical support.
- (bb) “Site” means the place(s) specified in the PC for installation and commissioning of the IT Products and Services.

- (bc) “Software” means the items to be supplied under this Contract as specified in Appendix 4 to this Contract.
- (bd) “Software Support Services” means the services specified in the SOR to be provided by the Supplier to the Purchaser in respect of the packaged software.
- (be) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the software (typically, but not exclusively, required for custom software).
- (bf) “Standard Documentation” means all documentation not specified as Customs Documentation.
- (bg) “Standard Software” means software identified as such in Appendix 4 of the Contract and such other software as the parties may agree in writing to be standard software.
- (bh) “Subcontractor” means any third-party provider with whom the Supplier contracts for the supply or execution of any part of the products and services to be provided by under the Contract and includes its legal successors or permitted assigns.
- (bi) “Supplier” means the party named as the Supplier in the Contract, and includes the legal successors or permitted assigns of the Supplier.
- (bj) “Supplier’s Country” is the country in which the Supplier is legally organized, as named in the Contract.
- (bk) “Supplier’s Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion, and maintenance of the system that are to be provided by the Supplier, but excluding the IT Products and Services, or other items forming part of the system.
- (bl) “Supplier’s Representative” means any person nominated by the Supplier and approved by the Purchaser in the manner provided in GC Clause 18 (Representatives) hereof to perform the duties delegated to the Supplier.
- (bm) “System” or “Subsystem” means a combination of products that are integrated so as to operate together.
- (bn) “Time for Operational Acceptance” means the time within which operational acceptance of the facilities as a whole (or of a part of the facilities where a separate Time for Operational Acceptance of such part has been prescribed) is to be achieved, as referred to in GC Sub-Clause 27.2 (Operational Acceptance) and in accordance with the relevant provisions of the Contract.

- (bo) “Time for Completion” means the time within which completion of the facilities as a whole (or of a part of the facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GC Sub-Clause 8.2 (Time for Commencement and Completion) and in accordance with the relevant provisions of the Contract.
- (bp) “Training Schedule” means the program of training including dates and training topics to be provided by the Supplier to the Purchaser’s personnel.
- (bq) “Warranty Period” means the period defined in the SOR by which the Supplier warrants its products will remain defect-free, and any remediation of any defect that arises in this period will be the responsibility of the Supplier, including the costs of such remediation.
- (br) “Week” means seven (7) consecutive days, beginning the day of the week as is customary in the Purchaser’s country.
- (bs) “Year” means 365 days.

2. Contract Documents

- 2.1 Subject to Article 1.2 (Order of Precedence) of the Contract, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole.
- 2.2 In the event and to the extent of any inconsistency between two or more documents that form part of this Contract, those documents will be interpreted in the following order of precedence:
 - (a) Appendix 15 (Minutes of Contract Finalization Discussions and Agreed Contract Amendments) attached to the Contract;
 - (b) the Contract and Appendixes 1 to 7 and 9 to 14 attached to the Contract;
 - (c) the PC and its Appendixes;
 - (d) all GCs (including documents incorporated by reference in these terms and conditions);
 - (e) Appendix 8 (Agreed and Finalized Project Plan) attached to the Contract;
 - (f) the Supplier’s bid and original Price Schedules; and
 - (g) the remaining appendixes to these GCs (including documents incorporated by reference in any Appendix).

3. Interpretation

- 3.1 In the Contract, except where the context requires otherwise,
- (a) words indicating one gender include all genders;
 - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing;
 - (d) “written” or “in writing” means handwritten, typewritten, printed or electronically made, resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (ICC) (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.3 Entire Agreement

Subject to GC Sub-Clause 17.6 hereof, the Contract constitutes the entire agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.4 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

3.5 Independent Supplier

The Supplier shall be an independent Supplier performing the Contract. The Contract does not create any agency, partnership, Joint Venture, or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.

3.6 **Nonwaiver**

3.6.1 Subject to GC Sub-Clause (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.6.2 Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.7 **Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

4. **Communications**

4.1 Wherever these General Conditions (GC) provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests, and discharges, these communications shall be

- (a) in writing and delivered against receipt; and
- (b) delivered, sent, or transmitted to the address for the recipient's communications as stated in the Contract.

4.2 When a certificate is issued to a party, the certifier shall send a copy to the other party. When a notice is issued to a party, by the other party or the project manager, a copy shall be sent to the project manager or the other party, as the case may be.

4.3 Communications shall be deemed to include any approvals, consents, instructions, orders, and certificates to be given under the Contract.

5. **Law and Language**

5.1 The Contract shall be governed by, and interpreted in accordance with, laws of the country specified in the PC.

5.2 The ruling language of the Contract shall be that stated in the PC.

5.3 The language for communications shall be the ruling language unless otherwise stated in the PC.

6. Fraud and Corruption

- 6.1 If the Purchaser determines, based on reasonable evidence, that the Supplier has engaged in corrupt, fraudulent, collusive or coercive practices, or other integrity violations, including the failure to disclose any required information which constitutes a fraudulent practice, in competing for or in executing the Contract, then the Purchaser may, after giving 14 days' notice to the Supplier, terminate the Contract and expel him from the Site, and the provisions of Clause 47 shall apply as if such termination had been made under Sub-Clause 47.1 (c) [Termination for Supplier's Default].
- 6.2 Should any employee of the Supplier be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice or other integrity violations during the supply of IT Products and Services then that employee shall be removed in accordance with Sub-Clause 18.4.
- 6.3 ADB requires that Borrowers (including beneficiaries of bank-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under bank-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) "corrupt practice" means the offering, giving receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a contract;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to influence the action of any party in a procurement process or the execution of a contract; and
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
 - (v) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;

- (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
 - (vii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

¹ Whether as a Contractor, Subcontractor, Consultant, Manufacturer, or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.
- 6.4 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:
- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
 - (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
 - (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
 - (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's ICT resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
 - (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
 - (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.
- 6.5 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, subcontractors and other third parties engaged or involved in ADB-related activities, such subconsultants, subcontractors and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.
- 6.6 The Supplier shall permit ADB or its representative to inspect the Supplier's site, assets, accounts and records and other documents relating to the bid submission and contract performance of the Supplier and to have them audited by auditors appointed by ADB, if so required by ADB.

- 6.7 The Supplier undertakes that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution.²
- 6.8 ADB's right to inspect the Site and/or the Supplier's accounts and records relating to the performance of the Contract as stated in this Sub-Clause and GCC 6.3(e) shall survive termination and/ or expiration of this Contract.
- 6.9 The Supplier has the obligation to notify the Purchaser of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (p) and (t) of the Letter of Second-Stage Bid.
- 6.9 If the Supplier is debarred or temporarily suspended by ADB, it shall inform the Purchaser of such debarment or suspension, and that the endorsement of ADB's Office of Anticorruption and Integrity is required for any variations, extensions or modifications to the Contract.

B. Subject Matter of Contract

- 7. Scope of Facilities** 7.1 Unless otherwise expressly limited in the SOR, the Supplier shall
- (a) provide the products and services as specified in the SOR;
 - (b) be responsible for timely provision of all resources, information, and decision-making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan pursuant to GC Clause 19 (Project Planning and Performance) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision-making may constitute grounds for termination pursuant to GC Clause 47 (Termination for Supplier's Default);
 - (c) provide all documentation and products, as well as the performance of all products and services, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the SOR and/or the Agreed and Finalized Project Plan;
 - (d) unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining completion of the products and services as if such work and/or items and materials were expressly mentioned in the Contract; and
 - (e) provide products and services as implied by the Recurrent Cost Form of the Supplier's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), such as are specified in the SOR, including the relevant terms, characteristics, and timings.

² The undertaking also applies during the period of performance of the contract.

8. Time for Commencement and Completion

- 8.1 The Supplier shall commence work on the facilities within the period specified in the PC, and, without prejudice to GC Sub-Clause 26.2 (Completion) hereof, the Supplier shall thereafter proceed with the facilities, in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed and Finalized Project Plan.
- 8.2 The Supplier shall attain completion of the facilities or of a part where a separate Time for Completion of such part is specified in the Contract, within the time stated in the PC or within such extended time to which the Supplier shall be entitled under GC Clause 44 (Extension of Time for Completion) hereof.

9. Supplier's Responsibilities

- 9.1 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract, and with the skill and care expected of a competent provider of IT Products and Services, support, maintenance, training, and other related services, or in accordance with best industry practices. When completed, the IT Products and Services should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the Purchaser's existing equipment, installations, and including reviewing any hardware, software, and data interfaces as provided by the Purchaser, and on the basis of information that the Supplier could have obtained from a visual inspection of the site if access thereto was available and of other data readily available to it relating to the facilities as of the date 28 days prior to bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 9.3 The Supplier shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the site is located, which such authorities or undertakings require the Supplier to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Purchaser under GC Clause 10 hereof and that are necessary for the performance of the Contract.
- 9.4 The Supplier shall comply with all laws in force in the country where the IT Products and Services are to be installed. The laws will include all local, state, national, or other laws that affect the performance of the Contract and bind upon the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Clause 10 (Purchaser's Responsibilities) hereof.

- 9.5 Any IT Products and Services that will be incorporated in or be required for the facilities and other supplies shall have as their origin an eligible country. Any Subcontractors retained by the Supplier shall have as their origin an eligible country.
- 9.6 The Supplier shall permit ADB to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by ADB, if so required by ADB.
- 9.7 If the Supplier is a Joint Venture or consortium of two or more parties, all such parties shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such parties to act as a leader with authority to bind the Joint Venture or consortium. The composition or the constitution of the Joint Venture or consortium shall not be altered without the prior consent of the Purchaser.
- 9.8 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 9.9 Other Supplier responsibilities, if any, are as stated in the SOR.

10. Purchaser's Responsibilities

- 10.1 The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser to the Supplier, except when otherwise expressly stated in the Contract.
- 10.2 The Purchaser shall be responsible for timely provision of all resources, information, and decision-making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GC Sub-Clause 19.2 (Project Planning and Performance) within the time schedule specified in the Implementation Plan in the SOR. Failure to provide such resources, information, and decision-making may constitute grounds for termination, pursuant to GC Clause 48 (Termination by Supplier).
- 10.3 The Purchaser shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of, and access to, all other areas reasonably required for the proper execution of the Contract.
- 10.4 The Purchaser shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the site is located which (a) such authorities or undertakings require the Purchaser to obtain in the Purchaser's name; (b) are necessary for the execution of the Contract, including those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract; and (c) are specified in the SOR.
- 10.5 If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.

- 10.6 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the SOR, PC, Agreed and Finalized Project Plan, or other parts of the Contract, the Purchaser shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.
- 10.7 The Purchaser shall be responsible for timely provision of all resources, access, and information necessary for the provision of the IT Products and Services (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Purchaser may result in an appropriate extension of the Time for Operational Acceptance at the Supplier's discretion.
- 10.8 Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Supplier, the Purchaser shall provide sufficient, properly qualified operating and technical personnel as required by the Supplier to properly carry out the provision of the IT Products and Services at or before the time specified in the Implementation Schedule and the Agreed and Finalized Project Plan.
- 10.9 The Purchaser will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the SOR, PC, the Agreed and Finalized Project Plan, or other parts of the Contract.
- 10.10 The Purchaser assumes primary responsibility for the Operational Acceptance Test(s) for the IT Products and Services, in accordance with GC Sub-Clause 27.2 (Operational Acceptance Test), and shall be responsible for the continued operation of the products after operational acceptance. However, this shall not limit in any way the Supplier's responsibilities after the date of operational acceptance otherwise specified in the Contract.
- 10.11 During the development of the products and services, the Supplier is responsible for performing and safely storing timely and regular backups of its data and software, in accordance with accepted data management principles. Following commissioning and acceptance, the Purchaser is responsible for backups.
- 10.12 All costs and expenses involved in the performance of the obligations under this GC Clause 10 shall be the responsibility of the Purchaser, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test(s), in accordance with GC Sub-Clause 27.2.
- 10.13 In the event that the Purchaser shall be in breach of any of its obligations under this clause, the additional cost incurred by the Supplier in consequence thereof shall be determined by the project manager and added to the Contract Price.
- 10.14 Other Purchaser responsibilities, if any, are as stated in the SOR.

C. Payment

11. Contract Price	11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract. 11.2 Unless an adjustment clause is provided for in the PC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a change in the SOR or as otherwise provided in the Contract. 11.3 Subject to GC Sub-Clauses 9.2, 10.1, and 39 (Unforeseen Conditions) hereof, the Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
12. Terms of Payment	12.1 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by (a) an invoice describing, as appropriate, (i) the IT Products and Services provided; (ii) when the IT Products and Services were supplied and (if applicable) accepted; and (iii) the amount payable in respect of each item; and (b) documents submitted pursuant to GC Sub-Clause 22.5 (Transport and Delivery) and upon fulfillment of other obligations stipulated in the Contract. 12.2 The Contract Price shall be paid as specified in Appendix 7 (Terms and Procedures for Payment) of the Contract. 12.3 No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the IT Products and Services or any part(s) thereof. 12.4 Payments shall be made promptly by the Purchaser, but in no case later than 45 days after submission of a valid invoice by the Supplier. In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate(s) specified in Appendix 7 (Terms and Procedures for Payment) of the Contract for the period of delay until payment has been made in full, whether before or after judgment or arbitration award. 12.5 All payments shall be made in the currency(ies) specified in the Contract, pursuant to GC Clause 11. For IT Products and Services supplied locally, payments shall be made in the currency of the Purchaser's country, unless otherwise specified in Appendix 7 (Terms and Procedures for Payment) of the Contract.

- 12.6 Unless otherwise specified in Appendix 7 (Terms and Procedures for Payment) of the Contract, payment of the foreign currency portion of the Contract Price for products supplied from outside the Purchaser's country shall be made to the Supplier through the irrevocable Letter of Credit opened by an authorized bank in the Supplier's country and will be payable on presentation of the appropriate documents. It is agreed that the Letter of Credit will be subject to Article 10 of the latest revision of Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce (ICC), Paris.

13. Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

- (a) If specified in the PC, the Supplier shall, within 28 days of the Notification of Award, provide a security equal in the amount and currency to the advance payment, and valid until the IT Products and Services achieve operational acceptance.
- (b) The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the IT Products and Services executed by and paid to the Supplier from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The way the value of the security is deemed to become reduced and, eventually, voided is as specified in the PC. The security shall be returned to the Supplier immediately after its expiration.

13.3 Performance Security

- (a) The Supplier shall, within 28 days of the Notification of Award, provide a security for the due performance of the Contract in the amount specified in the PC.
- (b) The security shall be a bank guarantee in the form provided in Section 9 (Contract Forms) or it shall be in another form acceptable to the Purchaser.
- (c) The Performance Security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the warranty period and any extensions to the period. The security shall be returned to the Supplier no later than 28 days after its expiration.

- (d) Upon operational acceptance of the IT Products and Services, the security shall be reduced to the amount specified in the PC, on the date of such operational acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.
- (e) The Purchaser shall not make a claim under the Performance Security, except for amounts to which the Purchaser is entitled under the Contract. The Purchaser shall indemnify and hold the Supplier harmless against and from all damages, losses, and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Purchaser was not entitled to make the claim.

14. Taxes and Duties

- 14.1 For IT Products and Services supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies, payable in the Purchaser's country. Any duties, such as importation or customs duties, and taxes and other levies, payable in the Purchaser's country for the supply of products and services from outside the Purchaser's country are the responsibility of the Purchaser unless these duties or taxes have been made part of the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers, in which case the duties and taxes will be the Supplier's responsibility.
- 14.2 For IT Products and Services supplied locally, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted products or services to the Purchaser. The only exceptions are taxes or duties, such as value-added or sales tax or stamp duty as applied to, or are clearly identifiable on, the invoices, and provided they apply in the Purchaser's country and only if these taxes, levies, and/or duties are also excluded from the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers.
- 14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in the country where the site is located, the Purchaser shall use its best endeavors to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract is based on the taxes, duties, levies, and charges prevailing at the date 28 days prior to the date of bid submission in the country where the site is located (hereinafter called "tax" in this GC Sub-Clause 14.4). If any rates of tax are increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance of Contract, which was or will be assessed on the Supplier, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GC Clause 40 (Change in Laws and Regulations) hereof.

D. Intellectual Property

15. Intellectual Property and Copyright	15.1 The Intellectual Property Rights in all IT Products and Services documentation and software shall remain vested in the owner of such rights where it existed prior to commencement of this Contract. 15.2 The Purchaser agrees to restrict use, copying, or duplication of any hardware, software, and documentation, except that additional copies of documentation may be made by the Purchaser for use within the scope of the project in the event that the Supplier does not deliver copies within 28 days from receipt of a request for such documentation. 15.3 The Purchaser's contractual rights to use the standard software or elements of the standard software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or as may be otherwise specified in the PC. 15.4 As applicable, the Purchaser's and Supplier's rights and obligations with respect to custom software or elements of the custom software, including any license agreements, and with respect to Customs Documentation or elements of the Customs Documentation, are specified in the PC. Subject to the PC, the Intellectual Property Rights in all custom software and Customs Documentation specified in Appendixes 4 and 5 of the Contract (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Purchaser. The Supplier shall do and execute or arrange each necessary act, document, and thing that the Purchaser may consider necessary or desirable to perfect the right, title, and interest of the Purchaser in and to those rights. In respect of such custom software and Customs Documentation, the Supplier shall ensure that the holder of a moral right in such an item does not assert it, and the Supplier shall, if requested to do so by the Purchaser and where permitted by applicable law, ensure that the holder of such moral right waives it. 15.5 The parties shall enter into such (if any) escrow arrangements in relation to the source code for some or all of the software as specified in the PC.
16. Software Services and License Agreements	16.1 Except to the extent that the Intellectual Property Rights in the software vest in the Purchaser, the Supplier hereby grants to the Purchaser license to access and use the software, including all inventions, designs, and marks embodied in the software. Such license to access and use the software shall: (a) be (i) nonexclusive, (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GC Clause 46), (iii) valid throughout the territory of the Purchaser's country (or such other territory as specified in the PC), and (iv) subject to additional restrictions (if any) as specified in the PC; and

- (b) permit the software to be
 - (i) used or copied for use on or with the computer(s), users, or environment(s) for which it was acquired (as specified in the SOR and/or Supplier's bid), plus a backup of the same or similar capacity (Such backup shall be used if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup);
 - (ii) as specified in the PC, used or copied for use on or transferred to a replacement computer(s) or users (and use on the original and replacement computer(s) users or environment(s) may be simultaneous during a reasonable transitional period) provided that, if the SOR and/or Supplier's bid specifies a class of computer, user or environment to which the license is restricted and unless the Supplier agrees otherwise in writing, the replacement computer(s) is(are) within that class;
 - (iii) if the nature of the products is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
 - (iv) reproduced for safekeeping or backup purposes;
 - (v) customized, adapted, or combined with other computer software for use by the Purchaser, provided that derivative software incorporating any substantial part of the delivered, restricted software shall be subject to same restrictions as are set forth in this Contract;
 - (vi) as specified in the PC, disclosed to, and reproduced for use by, support service Suppliers and their Subcontractors, (and the Purchaser may sublicense such persons to use and copy for use the software) to the extent reasonable necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and
 - (vii) disclosed to, and reproduced for use by, the Purchaser and by such other persons as are specified in the PC (and the Purchaser may sublicense such persons to use and copy for use the software), subject to the same restrictions as are set forth in this Contract.
- 16.2 The standard software may be subject to audit by the Supplier, in accordance with the terms specified in the PC, to verify compliance with the above license agreements.
- 16.3 The Purchaser will require the Supplier to meet the mandatory requirements for licensing agreements as specified in the SOR.

17. Confidential Information

- 17.1 The Purchaser (“the disclosing party”) and the Supplier (“the receiving party”) shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract (confidential information), whether such information has been furnished prior to, during, or following termination of the Contract.
- 17.2 For the purposes of GC Sub-Clause 17.1, the Supplier is also deemed to be the receiving party of confidential information generated by the Supplier itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, Suppliers, employees, or other contracts of the Purchaser or the Purchaser’s use of the IT Products and Services.
- 17.3 Notwithstanding GC Sub-Clauses 17.1 and 17.2
- (a) the Supplier may furnish to its Subcontractor confidential information of the Purchaser to the extent reasonably required for the Subcontractor to perform its work under the Contract; and
 - (b) the Purchaser may furnish confidential information of the Supplier (i) to support service Suppliers and their Subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries,
- in which event the receiving party shall ensure that the person to whom it furnishes confidential information of the disclosing party is aware of and abides by the receiving party’s obligations under this GC Clause 17 as if that person were party to the Contract in place of the receiving party.
- 17.4 The Purchaser shall not, without the Supplier’s prior written consent, use any confidential information received from the Supplier for any purpose other than the operation, maintenance, and further development of the IT Products and Services. Similarly, the Supplier shall not, without the Purchaser’s prior written consent, use any confidential information received from the Purchaser for any purpose other than those that are required for the performance of the Contract.
- 17.5 The obligation of a party under GC Sub-Clauses 17.1–17.4 above, however, shall not apply to that information which
- (a) now or hereafter enters the public domain through no fault of the receiving party;
 - (b) can be proven to have been possessed by the receiving party at the time of disclosure and that was not previously obtained, directly or indirectly, from the disclosing party;
 - (c) otherwise lawfully becomes available to the receiving party from a third party that has no obligation of confidentiality.
- 17.6 The above provisions of this GC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the system or any part thereof.
- 17.7 The provisions of this GC Clause 17 shall survive the termination, for whatever reason, of the Contract for 3 years.

E. Execution of the Facilities

18. Representatives 18.1 **Project Manager**

If the project manager is not named in the Contract, then within 14 days of the effective date, the Purchaser shall appoint and notify the Supplier in writing of the name of the project manager. The Purchaser may from time to time appoint some other person as the project manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the facilities. Such appointment shall only take effect upon receipt of such notice by the Supplier. The project manager shall represent and act for the Purchaser at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the project manager, except as herein otherwise provided.

All notices, instructions, information, and other communications given by the Supplier to the Purchaser under the Contract shall be given to the project manager, except as herein otherwise provided.

18.2 **Supplier's Representative**

18.2.1 If the Supplier's representative is not named in Appendix 1 (Supplier's Representative) of the Contract, then within 14 days of the effective date, the Supplier shall appoint the Supplier's representative and shall request the Purchaser in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as description of any other responsibilities the nominee would retain while performing the duties of the Supplier's representative. If the Purchaser does not object to the appointment within 14 days, the Supplier's representative shall be deemed to have been approved. If the Purchaser objects to the appointment within 14 days giving the reason therefore, then the Supplier shall appoint a replacement within 14 days of such objection, in accordance with this GC Sub-Clause 18.2.1.

18.2.2 Subject to the extensions and/or limitations specified in the SOR (if any), the Supplier's representative shall have the authority to represent the Supplier on all day-to-day matters relating to the system or arising from the Contract. The Supplier's representative shall give to the project manager all the Supplier's notices, instructions, information, and all other communications under the Contract.

18.3 All notices, instructions, information, and all other communications given by the Purchaser or the project manager to the Supplier under the Contract shall be given to the Supplier's representative or, in its absence, its deputy, except as otherwise provided for in this Contract.

18.3.1 The Supplier shall not revoke the appointment of the Supplier's representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's representative, pursuant to the procedure set out in GC Sub-Clause 18.2.1.

18.3.2 The Supplier's representative and staff are obliged to work closely with the project manager and staff, act within their own authority, and abide by directives issued by the Purchaser that are consistent with the terms of the Contract. The Supplier's representative is responsible for managing the activities of its personnel and any subcontracted personnel.

18.3.3 The Supplier's representative may, subject to the approval of the Purchaser (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Purchaser and the project manager.

18.3.4 Any act or exercise by any person of powers, functions, and authorities so delegated to him or her in accordance with this GC Sub-Clause 18.3(d) shall be deemed to be an act or exercise by the Supplier's representative.

18.4 **Objections and Removals**

18.4.1 The Purchaser may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Purchaser, may have behaved inappropriately, be incompetent, or be negligent. The Purchaser shall provide evidence of the same, whereupon the Supplier shall remove such person from work on the system.

18.4.2 If any representative or person employed by the Supplier is removed in accordance with GC Sub-Clause (a) above, the Supplier shall, where required, promptly appoint a replacement.

19. Project Planning and Performance

- 19.1 If specified in the SOR, the Supplier shall develop, in close cooperation with the Purchaser, and based on the Preliminary Project Plan included in the Supplier's bid, an Agreed and Finalized Project Plan encompassing the activities specified in the SOR.
- 19.2 The Agreed and Finalized Project Plan will be prepared by the Supplier and approved by the Purchaser in accordance with the procedure specified in the SOR.
- 19.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GC Clause 44 (Extension Time for Completion).
- 19.4 The Supplier shall undertake to supply, install, test, and commission the IT Products and Services in accordance with the SOR and Agreed and Finalized Project Plan.
- 19.5 The progress report and other reports specified in the SOR shall be prepared by the Supplier and submitted to the Purchaser in the format and frequency specified in the SOR.
- 19.6 If at any time the Supplier's actual progress falls behind the project schedule described in the Agreed and Finalized Project Plan, or it becomes apparent that it will so fall behind, the Supplier shall, at the request of the Purchaser or the project manager, prepare and submit to the project manager a revised project schedule, taking into account the prevailing circumstances, and shall notify the project manager of the steps being taken to expedite progress so as to attain completion of the facilities within the Time for Completion under GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 44.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Purchaser and the Supplier.

20. Subcontracting

- 20.1 Appendix 3 (List of Approved Subcontractors) of the Contract specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Purchaser. If no Subcontractors are listed for an item, the Supplier shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Supplier may from time to time propose additions to or deletions from any such list. The Supplier shall submit any such list or any modification to the list to the Purchaser for its approval in sufficient time so as not to impede the progress of work on the system. The Purchaser shall not withhold such approval unreasonably. Such approval by the Purchaser of a Subcontractor(s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.
- 20.2 The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GC Sub-Clause 20.1. If the Supplier wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Purchaser's prior approval under GC Sub-Clause 20.3.

- 20.3 For items for which preapproved Subcontractor have not been specified in Appendix 3 of the Contract, the Supplier may employ such Subcontractors as it may select, provided (i) the Supplier notifies the Purchaser in writing at least 28 days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period, either the Purchaser has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontractor to which the Purchaser has objected in writing prior to the end of the notice period. The absence of a written objection by the Purchaser during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits, the deemed approval of the Purchaser of Subcontractors not listed in the Contract, nothing in this Clause, however, shall limit the rights and obligations of either the Purchaser or Supplier as they are specified in GC Sub-Clauses 20.1 and 20.2 or in Appendix 3 of the Contract.
- 20.4 Each subcontract shall include provisions which would entitle the Purchaser to require the subcontract to be assigned to the Purchaser under GC Sub-Clause 20.5 (if and when applicable), or in event of termination by the Purchaser under GC Clause 46.
- 20.5 If a Subcontractor's obligations extend beyond the expiry date of the relevant defect liability period and the project manager, prior to that date, instructs the Supplier to assign the benefits of such obligations to the Purchaser, then the Supplier shall do so.

21. Design and Engineering

21.1 Technical Specifications and Drawings

- 21.1.1 The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful provision of the IT Products and Services in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.

The Supplier shall be responsible for any discrepancies, errors, or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the project manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.

- 21.1.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Purchaser by giving a notice of such disclaimer to the project manager.

21.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 28 days prior to date of bid submission shall apply unless otherwise specified in the SOR. During contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with GC Sub-Clause 43.3 (Changes Originating from Supplier).

21.3 Approval/Review of Technical Documents by Project Manager

- 21.3.1 The Supplier shall prepare or cause its Subcontractors to prepare, and furnish to the project manager the documents listed in Appendix 9 (List of Documents for Approval and Review) of the Contract, for its approval or review as specified and in accordance with the requirements of GC Sub-Clause 19.1.
 - 21.3.2 Any part of the IT Products and Services covered by or related to the documents to be approved by the project manager shall be executed only after the project manager's approval thereof.
 - 21.3.3 GC Sub-Clause 21.5 shall apply to those documents requiring the project manager's approval, but not to those furnished to the project manager for its review only.
- 21.4 Any part of the IT Products and Services covered by or related to the documents to be approved by the project manager shall be executed only after the project manager's approval of these documents.
- 21.5 GC Sub-Clauses 21.3.2–21.3.3 shall apply to those documents requiring the project manager's approval, but not to those furnished to the project manager for its review only.
- 21.5.1 Within 14 days after receipt by the project manager of any document requiring the project manager's approval in accordance with GC Sub-Clause 21.4, the project manager shall either return one copy of the document to the Supplier with its approval endorsed on the document or shall notify the Supplier in writing of its disapproval of the document and the reasons for disapproval and the modifications that the project manager proposes. If the project manager fails to take such action within 14 days, then the document shall be deemed to have been approved by the project manager.
 - 21.5.2 The project manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.

- 21.5.3 If the project manager disapproves the document, the Supplier shall modify the document and resubmit it for the project manager's approval in accordance with GC Sub-Clause 21.4. If the project manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall be deemed to have been approved.
- 21.5.4 If any dispute or difference occurs between the Purchaser and the Supplier in connection with or arising out of the disapproval by the project manager of any document and/or any modification(s) to a document that cannot be settled between the parties within a reasonable period, then, in case the Contract includes and names an adjudicator, such dispute may be referred to the adjudicator for determination in accordance with GC Clause 52 (Disputes and Arbitration). If such dispute is referred to an adjudicator, the project manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the project manager's instructions, provided that if the adjudicator upholds the Supplier's view on the dispute and if the Purchaser has not given notice under GC Clause 52, then the Supplier shall be reimbursed by the Purchaser for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the adjudicator shall decide, and the Time for Operational Acceptance shall be extended accordingly.
- 21.5.5 The project manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the project manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.
- 21.5.6 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the project manager an amended document and obtained the project manager's approval of the document, pursuant to the provisions of this GC Sub-Clause 21.5. If the project manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GC Clause 43 (Change in the Facility) shall apply to such request.

22. Transport and Delivery

- 22.1 Subject to GC Clauses 9 and 14, the Supplier shall manufacture or procure and transport all IT Products and Services in an expeditious and orderly manner to the project site.
- 22.2 Delivery of the IT Products and Services shall be made by the Supplier in accordance with the SOR.
- 22.3 Early or partial deliveries require the explicit written consent of the Purchaser, which consent shall not be unreasonably withheld.
- 22.4 Transportation
 - 22.4.1 The Supplier shall provide such packing of the IT Products and Services as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Purchaser's instructions to the Supplier.
 - 22.4.2 The Supplier shall bear responsibility for, and cost of, transport to the project sites in accordance with the terms and conditions used in the specification of prices in Appendix 6 (Revised Price Schedules) of the Contract, including the terms and conditions of the associated International Commercial Terms (Incoterms).
 - 22.4.3 Unless otherwise specified in the PC, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible country.
- 22.5 Unless otherwise specified in the PC, the Supplier shall provide the Purchaser with shipping and other documents, as specified below:

For products supplied from outside the Purchaser's country:

- (a) Upon shipment, the Supplier shall notify the Purchaser and the insurance company contracted by the Supplier to provide cargo insurance by cable, facsimile, e-mail, or electronic data interchange with the full details of the shipment. The Supplier shall promptly send the following documents to the Purchaser by mail or courier, as appropriate, with a copy to the cargo insurance company:
 - (i) two copies of the Supplier's invoice showing the description of the products, quantity, unit price, and total amount;
 - (ii) usual transportation documents;
 - (iii) insurance certificate;
 - (iv) certificate(s) of origin; and
 - (v) estimated time and point of arrival in the Purchaser's country and at the project sites.

For products supplied locally (i.e., from within the Purchaser's country):

- (b) Upon shipment, the Supplier shall notify the Purchaser by cable, facsimile, e-mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Purchaser by mail or courier, as appropriate:
 - (i) two copies of the Supplier's invoice showing the products' description, quantity, unit price, and total amount;
 - (ii) delivery note, railway receipt, or truck receipt;
 - (iii) certificate of insurance;
 - (iv) certificate(s) of origin; and
 - (v) estimated time of arrival at the project sites.

22.6 Customs clearance

22.6.1 The Purchaser shall bear responsibility for, and cost of, customs clearance into the Purchaser's country in accordance with the particular Incoterm(s) used for products supplied from outside the Purchaser's country in the Price Schedules referred to by Article 2 of the Contract.

22.6.2 At the request of the Purchaser, the Supplier shall make available a representative or agent during the process of customs clearance in the Purchaser's country for products supplied from outside the Purchaser's country. In the event of delays in customs clearance that are not the fault of the Supplier,

- (a) the Supplier shall be entitled to an extension in the time for achieving operational acceptance, pursuant to GC Clause 44 (Extension of Time for Completion);
- (b) the Contract Price shall be adjusted to compensate the Supplier for any additional storage charges that the Supplier may incur as a result of the delay.

23. Product Upgrades

23.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for the IT Products and Services originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to offer to the Purchaser the latest versions of the available information technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GC Clause 43 (Change in the Facility).

23.2 At any point during performance of the Contract, for IT Products and Services still to be delivered, the Supplier will also pass on to the Purchaser any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Supplier in the Purchaser's country, pursuant to GC Clause 43.

- 23.3 During performance of the Contract, the Supplier shall offer to the Purchaser all new versions, releases, and updates of standard software, as well as related documentation and technical support services within 30 days of their availability from the Supplier to other clients of the Supplier in the Purchaser’s country, and no later than 12 months after they are released in the country of origin. In no case will the prices for this software exceed those quoted by the Supplier in the recurrent costs tables in its bid.
- 23.4 During the warranty period, unless otherwise specified in the PC, the Supplier will provide at no additional cost to the Purchaser all new versions, releases, and updates for all standard software that are used in with the IT Products and Services within 30 days of their availability from the Supplier to other clients of the Supplier in the Purchaser’s country, and no later than 12 months after they are released in the country of origin of the software.
- 23.5 The Purchaser shall introduce all new versions, releases or updates of the software within 18 months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect system operation or performance or require extensive reworking of the system. In cases where the new version, release, or update adversely affects system operation or performance, or requires extensive reworking of the system, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the software less than 24 months after the Purchaser receives a production-ready copy of a subsequent version, release, or update. The Purchaser shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the 24-month-long stop date.

24. IT Products and Services

- 24.1 Prices charged by the Supplier for IT Products and Services that are not included in the Contract shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other Purchasers in the Purchaser’s country for similar IT Products and Services.

25. Inspection and Testing

- 25.1 The Purchaser or its representative shall have the right to inspect and/or test any components of the IT Products and Services, as specified in the SOR, or specify such tests to be executed by the Supplier to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the project site.
- 25.2 The Purchaser and the project manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 25.3 Whenever the Supplier is ready to carry out any such test and/or inspection, the Supplier shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the project manager. The Supplier shall obtain from any relevant third party or Manufacturer any necessary permission or consent to enable the Purchaser and the project manager or their designated representatives to attend the test and/or inspection.
- 25.4 The Supplier shall provide the project manager with a certified report of the results of any such test and/or inspection.
- 25.5 If the Purchaser or project manager (or their designated representative) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Supplier may proceed with the test and/or inspection in the absence of such persons, and may provide the project manager with a certified report of the results thereof.
- 25.6 The project manager may require the Supplier to carry out any test and/or inspection not required by the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the facilities and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 25.7 If any component of the IT Products and Services fails to pass any test and/or inspection, the Supplier shall either rectify or replace such component and shall repeat the test and/or inspection upon giving a notice under GC Sub-Clause 25.3.
- 25.8 If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the IT Products and Services that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GC Clause 52 (Disputes and Arbitration), starting with referral of the matter to the adjudicator in case an adjudicator is included and named in the Contract.

26. Completion

- 26.1 As soon as the IT products and installation services have, in the opinion of the Supplier, been delivered, pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Schedule of Requirements, and the Agreed and Finalized Project Plan, the Supplier shall so notify the Purchaser in writing.
- 26.2 The project manager shall, within 14 days after receipt of the Supplier's notice under GC Sub-Clause 26.1, either issue an Installation Certificate in the form specified in the Sample Forms Section in the Bidding Documents, stating that the installation of the IT products has been achieved by the date of the Supplier's notice under GC Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components making up the IT products and installation services. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that have been notified to the Supplier by the project manager. The Supplier shall then promptly carry out retesting of the IT products and installation services and, when in the Supplier's opinion they are ready for Commissioning and Operational Acceptance Testing, notify the Purchaser in writing, in accordance with GC Sub-Clause 26.1. The procedure set out in this Sub-Clause GC 26.2 shall be repeated, as necessary, until the Installation Certificate is issued.
- 26.3 If the project manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within 14 days after receipt of the Supplier's notice under GC Sub-Clause 26.1, or if the Purchaser puts the IT products and installation services into production operation, then the IT products and installation services shall be deemed to have achieved successful installation as of the date of the Supplier's notice or repeated notice, or when the Purchaser put the IT products and installation services into production operation, as the case may be.

27. Commissioning and Operational Acceptance**27.1 Commissioning**

- 27.1.1 Commissioning of the IT Products and Services shall be commenced by the Supplier
- (a) immediately after the Installation Certificate is issued by the project manager, pursuant to GC Sub-Clause 26.2;
 - (b) as otherwise specified in the Technical Requirements (specified in the SOR) or the Agreed and Finalized Project Plan; or
 - (c) immediately after installation occurred, under GC Sub-Clause 26.3.
- 27.1.2 The Purchaser shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to commissioning. Production use of the IT Products and Services shall not commence prior to the start of the formal Operational Acceptance Testing.

27.2 Operational Acceptance Test

- 27.2.1 The Operational Acceptance Tests (and repeats of each tests) shall be the primary responsibility of the Purchaser, in accordance with GC Sub-Clause 10.10, but shall be conducted with the full cooperation of the Supplier during commissioning of the IT products and installation services to ascertain whether they conform to the SOR and meets the standard of performance quoted in the Supplier's bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during commissioning will be conducted as specified in the SOR and/or the Agreed and Finalized Project Plan.
- 27.2.2 At the Purchaser's discretion, Operational Acceptance Tests may also be performed on replacement products, upgrades and new version releases, and products that are added or field-modified after operational acceptance of the system.
- 27.2.3 If for reason attributable to the Purchaser, the Operational Acceptance Test of the IT products and installation services cannot be successfully completed within the period specified in the SOR, from the date of installation or any other period agreed upon in writing by the Purchaser and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the SOR and/or the Agreed and Finalized Project Plan, and GC Sub-Clauses 28.2 and 28.3 (Completion Time Guarantee) shall not apply.

27.3 Operational Acceptance

- 27.3.1 Subject to GC Sub-Clause 27.4 (Partial Acceptance) below, operational acceptance shall occur in respect of the IT products and installation services when
- (a) the Operational Acceptance Tests, specified in the SOR and/or Agreed and Finalized Project Plan, have been successfully completed; or
 - (b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Purchaser within the period from the date of installation or any other agreed-upon period as specified in GC Clause 27.2.3 above; or
 - (c) the Purchaser has put the system into production or use for 60 consecutive days. (If the System is put into production or use in this manner, the Supplier shall notify the Purchaser and document such use.)

- 27.3.2 At any time after any of the events set out in GC Sub-Clause 27.3.1 above have occurred, the Supplier may give a notice to the project manager requesting the issue of an Operational Acceptance Certificate.
- 27.3.3 After consultation with the Purchaser, and within 14 days after receipt of the Supplier's notice, the Project Manager shall
- (a) issue an Operational Acceptance Certificate; or
 - (b) notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
 - (c) issue the Operational Acceptance Certificate, if the situation covered by GC Clause 27.3.1 (b) arises.
- 27.3.4 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the project manager has notified to the Supplier. Once such remedies have been made by the Supplier, the Supplier shall notify the Purchaser, and the Purchaser, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the IT products and installation services. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Purchaser of its request for Operational Acceptance Certification, in accordance with GC Sub-Clause 27.3.2. The Purchaser shall then issue to the Supplier the Operational Acceptance Certification in accordance with GC Sub-Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GC Sub-Clause 27.3.4 shall be repeated, as necessary, until the Operational Acceptance Certificate is issued.
- 27.3.5 If the system or subsystem fails to pass the Operational Acceptance Test(s) in accordance with GC Sub-Clause 27.2, then either
- (a) the Purchaser may consider terminating the Contract, pursuant to GC Clause 47 (Termination for Supplier's Default), or
 - (b) the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GC Sub-Clauses 30.3 and 30.4 (Functional Guarantees) shall not apply, if the failure to achieve operational acceptance within the specified time period is a result of the failure of the Purchaser to fulfill its obligations under the Contract.

27.3.6 If within 14 days after receipt of the Supplier's notice, the project manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the project manager has not issued the Operational Acceptance Certificate, the IT products and installation services shall be deemed to have been accepted as of the date of the Supplier's said notice.

27.4 **Partial Acceptance**

27.4.1 If so specified in the SOR for GC Sub-Clause 27.2(a), installation and commissioning shall be carried out individually for each identified major component of the IT products and installation services. In this event, the provisions in the Contract relating to installation and commissioning, including the Operational Acceptance Test, shall apply to each such major component individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component, subject to the limitations contained in GC Sub-Clause 27.4.2.

27.4.2 The issuance of Operational Acceptance Certificates for individual major components pursuant to GC Sub-Clause 27.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the IT products and installation services as a whole once all major components have been supplied, installed, tested, and commissioned.

27.4.3 In the case of minor components for the IT products and installation services that by their nature do not require commissioning or an Operational Acceptance Test, the project manager shall issue an Operational Acceptance Certificate within 14 days after such components have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Purchaser or Supplier.

F. Guarantees and Liabilities

28. Completion Time Guarantee

28.1 The Supplier guarantees that it shall complete the supply, installation, and commissioning, and achieve operational acceptance of the IT Products and Services within the time periods specified in the Implementation Schedule and/or Agreed and Finalized Project Plan pursuant to GC Sub-Clause 8.2, or within such extended time to which the Supplier shall be entitled under GC Clause 44 (Extension of Time for Completion).

- 28.2 If the Supplier fails to supply, install, commission, and achieve operational acceptance of, the IT Products and Services within the time for achieving operational acceptance specified in the Implementation Schedule or the Agreed and Finalized Project Plan, or any extension of the time for achieving operational acceptance previously granted under GC Clause 44 (Extension of Time for Completion), the Supplier shall pay to the Purchaser liquidated damages at the rate specified in the PC as a percentage of the Contract Price, or the relevant part of the Contract Price if a major component of the IT Products and Services has not achieved operational acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the PC (“the maximum”). Once the maximum is reached, the Purchaser may consider termination of the Contract, pursuant to GC Sub-Clause 47 (Termination for Supplier’s Default).
- 28.3 Unless otherwise specified in the PC, liquidated damages payable under GC Sub-Clause 28.2 shall apply only to the failure to achieve operational acceptance of the IT Products and Services as specified in the Implementation Schedule and/or Agreed and Finalized Project Plan. This GC Sub-Clause 28.3 shall not limit, however, any other rights or remedies the Purchaser may have under the Contract for other delays.
- 28.4 If liquidated damages are claimed by the Purchaser for the IT Products and Services, the Supplier shall have no further liability whatsoever to the Purchaser in respect to the operational acceptance time guarantee for the system (or subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the IT Products and Services or from any other of its obligations and liabilities under the Contract.

29. Defect Liability

- 29.1 The Supplier warrants that for the period specified in the SOR, all products, including documentation, and/or Services (to the extent relevant) to be delivered under this contract
- (a) shall be free from defects in the design, engineering, and workmanship;
 - (b) are newly manufactured, unused, and incorporate all recent material improvements in design; and
 - (c) complies with or exceeds the Technical Specifications in the SOR.
- Exceptions and/or limitations, if any, to this warranty with respect to software (or categories of software), shall be as specified in the PC. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
- 29.2 In addition, the Supplier warrants that
- (a) all product components to be incorporated into the system form part of the Supplier’s and/or Subcontractor’s current product lines,
 - (b) they have been previously released to the market, and
 - (c) those specific items identified in the PC (if any) have been in the market for at least the minimum periods specified in the PC.

- 29.3 The warranty period shall commence from the date of operational acceptance of the IT Products and Services and shall extend for the length of time specified in the PC.
- 29.4 If during the warranty period any defect as described in GC Sub-Clause 29.1 should be found in the design, engineering, documentation, and workmanship of the products and services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the products and services caused by such defect. Any defective products and services that have been replaced by the Supplier shall remain the property of the Supplier.
- 29.5 The Supplier shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the products and services arising out of or resulting from any of the following causes:
- (a) improper operation or maintenance of the product and/or service by the Purchaser;
 - (b) normal wear and tear;
 - (c) use of the IT Products and Services with items not supplied by the Supplier, unless otherwise identified in the SOR or approved by the Supplier; or
 - (d) modifications made to the products and services by the Purchaser, or a third party, not approved by the Supplier.
- 29.6 The Supplier's obligations under this GC Clause 29 shall not apply to
- (a) any materials that are normally consumed in operation or have a normal life shorter than the warranty period; or
 - (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Purchaser or any matters for which the Supplier has disclaimed responsibility in writing and has been accepted by the Purchaser.
- 29.7 The Purchaser shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence.
- 29.8 The Supplier may, with the consent of the Purchaser, remove from the site any defective IT Products and Services, if the nature of the defect, and/or any damage to the IT Products and Services caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the IT Products and Services, the Purchaser may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.

- 29.9 If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case may be) until that part of the IT product and/or service passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.
- 29.10 If the Supplier fails to commence the work necessary to remedy such defect or any damage to the IT product and/or service caused by such defect within the time period specified in the PC, the Purchaser may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the Supplier or may be deducted by the Purchaser from any monies due the Supplier or claimed under the Performance Security, pursuant to GC Sub-Clause 13.3 (Performance Security).
- 29.11 If the IT Products and Services cannot be used by reason of such defect and/or making good of such defect, the warranty period for the IT Products and Services shall be extended by a period equal to the period during which the IT products and/or service could not be used by the Purchaser because of such defect and/or making good of such defect.
- 29.12 Items substituted for defective parts of the IT product and/or service during the warranty period shall be covered by the defect liability period for the remainder of the warranty period applicable for the part replaced or 3 months, whichever is greater.
- 29.13 At the request of the Purchaser and without prejudice to any other rights and remedies that the Purchaser may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Purchaser to seek warranty services or remedial action from any subcontracted third-party producers or licensor of IT Products and Services including without limitation assignment or transfer in favor of the Purchaser of the benefit of any warranties given by such producers or licensors to the Supplier.

30. Functional Guarantees

- 30.1 The Supplier guarantees that during the operational acceptance, the IT Products and Services and all parts thereof shall attain the functional guarantees, subject to and upon the conditions therein specified.
- 30.2 If, for reasons attributable to the Supplier, the minimum level of the functional guarantees are not met either in whole or in part, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the IT Products and Services or any part thereof as may be necessary to meet at least the minimum level of such guarantees. The Supplier shall notify the Purchaser upon completion of the necessary changes, modifications, and/or additions, and shall request the Purchaser to repeat the Operational Acceptance Test until the minimum level of the guarantees has been met. If the Supplier eventually fails to meet the minimum level of functional guarantees, the Purchaser may consider termination of the Contract, pursuant to GC Clause 47 (Termination for Supplier's Default).

30.3 If, for reasons attributable to the Supplier, the functional guarantees are not attained either in whole or in part, but the minimum level of the functional guarantees is met, the Supplier shall, at the Supplier's option, either

- (a) make such changes, modifications, and/or additions to the facilities or any part thereof that are necessary to attain the functional guarantees at its cost and expense, and shall request the Purchaser to repeat the Operational Acceptance Test; or
- (b) pay liquidated damages to the Purchaser in respect of the failure to meet the functional guarantees.

30.4 The payment of liquidated damages under GC Sub-Clause 30.3, up to the limitation of liability specified in the Appendix 10 (Functional Guarantees) of the Contract, shall completely satisfy the Supplier's guarantees under GC Sub-Clause 30.3, and the Supplier shall have no further liability whatsoever to the Purchaser in respect thereof. Upon the payment of such liquidated damages by the Supplier, the project manager shall issue the Operational Acceptance Certificate for the facilities or any part thereof in respect of which the liquidated damages have been so paid.

31. Intellectual Property Rights Warranty

31.1 The Supplier hereby represents and warrants that

- (a) the IT Products and Services as supplied, installed, tested, and accepted;
- (b) use of the IT Products and Services in accordance with the Contract; and
- (c) copying of the software and documentation provided to the Purchaser in accordance with the Contract

do not and will not infringe any Intellectual Property Rights held by any third party, and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Purchaser to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the IT Products and Services.

32. Intellectual Property Rights Indemnity

32.1 The Supplier shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Purchaser or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights.

- 32.2 Such indemnity shall not cover any use of the IT Products and Services, including the documentation, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the IT Products and Services, or any secondary IT Products and Services that result thereby in association or combination with any IT Products and Services not supplied by the Supplier, where the infringement arises because of such association or combination and not because of use of the IT Products and Services in its own right.
- 32.3 Such indemnities shall also not apply if any claim or infringement
- (a) is asserted by a parent, subsidiary, or affiliate of the Purchaser's organization;
 - (b) is a direct result of a design mandated by the Purchaser's SOR, and the possibility of such infringement was duly noted in the Supplier's bid; or
 - (c) results from the alteration of the IT Products and Services, including the Documentation, by the Purchaser or any persons other than the Supplier or a person authorized by the Supplier.
- 32.4 If a claim of infringement of Intellectual Property Rights is made or threatened by a third party, the Purchaser will allow the Supplier, at the Supplier's expense, to either
- (a) obtain for the Purchaser the right to continued use of the IT Products and Services; or
 - (b) replace or modify the IT Products and Services so that the alleged infringement ceases so long as the IT Products and Services continue to provide the Customer with equivalent functionality and performance as required in the SOR.
- 32.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers and Subcontractors from and against any and all losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Purchaser or any persons (other than the Supplier) contracted by the Purchaser, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GC Sub-Clause 32.8.
- 32.6 Such indemnity shall not cover any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, or any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other IT Products and Services not provided by the Purchaser or any other person contracted by the Purchaser, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

32.7 Such indemnities shall also not apply

- (a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Supplier's organization;
- (b) to the extent that any claim of infringement caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Purchaser or any persons contracted by the Purchaser.

32.8 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GC Sub-Clause 32.5, the Supplier shall promptly give the Purchaser notice of such proceedings or claims, and the Purchaser may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Purchaser fails to notify the Supplier within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Purchaser has so failed to notify the Supplier within 28 days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Purchaser's request, afford all available assistance to the Purchaser in conducting such proceedings or claim and shall be reimbursed by the Purchaser for all reasonable expenses incurred in so doing.

33. Limitation of Liability

33.1 Except in cases of criminal negligence or willful misconduct, and Intellectual Property Rights Indemnity claims pursuant to Clause 32

- (a) neither party shall be liable to the other party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other party in connection with the Contract, other than specifically provided as any obligation of the party in the Contract; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

34. Criminal Charges and Convictions

34.1

The Supplier warrants that it has disclosed and will continue to disclose during the term of this Contract full details of all criminal convictions and all pending criminal charges against it or any of its personnel, associates, or Subcontractors that would reasonably be expected to adversely affect the Supplier or the Supplier’s capacity to fulfill its obligations under this Contract. The Supplier is not required to provide information to the Purchaser in a form or in a manner which would cause the Supplier to breach the privacy of the individual but the Supplier will take all reasonable steps to either

(a)

provide sufficient information to enable the Purchaser to assess the level of any risk or conflict posed to it by the existence of such conviction or pending charge, or

(b)

take such steps as necessary to ensure that the person who is the subject of the conviction or pending charge ceases to be directly or indirectly involved with this Contract.

34.2

A failure to make any such disclosure will be treated as a material breach of this Contract.

G. Risk Distribution

35. Transfer of Ownership

35.1

With the exception of any software and documentation, the ownership of the IT Products and Services shall be transferred to the Purchaser at the time of delivery or otherwise under terms that may be agreed upon and specified in the Contract.

35.2

Ownership and the terms of usage of any software and documentation supplied under the Contract shall be governed by GC Clause 15 (Intellectual Property and Copyright), and any elaboration in the SOR.

35.3

Ownership of the Supplier’s equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.
36. Care of IT Products and Services

36.1

The Supplier shall be responsible for the care and custody of the IT Products and Services or any part thereof until the date of completion of the IT Products and Services, pursuant to GC Clause 26 (Completion) or, where the Contract provides for completion of the IT Products and Services in parts, until the date of completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the IT Products and Services or the relevant part thereof from any cause whatsoever during such period. The Supplier shall also be responsible for any loss or damage to the IT Products and Services caused by the Supplier or its Subcontractors in the course of any work carried out, pursuant to GC Clause 29 (Defect Liability). Notwithstanding the foregoing, the Supplier shall not be liable for any loss or damage to the IT Products and Services or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GC Sub-Clauses 36.2 and 42.1 (War Risks).

36.2 If any loss or damage occurs to the IT Products and Services or any part thereof or to the Supplier's temporary IT Products and Services by reason of

- (a) insofar as they relate to the country where the site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced Supplier could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC Clause 38 (Insurance) hereof; or
- (b) any use or occupation by the Purchaser or any third party other than a Subcontractor (authorized by the Purchaser) of any part of the IT Products and Services; or
- (c) any use of, or reliance upon, any design, data, or specification provided or designated by, or on behalf of, the Purchaser, or any such matter for which the Supplier has disclaimed responsibility herein,

the Purchaser shall pay to the Supplier all sums payable in respect of the IT Products and Services executed, notwithstanding that the same be lost, destroyed, or damaged, and will pay to the Supplier the replacement value of all temporary facilities and all parts thereof lost, destroyed, or damaged. If the Purchaser requests the Supplier in writing to make good any loss or damage to the IT Products and Services thereby occasioned, the Supplier shall make good the same at the cost of the Purchaser, in accordance with GC Clause 43 (Change in the Facilities). If the Purchaser does not request the Supplier in writing to make good any loss or damage to the IT Products and Services thereby occasioned, the Purchaser shall either request a change in accordance with GC Clause 43, excluding the performance of that part of the IT Products and Services thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the IT Products and Services, the Purchaser shall terminate the Contract pursuant to GC Sub-Clause 46.1 hereof.

36.3 The Supplier shall be liable for any loss of, or damage to, any Supplier's equipment, or any other property of the Supplier used or intended to be used for purposes of the IT Products and Services, except

- (a) as mentioned in GC Sub-Clause 36.2 with respect to the Supplier's temporary IT Products and Services, and
- (b) where such loss or damage arises by reason of any of the matters specified in GC Sub-Clauses 36.2 (b) and (c) and 42.1 (War Risks).

36.4 With respect to any loss or damage caused to the IT Products and Services or any part thereof or to the Supplier's equipment by reason of any of the matters specified in GC Sub-Clause 42.1, the provisions of GC Sub-Clause 42.3 shall apply.

37. Loss of, or Damage to, Property; Accident or Injury to Workers; Indemnification

37.1

The Supplier and each and Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Purchaser’s country.

37.2

Subject to GC Sub-Clause 37.3, the Supplier shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of, or damage to, any property other than the IT Products and Services whether accepted or not, arising in connection with the supply and installation of the IT Products and Services and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers, or agents, except any injury, death, or property damage caused by the negligence of the Purchaser, its Suppliers, employees, officers or agents.

37.3

If any proceedings are brought or any claim is made against the Purchaser that might subject the Supplier to liability under GC Sub-Clause 37.2, the Purchaser shall promptly give the Supplier a notice thereof and the Supplier may at its own expense and in the Purchaser’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Purchaser within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Purchaser within the 28-day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Purchaser shall, at the Supplier’s request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

37.4

The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of, or damage to, property of the Purchaser, other than the IT Products and Services not yet achieving operational acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GC Clause 38 (Insurance), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.

- 37.5 If any proceedings are brought or any claim is made against the Supplier that might subject the Purchaser to liability under GC Sub-Clause 37.4, the Supplier shall promptly give the Purchaser notice of such proceedings or claims, and the Purchaser may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceeding or claim. If the Purchaser fails to notify the Supplier within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Purchaser has so failed to notify the Supplier within 28 days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Purchaser's request, afford all available assistance to the Purchaser in conducting such proceedings or claim and shall be reimbursed by the Purchaser for all reasonable expense incurred in so doing.
- 37.6 The party entitled to the benefit of an indemnity under this GC Clause 37 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

38. Insurance

- 38.1 To the extent specified in the Appendix 11 (Insurance Requirements) of the Contract, the Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.

38.1.1 Cargo Insurance During Transport

As applicable, 110% of the price of the products covering the products at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type of reputable insurers) occurring prior to operational acceptance of the IT Products and Services.

38.1.2 Installation All Risks Insurance

Covering physical loss or damage to the IT Products and Services at the site, occurring prior to completion of the facilities, with an extended maintenance coverage for the Supplier's liability in respect of any loss or damage occurring during the defect liability period while the Supplier is on the site for the purpose of performing its obligations during the defect liability period.

38.1.3 Third Party Liability Insurance

Covering bodily injury or death suffered by third parties including the Purchaser's personnel, and loss of, or damage to, property occurring in connection with the supply and installation of the IT Products and Services.

38.1.4 **Automobile Liability Insurance**

Covering use of all vehicles used by the Supplier or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

38.1.5 **Workers' Compensation**

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

38.1.6 **Purchaser's Liability**

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

38.1.7 **Other Insurances**

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the Appendix 11 (Insurance Requirements) of the Contract.

- 38.2 The Purchaser shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GC Sub-Clause 38.1, except for the Third Party Liability, Workers' Compensation, and Purchaser's Liability Insurances, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GC Sub-Clause 38.1 except for the Cargo Insurance During Transport, Workers' Compensation, and Purchaser's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 38.3 The Supplier shall, in accordance with the provisions of the Appendix to the Contract titled Insurance Requirements, deliver to the Purchaser certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Purchaser by insurers prior to cancellation or material modification of a policy.
- 38.4 The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.

- 38.5 The Purchaser shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix 11 (Insurance Requirements) of the Contract, in the sums and with the deductibles and other conditions specified in the said Appendix. The Supplier and the Supplier's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Purchaser shall deliver to the Supplier satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Supplier by all insurers prior to any cancellation or material modification of the policies. If so requested by the Supplier, the Purchaser shall provide copies of the policies taken out by the Purchaser under this GC Sub-Clause 38.5.
- 38.6 If the Supplier fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 38.1, the Purchaser may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Supplier under the Contract any premium that the Purchaser shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Supplier. If the Purchaser fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 38.5, the Supplier may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Purchaser under the Contract any premium that the Supplier shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Purchaser. If the Supplier fails to or is unable to take out and maintain in effect any such insurances, the Supplier shall nevertheless have no liability or responsibility toward the Purchaser, and the Supplier shall have full recourse against the Purchaser for any and all liabilities of the Purchaser herein.
- 38.7 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Clause 38, and all monies payable by any insurers shall be paid to the Supplier. The Purchaser shall give to the Supplier all such reasonable assistance as may be required by the Supplier. With respect to insurance claims in which the Purchaser's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Purchaser. With respect to insurance claims in which the Supplier's interest is involved, the Purchaser shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.

39. Unforeseen Conditions

39.1 If, during the execution of the Contract, the Supplier shall encounter on the site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract by an experienced Supplier on the basis of reasonable examination of the data relating to the IT Products and Services and on the basis of information that it could have obtained from a visual inspection of the site if access thereto was available, or other data readily available to it relating to the IT Products and Services, and if the Supplier determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Supplier shall promptly, and before performing additional work or using additional Supplier's equipment, notify the project manager in writing of the

- (a) physical conditions or artificial obstructions on the site that could not have been reasonably foreseen;
- (b) additional work required, including the steps which the Supplier will, or proposes to, take to overcome such conditions or obstructions;
- (c) extent of the anticipated delay; and
- (d) additional cost and expense that the Supplier is likely to incur.

On receiving any notice from the Supplier under this GC Sub-Clause 39.1, the project manager shall promptly consult with the Purchaser and Supplier and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the project manager shall instruct the Supplier, with a copy to the Purchaser, of the actions to be taken.

39.2 Any reasonable additional cost and expense incurred by the Supplier in following the instructions from the project manager to overcome such physical conditions or artificial obstructions referred to in GC Sub-Clause 39.1 shall be paid by the Purchaser to the Supplier as an addition to the Contract Price.

39.3 If the Supplier is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 39.1, the Time for Completion shall be extended in accordance with GC Clause 44 (Extension of Time for Completion).

40. Change in Laws and Regulations

40.1 If, after the date 28 days prior to the date of bid submission, in the country where the site is located, any law, regulation, ordinance, order, or by-law having the force of law is enacted, promulgated, abrogated, or changed, which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Supplier and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PC pursuant to GC Sub-Clause 11.2.

41. Force Majeure

- 41.1 “Force Majeure” shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy, and civil war;
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
 - (c) confiscation, nationalization, mobilization, commandeering, or requisition by, or under the order of, any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
 - (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
 - (f) shortage of labor, materials, or utilities where caused by circumstances that are themselves force majeure.
- 41.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of force majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 14 days after the occurrence of such event.
- 41.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of force majeure continues and to the extent that such party’s performance is prevented, hindered, or delayed. The Time for Completion shall be extended in accordance with GC Clause 8.
- 41.4 The party or parties affected by the event of force majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GC Clauses 45 (Suspension), 46 (Termination for Purchaser’s Convenience), 47 (Termination for Supplier’s Default), and 48 (Termination by Supplier).
- 41.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of force majeure shall
- (a) constitute a default or breach of the Contract; or
 - (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GC Sub-Clauses 36.2 (Care of IT Products and Services), 41.3, and 42.4 (War Risks)
- if and to the extent that such delay or nonperformance is caused by the occurrence of an event of force majeure.

42. War Risks

- 41.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than 60 days or an aggregate period of more than 120 days on account of one or more events of force majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GC Sub-Clause 42.5 (War Risks).
- 41.7 In the event of termination pursuant to GC Sub-Clause 41.6, the rights and obligations of the Purchaser and the Supplier shall be as specified in GC Sub-Clauses 46.2 and 46.3 (Termination for Purchaser's Convenience).
- 41.8 Notwithstanding GC Sub-Clause 41.6, force majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier herein.
- 42.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GC Sub-Clause 41.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions, or explosive of war, occurring or existing in or near the country (or countries) where the site is located.
- 42.2 Notwithstanding anything contained in the Contract, the Supplier shall have no liability whatsoever for, or with respect to,
- (a) destruction of, or damage to, facilities, or any part thereof;
 - (b) destruction of, or damage to, property of the Purchaser or any third party; or
 - (c) injury or loss of life
- if such destruction, damage, injury, or loss of life is caused by any war risks, and the Purchaser shall indemnify and hold the Supplier harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges, or expenses arising in consequence of or in connection with the same.
- 42.3 If the IT Products and Services or any other property of the Supplier used or intended to be used for the purposes of the IT Products and Services shall sustain destruction or damage by reason of any war risks, the Purchaser shall pay the Supplier for
- (a) any part of the IT Products and Services so destroyed or damaged to the extent not already paid for by the Purchaser and so far as may be required by the Purchaser, and as may be necessary for completion of the facilities;
 - (b) replacing or making good any Supplier's equipment or other property of the Supplier so destroyed or damaged; and
 - (c) replacing or making good any such destruction or damage to the IT Products and Services or any part thereof.

If the Purchaser does not require the Supplier to replace or make good any such destruction or damage to the IT Products and Services, the Purchaser shall either request a change in accordance with GC Clause 43 (Change in the Facilities), excluding the performance of that part of the IT Products and Services thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the IT Products and Services, shall terminate the Contract, pursuant to GC Clause 46 (Termination for Purchaser's Convenience).

If the Purchaser requires the Supplier to replace or make good on any such destruction of, or damage to, the IT Products and Services, the Time for Completion shall be extended in accordance with GC Clause 44 (Extension of Time for Completion).

- 42.4 Notwithstanding anything contained in the Contract, the Purchaser shall pay the Supplier for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any war risks, provided that the Supplier shall as soon as practicable notify the Purchaser in writing of any such increased cost.
- 42.5 If during the performance of the Contract any war risks shall occur that financially or otherwise materially affect the execution of the Contract by the Supplier, the Supplier shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the facilities, provided, however, that if the execution of the work on the facilities becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any war risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.
- 42.6 In the event of termination pursuant to GC Sub-Clauses 42.3 or 42.5, the rights and obligations of the Purchaser and the Supplier shall be specified in GC Sub-Clauses 26.2 (Completion) and 46.3 (Termination for Purchaser's Convenience).

H. Change in Contract Elements

43. Change in the Facilities

43.1 Introducing a Change

- 43.1.1 Either party may seek to vary any obligation of the Contract by making application to the other party. No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.
- 43.1.2 Subject to GC Sub-Clauses 43.2.5 and 43.2.7, the Purchaser shall have the right to propose, and subsequently require, that the project manager order the Supplier from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the SOR (interchangeably called "change"), provided that such change falls within the general scope

of the SOR and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the work against the Agreed and Finalized Project Plan and the technical compatibility of the change envisaged with the nature of the SOR as originally specified in the Contract.

A change may involve, but is not restricted to, the substitution of updated IT Products and Services and related services, in accordance with GC Clause 23 (Product Upgrades).

43.1.3 The Supplier may from time to time during its performance of the Contract propose to the Purchaser (with a copy to the project manager) any change that the Supplier considers necessary or desirable to improve quality or efficiency. The Purchaser may at its discretion approve or reject any change proposed by the Supplier.

43.1.4 Notwithstanding GC Sub-Clauses 43.1.2 and 43.1.3, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a change, and such change shall not result in any adjustment of the Contract Price or the Time for Operational Acceptance.

43.1.5 The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 43.2 and 43.3 (Changes Originating from Purchaser and Supplier) and further details and forms are provided in the Sample Forms Section in the Bidding Documents.

43.1.6 Moreover, the Purchaser and Supplier will agree, during development of the Agreed and Finalized Project Plan, to a date prior to the scheduled date for operational acceptance after which the SOR shall be “frozen.” Any change initiated after this time will be dealt with after operational acceptance.

43.2 Changes Originating from Purchaser

43.2.1 If the Purchaser proposes a change pursuant to GC Sub-Clause 43.1.2, it shall send to the Supplier a “Request for Change Proposal,” requiring the Supplier to prepare and furnish to the project manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:

- (a) brief description of the change,
- (b) impact on the Time for Operational Acceptance,
- (c) detailed estimated cost of the change,
- (d) effect on functional guarantees (if any), and
- (e) effect on any other provisions of the Contract.

43.2.2 Prior to preparing and submitting the “Change Proposal,” the Supplier shall submit to the project manager a “Change Estimate Proposal,” which shall be an estimate of the cost of preparing and submitting the change proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier’s Change Estimate Proposal, the Purchaser shall do one of the following:

- (a) accept the Supplier’s estimate with instructions to the Supplier to proceed with the preparation of the change proposal,
- (b) advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate, or
- (c) advise the Supplier that the Purchaser does not intend to proceed with the change.

43.2.3 Upon receipt of the Purchaser’s instruction to proceed under GC Sub-Clause 43.2.2 (a), the Supplier shall, with proper expedition, proceed with the preparation of the change proposal, in accordance with GC Sub-Clause 43.2.1. The Supplier, at its discretion, may specify a validity period for the change proposal, after which if the Purchaser and Supplier have not reached agreement in accordance with GC Sub-Clause 43.2.6, then GC Sub-Clause 43.2.7 shall apply.

43.2.4 The pricing of any change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the change.

43.2.5 If before or during the preparation of the change proposal it becomes apparent that the aggregate effect of compliance with the Request for Change Proposal and with all other change orders that have already become binding upon the Supplier under this GC Clause would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract by more than the percentage stated in the ITB Clause 42, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the change proposal. If the Purchaser accepts the Supplier’s objection, the Purchaser shall withdraw the proposed change and shall notify the Supplier in writing of its acceptance.

The Supplier’s failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested changes or change orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any change not objected to by the Supplier represents.

43.2.6 Upon receipt of the change proposal, the Purchaser and the Supplier shall mutually agree upon all matters contained in the change proposal. Within 14 days after such agreement, the Purchaser shall, if it intends to proceed with the change, issue the Supplier a change order. If the Purchaser is unable to reach a decision within 14 days, it shall notify the Supplier with details of when the Supplier can expect a decision.

If the Purchaser decides not to proceed with the change for whatever reason, it shall, within the said period of 14 days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the change proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GC Sub-Clause 43.2.2.

43.2.7 If the Purchaser and the Supplier cannot reach agreement on the price for the change, an equitable adjustment to the Time for Operational Acceptance, or any other matters identified in the change proposal, the change will not be implemented. However, this provision does not limit the rights of either party under GC Clause 52 (Disputes and Arbitration).

43.3 Changes Originating from Supplier

43.3.1 If the Supplier proposes a change pursuant to GC Sub-Clause 43.1.3, the Supplier shall submit to the project manager a written “Application for Change Proposal,” giving reasons for the proposed change and including the information specified in GC Sub-Clause 43.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GC Clauses 43.2.6 and 43.2.7 except that the words “change proposal” shall be read, for the purposes of this GC Sub-Clause 43.3, as “Application for Change Proposal.” However, should the Purchaser choose not to proceed or the Purchaser and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Purchaser and the Supplier to the contrary.

44. Extension of Time for Completion

44.1 The Time(s) for Completion specified in the PC pursuant to GC Sub-Clause 8.2 (Time for Commencement and Completion) shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any change in the SOR as provided in GC Clause 43;
- (b) any occurrence of force majeure as provided in GC Clause 41, unforeseen conditions as provided in GC Clause 39, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GC Sub-Clause 36.2;

- (c) any suspension order given by the Purchaser under GC Clause 45 hereof or reduction in the rate of progress pursuant to GC Sub-Clause 45.2;
- (d) any changes in laws and regulations as provided in GC Clause 40;
- (e) any default or breach of the Contract by the Purchaser, or any activity, act, or omission of the Purchaser, the project manager, or any other Suppliers employed by the Purchaser;
- (f) any delay on the part of the Subcontractor, provided such delay is due to a cause for which the Supplier himself would have been entitled to an extension of time under this sub-clause;
- (g) delays attributable to the Purchaser or caused by customs; or
- (h) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

44.2 Except where otherwise specifically provided in the Contract, the Supplier shall submit to the project manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Purchaser's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to an arbitrator, pursuant to GC Sub-Clause 52.1.

44.3 The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

44.4 In all cases where the Supplier has given a notice of a claim for an extension of time under GC 44.2, the Supplier shall consult with the project manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Supplier shall thereafter comply with all reasonable instructions which the project manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Supplier to incur extra costs and the Supplier is entitled to an extension of time under GC 44.1, the amount of such extra costs shall be added to the Contract Price.

45. Suspension

45.1 The Purchaser may request the project manager, by notice to the Supplier, to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension, and the reasons therefore. The Supplier shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the facilities, until ordered in writing to resume such performance by the project manager.

If, by virtue of a suspension order given by the project manager, other than by reason of the Supplier's default or breach of the Contract, the Supplier's performance of any of its obligations is suspended for an aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Supplier may give a notice to the project manager requiring that the Purchaser shall, within 28 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Clause 43 (Change in the Facilities), excluding the performance of the suspended obligations from the Contract.

If the Purchaser fails to do so within such period, the Supplier may, by a further notice to the project manager, elect to treat the suspension, where it affects a part only of the facilities, as a deletion of such part in accordance with GC Clause 43 or, where it affects the whole of the facilities, as termination of the Contract under GC Clause 46 (Termination for Purchaser's Convenience).

- 45.2 If the Purchaser has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix 7 (Terms and Procedures for Payment) of the Contract, or commits a substantial breach of the Contract, the Supplier may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be.

If

- (a) the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Supplier's notice; or
- (b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of, or access to, the site or other areas in accordance with GC Sub-Clause 10.2 (Purchaser's Responsibilities), or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Supplier may, by 14 days' notice to the Purchaser, suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

45.3 If the Supplier's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC Clause 45, then the Time for Completion shall be extended in accordance with GC Sub-Clause 44.1 (Extension of Time for Completion), and any and all additional costs or expenses incurred by the Supplier, as a result of such suspension or reduction, shall be paid by the Purchaser to the Supplier in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Supplier's default or breach of the Contract.

45.4 During the period of suspension, the Supplier shall not remove from the site any IT Products and Services or part thereof, or any Supplier's equipment, without the prior written consent of the Purchaser.

**46. Termination
for Purchaser's
Convenience**

46.1 The Purchaser may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GC Clause 46.

46.2 Upon receipt of the notice of termination under GC Sub-Clause 46.1, the Supplier shall, either as soon as practical or upon the date specified in the notice of termination,

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the SOR already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GC Sub-Clause 46.2(d)(ii) below;
- (c) remove all Supplier's equipment from the site, repatriate the Supplier's and its Subcontractors' personnel from the site, and remove from the site any wreckage, rubbish, and debris of any kind; and,
- (d) subject to the payment specified in GC Sub-Clause 46.3,
 - (i) deliver to the Purchaser the parts of the SOR executed by the Supplier up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the IT Products and Services, as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors; and
 - (iii) deliver to the Purchaser all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the IT Products and Services.

46.3 In the event of termination of the Contract under GC Sub-Clause 46.1, the Purchaser shall pay to the Supplier the following amounts:

- (a) the Contract Price, properly attributable to part or whole of the IT Products and Services executed by the Supplier as of the date of termination;

- (b) the costs reasonably incurred by the Supplier in the removal of the Supplier's equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;
- (c) any amounts to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- (d) the costs incurred by the Supplier in protecting the IT Products and Services and leaving the site in a clean and safe condition pursuant to GC Sub-Clause 47.1 (Termination for Supplier's Default); and
- (e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GC Sub-Clauses 46.3(a)–(d) above.

47. Termination for Supplier's Default

47.1 The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Supplier, referring to this GC Sub-Clause 47.1:

- (a) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or the Supplier takes or suffers any other analogous action in consequence of debt;
- (b) if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 49 (Assignment); or
- (c) if the Supplier, in the judgment of the Purchaser, has engaged integrity violations in competing for, or in executing the, Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights, or proper authorization and/or licenses from the owner to offer the hardware, software, or materials provided under the Contract.

47.2 If the Supplier

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the IT Products and Services promptly;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;

- (d) refuses or is unable to provide sufficient documentation, services, or labor to execute and complete the IT Products and Services in the manner specified in the Agreed and Finalized Project Plan furnished under GC Clause 19 at rates of progress that give reasonable assurance to the Purchaser that the Supplier can attain operational acceptance of the IT Products and Services by the Time for Operational Acceptance as extended,

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within 14 days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GC Sub-Clause 47.2.

- 47.3 Upon receipt of the notice of termination under GC Sub-Clauses 47.1 or 47.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the IT Products and Services already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GC Sub-Clause 47.3(d) below;
- (c) deliver to the Purchaser the parts of the IT Products and Services executed by the Supplier up to the date of termination;
- (d) to the extent legally possible, assign to the Purchaser all rights, title, and benefit of the Supplier to the IT Products and Services or subsystems as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors; and
- (e) deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the products and services.

- 47.4 The Purchaser may enter upon the site, expel the Supplier, and complete the products and services itself or by employing any third party. Upon completion of the products and services or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Supplier that such Supplier's equipment will be returned to the Supplier at or near the site and shall return such Supplier's equipment to the Supplier in accordance with such notice. The Supplier shall, thereafter without delay and at its cost, remove or arrange removal of the same from the Site.

47.5 Subject to GC Sub-Clause 47.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the IT Products and Services executed as of the date of termination, and the costs, if any, incurred in protecting the IT Products and Services and in leaving the site in a clean and safe condition pursuant to GC Sub-Clause 47.3. Any sums due the Purchaser from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.

47.6 If the Purchaser completes the IT Products and Services, the cost of completing the IT Products and Services by the Purchaser shall be determined.

If the sum that the Supplier is entitled to be paid, pursuant to GC Sub-Clause 47.5, plus the reasonable costs incurred by the Purchaser in completing the IT Products and Services, exceeds the Contract Price, the Supplier shall be liable for such excess.

If such excess is greater than the sums due, the Supplier under GC Sub-Clause 47.5 shall pay the balance to the Purchaser, and if such excess is less than the sums due, the Purchaser under GC Sub-Clause 47.5 shall pay the balance to the Supplier. The Purchaser and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

48. Termination by Supplier

48.1 If the Purchaser has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix 7 (Terms and Procedures for Payment) of the Contract, or commits a substantial breach of the Contract, the Supplier may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be.

If

- (a) the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Supplier's notice; or
- (b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of, or access to, the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the IT Products and Services,

then the Supplier may give a notice to the Purchaser of such events, and if the Purchaser has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within 28 days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser within 28 days of the said notice, the Supplier may, by a further notice to the Purchaser referring to this GC Sub-Clause 48.1(b), forthwith terminate the Contract.

- 48.2 The Supplier may terminate the Contract forthwith by giving a notice to the Purchaser to that effect, referring to this GC Sub-Clause 48.2, if the Purchaser becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Purchaser takes or suffers any other analogous action in consequence of debt.
- 48.3 If the Contract is terminated under GC Sub-Clauses 48.1(b) or 48.2, then the Supplier shall immediately
- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the IT Products and Services already executed, or any work required to leave the site in a clean and safe condition;
 - (b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GC Sub-Clause 48.3(d)(ii);
 - (c) remove all Supplier's equipment from the site and repatriate the Supplier's and its Subcontractors' personnel from the site; and,
 - (d) subject to the payment specified in GC Sub-Clause 48.4,
 - (i) deliver to the Purchaser the parts of the IT Products and Services executed by the Supplier up to the date of termination;
 - (ii) to the extent legally possible, assign to the Purchaser all rights, title, and benefit of the Supplier to the IT Products and Services, or subsystems as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors; and
 - (iii) to the extent legally possible, deliver to the Purchaser all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the IT Products and Services.
- 48.4 If the Contract is terminated under GC Sub-Clauses 48.1 or 48.2, the Purchaser shall pay to the Supplier all payments specified in GC Sub-Clause 46.3 and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with, or in consequence of such termination.
- 48.5 Termination by the Supplier pursuant to this GC Clause 48 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of, or in addition to, rights conferred by GC Clause 48.

- 48.6 In GC Clauses 46–48, the expression “portion of the IT Products and Services executed” shall include all work executed, services provided, and all IT Products and Services acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the Supplier, and used or intended to be used for the purpose of the IT Products and Services, up to and including the date of termination.
- 48.7 In GC Clauses 46–48, in calculating any monies due from the Purchaser to the Supplier, account shall be taken of any sum previously paid by the Purchaser to the Supplier under the Contract, including any advance payment paid pursuant to the Appendix 7 (Terms and Procedures for Payment) of the Contract.
- 49. Assignment** 49.1 Neither the Purchaser nor the Supplier shall, without the express prior written consent of the other party, which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or thereunder, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.
- 50. Export Restrictions** 50.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the IT Products and Services to be supplied, which arise from trade regulations from a country supplying those IT Products and Services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of ADB that it has completed all formalities in a timely manner, including applying for permits, authorizations, and licenses necessary for the export of the IT Products and Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser’s convenience pursuant to GC Clause 46.

I. Claims, Disputes, and Arbitration

- 51. Supplier’s Claims** 51.1 If the Supplier considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these General Conditions (GC) or otherwise in connection with the Contract, the Supplier shall submit a 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 28 days after the Supplier became aware, or should have become aware, of the event or circumstance.

- 51.2 If the Supplier fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Supplier shall not be entitled to additional payment, and the Purchaser shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this sub-clause shall apply:
- (a) The Supplier shall also submit any other notices required by the Contract and supporting particulars for the claim, all as relevant to such event or circumstance.
 - (b) The Supplier 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 Purchaser's liability, the project manager may, after receiving any notice under this sub-clause, monitor the record-keeping and/or instruct the Supplier to keep further contemporary records. The Supplier shall permit the project manager to inspect all these records, and shall (if instructed) submit copies to the project manager.
 - (c) Within 42 days after the Supplier became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Supplier and approved by the project manager, the Supplier shall send to the project manager a fully detailed claim, which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) this fully detailed claim shall be considered as interim;
 - (ii) the Supplier shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the project manager may reasonably require; and
 - (iii) the Supplier shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supplier and approved by the project manager.
 - (d) Within 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 Supplier, 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/her response on the principles of the claim within such time.
 - (e) Each payment certificate shall include such amounts 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 Supplier shall only be entitled to payment for such part of the claim as he has been able to substantiate.

- (f) The project manager shall agree with the Supplier or estimate
 - (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GC Clause 44 (Extension of Time for Completion), and/or
 - (ii) the additional payment (if any) to which the Supplier is entitled under the Contract.
- (g) The requirements of this sub-clause are in addition to those of any other sub-clause which may apply to a claim. If the Supplier fails to comply with this or another sub-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 sub-clause.
- (h) In the event that the Supplier and the Purchaser cannot agree on any matter relating to a claim, either party may refer the matter to the disputes and arbitration procedures pursuant to GC Clause 52 hereof.

52. Disputes and Arbitration

52.1 Adjudication

- (a) The parties, within 14 days of the effective date, will agree and appoint an adjudicator.
- (b) If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the operation of the IT Products and Services (whether during the progress of implementation or after its achieving operational acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within 14 days after one party has notified the other in writing of the dispute or difference, then, if the Contract in appendix includes and names an adjudicator, the dispute shall be referred in writing by either party to the adjudicator, with a copy to the other party. If there is no adjudicator specified in the Contract, the mutual consultation period stated above shall last 28 days (instead of 14), upon expiry of which either party may move to the notification of arbitration, pursuant to GC Sub-Clause 52.2(a).
- (c) The adjudicator shall give his or her decision in writing to both Parties within 28 days of a dispute being referred to the adjudicator. If the adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Purchaser or the Supplier within 56 days of such reference, the decision shall become final and binding upon the Purchaser and the Supplier. Any decision that has become final and binding shall be implemented by the parties forthwith.

- (d) The adjudicator shall be paid an hourly fee at the rate specified in Appendix 2 (Adjudicator) of the Contract, plus reasonable expenditures incurred in the execution of duties as adjudicator, and these costs shall be divided equally between the Purchaser and the Supplier.
- (e) Should the adjudicator resign or die, or should the Purchaser and the Supplier agree that the adjudicator is not fulfilling his or her function in accordance with the provision of the Contract, a new adjudicator shall be jointly appointed by the Purchaser and the Supplier. Failing agreement between the parties within 28 days, the new adjudicator shall be appointed at the request of either party by the appointing authority specified in the Appendix 2 (Adjudicator) of the Contract, or, if no appointing authority is specified in the Contract, shall, from this point onward and until the parties may otherwise agree on an adjudicator or an appointing authority, be implemented as if there is no adjudicator.

52.2 Arbitration

- (a) If either the Purchaser or the Supplier is dissatisfied with the adjudicator's decision, or if the adjudicator fails to give a decision within 28 days of a dispute being referred to him or her, then the Purchaser or the Supplier may, within 56 days of such reference, give notice to the other party, with a copy of information to the adjudicator, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GC Sub-Clause 52.2(a), shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the IT Products and Services.
- (c) Arbitration proceedings shall be conducted in accordance with the rules of procedures specified in the Appendix 2 (Adjudicator) of the Contract.

52.3 Notwithstanding any reference to the adjudicator or arbitration in this clause,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

Section 8: Particular Conditions of Contract

Table of Contents

1.	Definitions.....	334
5.	Law and Language.....	334
8.	Time for Commencement.....	334
9.	Supplier’s Responsibilities	334
11.	Contract Price	334
13.	Securities	335
15.	Intellectual Property and Copyright.....	335
16.	Software License Agreements.....	336
22.	Transport and Delivery	336
23.	Product Upgrades.....	336
28.	Completion Time Guarantee.....	336
29.	Defect Liability	337
33.	Limitation of Liability.....	337
	Particular Additional Clauses Relating To Off-The-Shelf (OTS) Hardware	337
53.	Delivery.....	337
54.	Application.....	337
55.	Rental Items	338
56.	Retention of Ownership.....	338

57.	Rental Defects	338
58.	Rent	338
59.	Duration of Lease	338
60.	No Encumbrances	339
61.	Quiet Enjoyment	339
62.	Damage	339
63.	Insurance	339
64.	Termination	339
	Training and Managed Services.....	340
65.	Application of this Part.....	340
66.	Training.....	340
67.	Managed Services.....	340
	Hardware Maintenance.....	341
68.	Application of this Part.....	341
69.	Availability of Maintenance Services	341
70.	Commencement of Maintenance	341
71.	Preventative Maintenance	341
72.	Remedial Maintenance.....	342
73.	Maintenance Records.....	342
74.	Excluded Services.....	342
75.	Third Party Equipment	342
76.	Respectful Work Environment	342

1. Definitions

The Bank is: *[name of financial institution financing the Contract]*

The Borrower is: *[name of Borrower]*

The Contract Period is: *[duration months/years]*

Country of Origin is: *[all countries and territories as indicated in Section V of the Bidding Documents, Eligible Countries]*

The Purchaser is: *[name, address, e-mail, and fax numbers of Purchaser]*.

The Purchaser's Country is: *[name of country]*.

The Post-Warranty Services Period is: *[number of months for each product and service starting with the completion of the warranty period]*.

The Project Manager is: *[name, address, e-mail, and fax numbers and official title of project manager]*.

The Project Site(s) is/are as specified in the Implementation Schedule in the Schedule of Requirements (SOR).

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: *[Name of the country]*.

5.2 The ruling language is: ***[Name of ruling language]***.

5.3 The language for communications is: ***[Name of language for communications only if different from the ruling language]***.

8. Time for Commencement

8.1 The Supplier shall commence work on the IT Products and Services within *[number of days]* from the effective date for determining Time for Completion as specified in the Contract Agreement.

8.2 The Time for Completion of designated parts or the whole products and services shall be *[days in words and figures for each part or the whole]* from the effective date as described in the Contract Agreement.

9. Supplier's Responsibilities

9.7 Where the Supplier is a Joint Venture, consortium or association of two or more persons, all such persons *[shall/shall not]* be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract.

11. Contract Price

11.2 The Contract Price *[is, is not]* adjustable. If the price is adjustable it shall be adjusted in accordance with the provisions of the Appendix 12 (Price Adjustment) of the Contract Agreement.

13. Securities

- 13.2 The Supplier shall provide, within 28 days of the Notification of Award, an Advance Payment Security in the amount and currency of the advance payment specified in Appendix 6 (Revised Price Schedules) of the Contract Agreement.

The Advance Payment Security will be progressively reduced based on milestone payments stated in Appendix 6 (Revised Price Schedules) of the Contract Agreement. The reduction schedule is as follows: *[insert suitable names of milestone payments, and a percentage reduction schedule consistent with reaching those payments while being mindful of the outlays the Supplier has to make to reach those payments]*.

No	Name of Payment	Percentage Reduction in Advanced Payment Security
1.	Advanced Payment	0
2.	Payment 2	
3.	Payment 3	
4.	Payment 4, etc.	

- 13.3(a) The Performance Security shall be denominated in *[insert currency]* for an amount equal to *[X percent]* of the Contract Price excluding any recurrent costs.
- 13.3(d) The Performance Security will be progressively reduced based on achieved project milestones payments stated in Appendix 8 (Agreed and Finalized Project Plan) of the Contract Agreement. The reduction schedule is as follows: *[insert suitable names of project milestones, and a percentage reduction schedule consistent with reaching those milestones while being mindful of the risks to the Purchaser]*.

No	Name of Project Milestone	Percentage Reduction in Performance Security
1.		
2.		
3.		
4.		

15. Intellectual Property and Copyright

- 15.3 The Purchaser may assign, license, or otherwise voluntarily transfer its contractual rights to use the standard software or elements of the standard software, without the Supplier's prior written consent, under the following circumstances:

[state: "None," or else specify circumstances]

- 15.4 The Purchaser's and Supplier's rights and obligations with respect to custom software or elements of the custom software are as follows *[state: "Not applicable" if custom software is not part of the IT Products and Services; otherwise, specify items, rights, obligations, restrictions, exceptions, and provisos]*.

The Purchaser's and Supplier's rights and obligations with respect to custom materials or elements of the custom materials are as follows *[state: "Not applicable" if custom materials are not part of the IT products and/or services; otherwise, specify items, rights, obligations, restrictions, exceptions, and provisos]*.

- 15.5 If not applicable, state *“No software escrow contract is required for the execution of the Contract.” Otherwise, specify the maximum number of days during which a separate escrow contract must be agreed upon with a reputable escrow agent and any specific rights and obligations that the Purchaser wishes to establish in advance.*

16. Software License Agreements

- 16.1(a)(iii) The standard software license shall be valid [*“throughout the territory of the Purchaser’s country” or specify geographical coverage other than the Purchaser’s country, if such coverage is necessary and appropriate, for example, to cover the area in which the Purchaser’s business group operates in*].
- 16.1(a)(iv) Use of the software shall be subject to the following additional restrictions [*state “None” or specify restrictions*].
- 16.1(b)(ii) The software license shall permit the software to be used or copied for use or transferred to a replacement computer(s) or users [*state “provided the replacement computer(s) or user(s) fall(s) within approximately the same class of machine and maintain(s) approximately the same number of users if a multi-user machine”; or specify other necessary and appropriate restrictions on the replacement computer*].
- 16.1(b)(vi) The software license shall permit the software to be disclosed to, and reproduced for, use (including a valid sublicense) by [*state “support service Suppliers or their Subcontractors, exclusively for such Suppliers or Subcontractors in the performance of their support service contracts”; or specify other necessary and appropriate support entities and terms*], subject to the same restrictions set forth in this Contract.
- 16.1(b)(vii) In addition to the persons specified in GCC Clause 16.1 (b) (vi), the software may be disclosed to, and reproduced for, use by [*specify categories of person*], subject to the same restrictions as are set forth in this Contract.
- 16.2 The Supplier’s right to audit the standard software will be subject to the following terms: [*insert terms*]

22. Transport and Delivery

- 22.5 The Supplier shall provide the Purchaser with shipping and other documents [*insert “as specified in the GC,” or specify the details of other documentation requirements as necessary and appropriate*].

23. Product Upgrades

- 23.4 The Supplier shall provide the Purchaser [*insert “with all new versions, releases, and updates to all standard software during the warranty period, for free, as specified in the GCC”; or specify other requirements as necessary and appropriate*].

28. Completion Time Guarantee

- 28.2 Liquidated damages shall be assessed at [*X%*] per week. The maximum liquidated damages are [*Y%*] of the Contract Price, or relevant part of the Contract Price if the liquidated damages apply to defined part of the IT Products and Services.
- 28.3 Liquidated damages shall be assessed [*insert “only with respect to achieving operational acceptance”; otherwise, indicate other milestones, such as installation, etc.*].

29. Defect Liability

- 29.1 For software, exceptions or limitations to the Supplier's warranty obligations shall be as follows: [*"None," or specify category or categories of software and the corresponding exceptions or limitations*].
- 29.2(c) The Supplier warrants that the following items have been released to the market for the following specific minimum time periods: [*indicate "No specific minimum time requirements are established for this Contract other than that the information technologies must have been previously released to the market"; or specify specific types of technologies and specific minimum time periods, e.g., "All standard software must have been commercially available in the market for at least 3 months"*].
- 29.3 The warranty period shall begin from the date of operational acceptance of the system or subsystem and extend for [*"36 months" or, if a different period is desired, specify number of months, or, if appropriate, the periods that may apply to different types of technologies, e.g., hardware and software*].
- 29.10 During the warranty period, the Supplier must commence the work necessary to remedy defects or damage within [*number of (working) days/number of hours*] of notification.

33. Limitation of Liability

- 33.1(b) The multiplier of the Contract Price is: [*one or insert multiplier*]

Particular Additional Clauses Relating to Off-the-Shelf Hardware

53. Delivery

- 53.1 Late delivery must be agreed to by the Purchaser or liquidated damages, if specified in the PC, shall apply.
- 53.2 Notwithstanding the requirements set out in the SOR, the Supplier must ensure that the most recent models compatible with the software infrastructure are supplied, regardless whether the delivery is made in accordance with the SOR or is delayed.
- 53.3 The Supplier shall keep a record of the serial numbers of the hardware that it supplies to the Purchaser under this Contract and shall provide such details within 3 days of receiving such a request from the Purchaser.

Rental of Hardware

54. Application

- 54.1 To the extent that the Supplier leases or rents the Purchaser any hardware, whether in conjunction with other services or not, the conditions of clauses 54 to 64 apply in addition to any other terms and conditions of the Contract.

55. Rental Items

- 55.1 The Supplier is responsible for
- (a) the delivery and all costs associated with the delivery of the rental items to the Purchaser's premises, and
 - (b) the installation of the rental items.
- 55.2 The rental items must be of the best quality and workmanship, free from faulty design and defects, suitable for the purpose intended, and conform to the requirements stated in the SOR and any applicable international or country standards.
- 55.3 The Supplier must provide all operating manuals and instructions for the rental items upon delivery and prior to operational acceptance.

56. Retention of Ownership

- 56.1 The Supplier retains full title to the rental items, notwithstanding that the rental items may be leased to, and in the possession of, the Purchaser.

57. Rental Defects

- 57.1 During the term of the lease, the Purchaser will notify the Supplier of any defect in the rental items as soon as practicable after becoming aware of such defect.
- 57.2 The Supplier must, at its own expense, do all things necessary to remedy the defect and must reimburse the Purchaser for any costs incurred in connection with the defect, including the cost of the Purchaser remedying the defect if the Supplier does not do so within a reasonable period following notice of the defect from the Purchaser.
- 57.3 If a defect cannot be remedied, the Supplier must make replacement rental items available for lease to the Purchaser in accordance with the terms of the Contract.

58. Rent

- 58.1 The Purchaser will pay rent for the rental items to the Supplier monthly in arrears in accordance with the Appendix 6 (Revised Price Schedules) and Appendix 7 (Terms and Procedures for Payment) of the Contract Agreement.
- 58.2 The rent is a fixed sum and is not subject to any rise and fall.

59. Duration of Lease

- 59.1 The lease will continue for the period specified in the SOR. If the Purchaser continues to retain possession of the rental items, with the Supplier's consent, beyond the period specified in the Contract, the Purchaser shall be deemed to lease the rental items on a weekly basis on the same terms as the Contract, including any changes necessary to make the terms appropriate for a monthly lease.

60. No Encumbrances

- 60.1 The Purchaser must ensure that, while in its possession,
- (a) the rental items are not sold or otherwise disposed of;
 - (b) the rental items are not shared with, or provided to, nor subleased, licensed, or sublicensed to, any other person; and
 - (c) no encumbrance is created over any rental items without first obtaining the express written permission of the Supplier.
- 60.2 The Supplier is under no obligation to provide approval under clause 60.1.

61. Quiet Enjoyment

- 61.1 If the Purchaser pays the rent for the rental items and duly and punctually complies with all provisions of the Contract, the Purchaser may peaceably possess and enjoy the rental items during the term of the lease without any interruption or disturbance from the Supplier or any person lawfully claiming through the Supplier.
- 61.2 Unless otherwise specified in the Contract,
- (a) the Supplier will be responsible for carrying out all routine and nonroutine maintenance of the rental items that may be required during the term of the lease; and
 - (b) the Supplier will maintain the rental items in good and operable condition.

62. Damage

- 62.1 The Purchaser will endeavor to protect the rental items against loss or damage.
- 62.2 However, the Purchaser will not be responsible for accidental loss of, or damage to, the rental items, and the Supplier will indemnify the Purchaser and the Purchaser group against any claims for such loss or damage.

63. Insurance

- 63.1 The Supplier is responsible, at its own cost, for insuring the rental items for their full replacement value against accidental loss or damage.

64. Termination

- 64.1 At the end of the term of the lease or upon the termination of the Contract for any reason,
- (a) the rental items will be returned to the Supplier subject to fair wear and tear given the conditions under which the rental items were employed;
 - (b) all costs associated with the return and delivery of the rental items from the Purchaser to the Supplier will be borne by the Supplier; and
 - (c) the Supplier may recover from the Purchaser all rent due and owing under the Contract at the date of termination.

Training and Managed Services

65. Application of This Part

- 65.1 To the extent that the Supplier provides the Purchaser with additional services relating to any hardware, whether in conjunction with other services or not, the conditions of clauses 65 to 67 apply in addition to any other terms and conditions of the Contract.

66. Training

- 66.1 The Supplier shall submit a Training Schedule and Training Curriculum to the Purchaser for approval prior to the delivery of any training.
- 66.2 The Purchase shall either
- (a) approve the Training Schedule and Training Curriculum, or
 - (b) provide feedback and details of any required changes to the Training Schedule and Training Curriculum
- within 14 days. The Supplier shall promptly incorporate any required changes and resubmit the Training Schedule and Training Curriculum to the Purchaser.
- 66.3 If the Purchaser wishes to cancel the training, it must give 5 days' notice to the Supplier or pay 50% of the agreed fee.
- 66.4 The maximum number of attendees the Purchaser wishes the attendees to attend each training session must be specified in the SOR. Where the Purchaser requires the number of attendees to a training session to exceed this number, the Supplier must agree to the increase in attendee numbers.
- 66.5 The Supplier shall issue each attendee with a signed certificate of attendance within 14 days of providing training to the Purchaser's personnel.
- 66.6 The Supplier must procure from each attendee a completed Training Assessment Form and provide them to the Purchaser within 7 days of completion of any training. Where the average training score across all attendees for a particular training session is less than 50%, the Supplier must repeat the training with a new trainer at no additional cost to the Purchaser.

67. Managed Services

- 67.1 To the extent specified in the SOR, the Supplier shall provide managed services for the Purchaser, whether the IT hardware was supplied by the Supplier under this Contract or not, at the fee provided for in the Price Schedule.
- 67.2 Prior to providing managed services, the Supplier shall audit all hardware and prepare an asset register of all hardware to be managed under this Contract. The asset register must contain, at a minimum, the make, model number, serial number, date of manufacture, and location of all managed hardware, as well as any other details as specified in the SOR.
- 67.3 The asset register is to be maintained by the Supplier and kept current and up-to-date, reflecting all moves, additions, and removals of the hardware.

- 67.4 The Supplier must make available the asset register for periodic audit by the Purchaser or its nominated agent, and transfer the asset register to the Purchaser at the end of this Contract.
- 67.5 The Supplier shall proactively monitor all hardware managed under this Contract and promptly attend to all faults in accordance with the time frames set out in the SOR.
- 67.6 The Supplier shall keep on hand the minimum number of spare parts if specified in the SOR.
- 67.7 The Supplier may store manuals, tools, and test equipment on site as required for the purposes of the Contract. The Purchaser agrees not to use any such manuals, tools, or test equipment without the Supplier's consent. Unless otherwise specified in the SOR, the Supplier must, at its own cost, take out appropriate insurance for its stored items for their full replacement value against accidental loss or damage.

Hardware Maintenance

68. Application of this Part

- 68.1 To the extent that the Supplier maintains any hardware under this Contract, whether the hardware was supplied by the Supplier under this Contract or not, the conditions of clauses 68 to 75 apply in addition to any other terms and conditions of the Contract.

69. Availability of Maintenance Services

- 69.1 If and to the extent specified in the SOR, the Supplier will provide the Purchaser with hardware maintenance services.
- 69.2 The hardware maintenance services will comply with the requirements of the SOR.

70. Commencement of Maintenance

- 70.1 The initial term of the hardware maintenance services will not commence if the services relate to hardware purchased under this Contract, until the expiry of any relevant warranty period for the hardware.
- 70.2 Any defect rectification required during the warranty period will be provided to the Purchaser by the Supplier free of charge. The hardware maintenance services will commence on the date specified in the contract details and will be renewable as specified in the contract details.

71. Preventative Maintenance

- 71.1 If so specified in the SOR, the Supplier will provide hardware maintenance services in the form of preventative maintenance and will ensure that
 - (a) preventative maintenance is carried out in accordance with the requirements of the SOR; and
 - (b) preventative maintenance is carried out at times specified in the SOR or otherwise at times when the equipment is either not operational or else at times likely to cause the least possible disruption to the Purchaser's business, and in all cases only by prior arrangement with the Purchaser.
- 71.2 The Purchaser will cooperate with the Supplier by providing access and facilities as reasonably necessary to enable the Supplier to provide preventative maintenance to the required standard.

72. Remedial Maintenance

- 72.1 If required in the SOR, the Supplier will provide hardware maintenance services in the form of remedial maintenance. Where the Supplier is required to provide remedial maintenance, it will, after being notified of a fault condition or possible fault condition in the equipment, promptly restore the equipment to good working order and will, as necessary,
- (a) replace or repair parts;
 - (b) comply with any response times specified in the Service Level Agreement;
 - (c) to the extent practical, implement measures to minimize disruption to the Purchaser's operations during maintenance work as specified in SOR or Service Level Agreement; and
 - (d) comply with any other requirements as specified in the SOR or Service Level Agreement.
- 72.2 The Purchaser will cooperate with the Supplier by providing access and facilities as is reasonably required.

73. Maintenance Records

- 73.1 Where required in the SOR, the Supplier will keep full records of its IT hardware maintenance services and will provide copies of those records to the Purchaser within 4 days of request.

74. Excluded Services

- 74.1 The hardware maintenance services do not include any services expressly excluded in the SOR.

75. Third Party Equipment

- 75.1 Equipment which is the subject of the IT hardware maintenance services may consist wholly or partly of hardware or office machines which have not been supplied by the Supplier under this Contract or at all.
- 75.2 For no additional clauses, see Software License Agreement attached to the SOR.

76. Respectful Work Environment

- 76.1 The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.
- 76.2 The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Purchaser or the Engineer at their first written request.

Section 9: Contract Forms

Table of Forms

Notice of Intention for Award of Contract	345
Notification of Award	346
1. Contract Agreement	347
Article 1. Contract Documents	347
Article 2. Contract Price and Terms of Payment	348
Article 3. Effective Date for Determining Time for Operational Acceptance.....	348
Article 4. Communication	349
Article 5. Appendixes.....	349
Appendix 1. Supplier's Representative.....	350
Appendix 2. Adjudicator	351
Appendix 3. List of Approved Sub-Suppliers.....	352
Appendix 4. Categories of Software	353
Appendix 5. Customs Documentation	354
Appendix 6. Revised Price Schedules	355
Appendix 7. Terms and Procedures for Payment.....	356
Appendix 8. Agreed and Finalized Project Plan	357
Appendix 9. List of Documents for Approval and Review.....	358
Appendix 10. Functional Guarantees	359
Appendix 11. Insurance Requirements.....	361
Appendix 12. Price Adjustment	363
Appendix 13. Software License Agreement.....	364
Appendix 14. Schedule of Requirements.....	365
Appendix 15. Minutes of Contract Finalization Discussions and Agreed Contract Amendments.....	366
2 Performance and Advance Payment Security Forms	367
2.1 Performance Security Form (Bank Guarantee).....	368
2.2 Advance Payment Security Form (Bank Guarantee).....	369

- 3 Installation and Acceptance Certificates370**
 - 3.1 Installation Certificate371
 - 3.2 Operational Acceptance Certificate372

- 4 Change Order Procedures and Forms 373**
 - 4.1 Request for Change Proposal Form (Purchaser).....374
 - 4.2 Change Estimate Proposal Form (Supplier).....376
 - 4.3 Estimate Acceptance Form (Purchaser).....377
 - 4.4 Change Proposal Form (Supplier)378
 - 4.5 Change Order Form (Purchaser)380
 - 4.6 Application for Change Proposal Form (Supplier)381

Notice of Intention for Award of Contract

[on letterhead paper of the Purchaser]

[date of notification]

To: [name of the Bidder]
 Attention: [insert name of the Bidder's authorized representative]
 Address: [insert address of the Bidder's authorized representative]
 Telephone/Fax numbers: [insert telephone/fax numbers of the Bidder's authorized representative]
 E-mail Address: [insert e-mail address of the Bidder's authorized representative]

This is to notify you of our intention to award the contract [insert name of the contract and identification number, as given in the Bid Data Sheet]. You have [insert number of days as specified in ITB 52.1 of the BDS] days, from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid, and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 58.1.

The summary of the evaluation are as follows:

- 1. List of Bidders** [insert names of all bidders that submitted a bid together with the corresponding bid price at opening and evaluated bid price (if applicable)]

Name of Bidder	Bid Price as Read Out at Opening	Evaluated Bid Price

2. Reason/s Why Your Bid Was Unsuccessful

[Provide reasons separately to each unsuccessful bidder why its bid was unsuccessful]

3. The Successful Bidder

Name of Bidder:	
Address:	
Contract Price:	
Duration of Contract:	
Scope of the Contract Awarded:	
Amount Performance Security Required:	

Authorized Signature:

Name and Title of Signatory:.....

Name of Agency:

Note:

The Purchaser should send this notification simultaneously to each Bidder that submitted a bid. Notice of Intention for Award of Contract shall only be included if standstill provision is applicable in accordance with ITB 52.1

Notification of Award

[on letterhead of the Purchaser]

Letter of Acceptance

[date]

To: [name and address of the supplier]

Subject: Contract No. [please specify]

This is to notify you that your Bid dated [date] for execution of the [name of the contract and identification number, as given in the Bid Data Sheet] for the Accepted Contract Amount of the equivalent of [amount in words and figures and name of currency], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract and any additional security required as a result of the evaluation of your bid, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature:
Name and Title of Signatory:.....
Name of Agency:

Attachment: Contract Agreement

1. Contract Agreement

THIS CONTRACT AGREEMENT is made the [nth] day of [month & Year]
BETWEEN

- (1) [Name of Purchaser], a corporation incorporated under the laws of [country of Purchaser] and having its principal place of business at [address of Purchaser] (hereinafter called “the Purchaser”),
and
(2) [Name of Supplier], a corporation incorporated under the laws of [country of Supplier] and having its principal place of business at [address of Supplier] (hereinafter called “the Supplier”):

WHEREAS the *Purchaser* desires to engage the *Supplier* to supply, install, achieve operational acceptance of, and support the following information technology (IT) products and services [brief description of the IT Products and Services] (“the IT Products and Services”), and the *Supplier* has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement,

NOW IT IS HEREBY AGREED as follows:

Article 1.

Contract Documents

1.1 Contract Documents (Reference GCC Clause 2)

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

- (a) This Contract Agreement and the Appendixes attached to the Contract Agreement
- (b) Schedule of Requirements (including Implementation Schedule)
- (c) Particular Conditions of Contract
- (d) General Conditions of Contract (GCC)
- (e) The Supplier’s bid and original Price Schedules

[Add here any other documents. Check consistency with GC 2.2 and amend as appropriate]

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 14 (Schedule of Requirements) shall prevail over all provisions of the Contract Agreement and the other Appendixes attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2.**Contract Price and
Terms of Payment****2.1 Contract Price (GCC Clause 11)**

The Purchaser hereby agrees to pay to the Supplier the Contract Price in consideration of the performance by the Supplier of its obligations under the Contract. The Contract Price shall be the aggregate of *[amount of foreign currency A in words]*, *[amount in figures]*, plus *[amount of foreign currency B in words]*, *[amount in figures]*, plus *[amount of local currency in words]*, *[amount in figures]*, as specified in the Grand Summary Price Schedule.

The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed Price Schedules, including the terms and conditions of the associated International Commercial Terms (Incoterms), and the taxes, duties, and related levies if and as identified.

2.2 Terms of Payment (GCC Clause 12)

The terms and procedures of payment according to which the Purchaser will reimburse the Supplier are given in the in Appendix 7 (Terms and Procedures for Payment) hereto.

The Purchaser may instruct its bank pursuant to GC Clause 12.5 to issue an irrevocable confirmed documentary credit made available to the Supplier in a bank in the country of the Supplier. The credit shall be for an amount of *[insert an amount equal to the total payment for the foreign currency portion of the Contract Price for products supplied from outside the Purchaser's country less the advance payment to be made for products supplied from abroad]*; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, International Chamber of Commerce (ICC) Publication No. 500.

2.3 In the event that the amount payable under 2.2 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Purchaser shall arrange for the documentary credit to be amended accordingly.

[The Purchaser may want to insert a similar provision for the payment of products supplied from within the Purchaser's country]

Article 3.**Effective Date for
Determining Time for
Operational Acceptance****3.1 Effective Date (GCC Clause 1.1)**

The time allowed for supply, installation, and achieving operational acceptance of the IT Products and Services shall be determined from the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for, and on behalf of, the Purchaser and the Supplier.
- (b) The Supplier has submitted to the Purchaser the Advance Payment Security and Performance Security, in accordance with GCC Clause 13.2 and GCC Clause 13.3.
- (c) The Purchaser has paid the Supplier the advance payment, in accordance with GCC Clause 13.2.
- (d) *[Specify here any other conditions, for example, opening/confirmation of Letter of Credit]*.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 above are not fulfilled within 2 months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the time for achieving operational acceptance and/or other relevant conditions of the Contract.

- Article 4.** 4.1 The address of the Purchaser for notice purposes, pursuant to GC 4.1 is: *[Insert address]*.
- Communication** 4.2 The address of the Supplier for notice purposes, pursuant to GC 4.1 is: *[Insert address]*.
- Article 5.** 5.1 The applicable appendixes listed below shall be deemed to form an integral part of this Contract Agreement.
- Appendixes** 5.2 Reference in the Contract to any appendix shall mean the applicable appendixes listed below and attached to this Contract Agreement and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Purchaser and the Supplier have caused this agreement to be duly executed by their duly authorized representatives the day and year first above written.

For and on behalf of the Purchaser

Signed:
in the capacity of *[title or other appropriate designation]*

in the presence of

For and on behalf of the Supplier

Signed:
in the capacity of *[title or other appropriate designation]*

in the presence of

CONTRACT AGREEMENT

dated the *[number]* day of *[month]*, *[year]*

BETWEEN

[name of Purchaser], "the Purchaser"

and

[name of Supplier], "the Supplier"

APPENDIXES *[Purchaser to list all appendixes and add the statement (not applicable) if that particular appendix does not apply to this Contract]*

- Appendix 1. Supplier's Representative [refer GC 18.2(b)]
- Appendix 2. Adjudicator [refer GC 52(b)]
- Appendix 3. List of Approved Subcontractors [refer GC 20.1]
- Appendix 4. Categories of Software [refer GC Definition & Section IV Form]
- Appendix 5. Custom Materials [refer GC Definition & Section IV Form]
- Appendix 6. Revised Price Schedules (if any)
- Appendix 7. Terms and Procedures for Payment [refer GC 12.1]
- Appendix 8. Agreed and Finalized Project Plan [refer GC 19.1]
- Appendix 9. List of Documents for Approval and Review [refer GC 21.3(a)]
- Appendix 10. Functional Guarantees [refer GC 30.1]
- Appendix 11. Insurance Requirements [refer GC 38.1]
- Appendix 12. Price Adjustment [refer ITB GC 11.2]
- Appendix 13. Software License Agreement [refer GC 16.3]
- Appendix 14. Schedule of Requirements [refer GC 19.1]
- Appendix 15. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

Appendix 1. Supplier's Representative

In accordance with General Conditions of Contract (GCC) Clause 1.1 (b) (iv), the Supplier's Representative is:

Name: *[name and provide title and address further below or state "to be nominated within 14 days of the effective date"]*

Title: *[if appropriate, title]*

In accordance with GCC Clause 4.3, the Supplier's addresses for notices under the Contract are:

Address of the Supplier's representative: *[as appropriate, personal delivery, postal, cable, telegraph, telex, facsimile, e-mail, and/or electronic data interchange addresses.]*

Fallback address of the Supplier: *[as appropriate, personal delivery, postal, cable, telegraph, telex, facsimile, e-mail, and/or electronic data interchange addresses.]*

Appendix 2. Adjudicator

In accordance with General Conditions of Contract (GCC) Clause 1.1, the agreed-upon adjudicator is:

Name: *[name]*

Title: *[title]*

Address: *[postal address]*

Telephone: *[telephone number]*

In accordance with GCC Clause 6.1.3, the agreed-upon fees and reimbursable expenses are:

Hourly Fees: *[hourly fees]*

Reimbursable Expenses: *[list reimbursables]*

Pursuant to GCC Clause 6.1.4, if at the time of Contract signing, agreement has not been reached between the Purchaser and the Supplier, an adjudicator will be appointed by the appointing authority named in the Special Conditions of Contract.

Appendix 3. List of Approved Subcontractors

The Purchaser has approved use of the following Subcontractors nominated by the Supplier for carrying out the item or component of the IT Products and Services indicated. Where more than one Subcontractor is listed, the Supplier is free to choose between them, but it must notify the Purchaser of its choice sufficiently in advance of the time when the subcontracted work needs to commence to give the Purchaser reasonable time for review. In accordance with General Conditions of Contract (GCC) Clause 20.1, the Supplier is free to submit proposals for Subcontractors for additional items from time to time. No subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Purchaser and their names have been added to this list of Approved Subcontractors, subject to GCC Clause 20.3.

[Specify item, approved Subcontractors, and their place of registration that the Supplier proposed in the corresponding attachment to its bid and that the Purchaser approves that the Supplier engage during the performance of the Contract. Add additional pages as necessary.]

[illegible]

Appendix 4. Categories of Software

The following table assigns each item of software supplied and installed under the Contract to one of the three categories: (i) informational technology (IT) products and services software, (ii) general-purpose Software, or (iii) application software; and to one of the two categories: (i) standard software or (ii) custom software.

[illegible]

Appendix 5. Customs Documentation

The following table specifies the custom materials the Supplier will provide under the Contract.

[illegible]

Appendix 6. Revised Price Schedules

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier's bid. These Revised Price Schedules reflect any corrections or adjustments to the Supplier's bid price, pursuant to the Instructions to Bidders (ITB) Clauses 22.3, 34.4, and 42.1.1.

Appendix 7. Terms and Procedures for Payment

Subject to the provisions of General Conditions of Contract (GCC) Clause 12 (Terms of Payment), the Purchaser shall pay the Contract Price to the Supplier according to the categories and in the manner specified below. Only the categories Advance Payment and Complete System Integration relate to the entire Contract Price. In other payment categories, the term “total Contract Price” means the total cost of IT Products and Services under the specific payment category. Within each such category, the Contract Implementation Schedule may trigger pro-rata payments for the portion of the total Contract Price for the category corresponding to the IT Products and Services actually delivered, installed, or operationally accepted at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.

(a) Advance Payment

Ten percent (10%) of the entire Contract Price, exclusive of all recurrent costs, shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 13.2.

(b) Information Technology Products, with the exception of Custom Software and Custom Materials

Sixty percent (60%) of the total or pro-rata Contract Price for this category against delivery

Ten percent (10%) of the same price against installation

Ten percent (10%) of the same price against operational acceptance

(c) Custom Software and Custom Materials (if applicable)

Sixty percent (60%) of the total or pro-rata Contract Price for this category against installation

Twenty percent (20%) of the same price against operational acceptance

(d) Support Services Other than Training:

Eighty percent (80%) of the pro-rata Contract Price for services performed will be paid monthly in arrears, on submission and Purchaser's approval of invoices.

(e) Training

Thirty percent (30%) of the total Contract Price for training services at the start of the full training program

Fifty percent (50%) of the pro-rata Contract Price for training services performed will be paid monthly in arrears, on submission and approval of appropriate invoices.

(f) Product and/or Services Integration (if required)

Ten percent (10%) of the entire Contract Price, exclusive of all recurrent costs, as final payment against operational acceptance of the IT Products and Services as an integrated whole

(g) Recurrent Costs

One hundred percent (100%) of the price of the services actually delivered will be paid monthly in arrears, on submission and Purchaser's approval of invoices.

Appendix 8. Agreed and Finalized Project Plan

[Agreed and Finalized Plan to be inserted]

Appendix 9. List of Documents for Approval and Review

Pursuant to General Conditions (GC) Sub-Clause 21.3, the Supplier shall prepare, or cause its Subcontractor to prepare, and present to the project manager the following documents for the following:

A. Approval

1. Etc.

B. Review

1. Etc.

Appendix 10. Functional Guarantees

[Insert or attach functional guarantee]

1. General

This Appendix sets out the

- (a) functional guarantees referred to in General Conditions of Contract (GCC) Clause 30 (Functional Guarantees);
- (b) preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below;
- (c) minimum level of the functional guarantees; and
- (d) formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Supplier gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

[List any conditions for the carrying out of the Guarantee Test referred to in General Conditions (GC) Sub-Clause 25.2.]

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Supplier guarantees as follows:

3.1 Production Capacity

[List here the production capacity that the Supplier is to guarantee, making sure to use, as functional guarantees, the figures offered by the Supplier in its bid.]

3.2 Raw Materials and Utilities Consumption

[List here the guaranteed items of consumption per unit of production (e.g., kilogram, ton, kilocalorie, kilowatt-hour, etc.) that the Supplier is to guarantee, making sure to use, as functional guarantees, the figures offered by the Supplier in its bid.]

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Supplier elects to pay liquidated damages to the Purchaser in lieu of making changes, modifications, and/or additions to the facilities, pursuant to GC Sub-Clause 28.3, then the Supplier shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete 1% of the deficiency in the production capacity of the facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete 1%.

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

[To be specified in the appropriate wording for the type of IT Products and Services if there are consumption guarantees.]

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para.. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Supplier elects to pay liquidated damages to the Purchaser in lieu of making changes, modifications, and/or additions to the facilities pursuant to GC Sub-Clause 28.3, then the Supplier shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete 1% of the excess consumption of the facilities, or part thereof, of less than a complete 1%.

[The rate of liquidated damages specified in para.. 4.1 and 4.2 above shall be at least equivalent to the rate specified in Section 3 (Evaluation and Qualification Criteria [EQC]), for the comparison of functional guarantees provided by the Bidders.]

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Supplier, the Supplier shall at its own cost make good any deficiencies until the facilities reach any of such minimum performance levels, pursuant to GC Sub-Clause 28.2:

- (a) production capacity of the facilities attained in the guarantee test: 95% of the guaranteed production capacity (the values offered by the Supplier in its bid for functional guarantees represents 100%), and/or
- (b) average total cost of consumption of all the raw materials and utilities of the facilities: 105% of the guaranteed figures (the figures offered by the Supplier in its bid for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to para. 4.3 above, the Supplier's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed _____.

Appendix 11. Insurance Requirements

Insurances to Be Taken Out by the Supplier

In accordance with the provisions of General Conditions (GC) Clause 38.1, the Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring while in transit from the Supplier's or Manufacturer's works or stores until arrival at the site, to the facilities (including spare parts there for), and to the equipment to be provided by the Supplier or its Subcontractors.

Amount	Deductible Limits	Parties Insured	From	To
a. [in currency(ies)]		[names]	[place]	[place]

(b) Installation All Risks Insurance

Covering physical loss of, or damage to, the facilities at the site occurring prior to completion of the facilities, with extended maintenance coverage for the Supplier's liability in respect of any loss or damage occurring during the defect liability period while the Supplier is on the site for the purpose of performing its obligations during the defect liability period.

Amount	Deductible Limits	Parties Insured	From	To
a. [in currency(ies)]		[names]	[place]	[place]

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Purchaser's personnel) and loss of, or damage to, property (including the Purchaser's property and any parts of the facilities that have been accepted by the Purchaser) occurring in connection with the supply and installation of the facilities.

Amount	Deductible Limits	Parties Insured	From	To
a. [in currency(ies)]		[names]	[place]	[place]

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the facilities or any parts thereof are executed.

(f) Purchaser's Liability

In accordance with the statutory requirements applicable in any country where the facilities or any parts thereof are executed.

(g) Other Insurances

The Supplier is also required to take out and maintain at its own cost the following insurances:

Details:

Amount	Deductible Limits	Parties Insured	From	To
<i>a. [in currency(ies)]</i>		<i>[names]</i>	<i>[place]</i>	<i>[place]</i>

The Purchaser shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GC Sub-Clause 38.1, except for the Third Party Liability, Workers’ Compensation, and Purchaser’s Liability Insurances, and the Supplier’s Subcontractors shall be named as co-insureds under all insurance policies taken out by the Supplier pursuant to GC Sub-Clause 38.1, except for the Cargo, Workers’ Compensation, and Purchaser’s Liability Insurances. All insurers’ rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Appendix 12. Price Adjustment

Prices payable to the Supplier for the items listed below, in accordance with the Contract, shall be subject to adjustment during performance of the Contract in accordance with the following formula: The Supplier subsequently appointed shall submit an updated list of the specified items showing the Manufacturer's Recommended Retail Price and the percentage of positive or negative movement in that price at that date. The Purchaser will provide the dates to be used.

Date	Items Subject to Adjustable Pricing	Manufacturer's Recommended Retail Price for a Unit of that Item at the Specified Date [currency]	Manufacturer's Recommended Retail Price Identifier	Percentage Bidders Margin on Manufacturer's Recommended Retail Price
[Base Date]	Item 1		Base Price	%
[Date 2]			Price Date 2	
[Date 3]			Price Date 3	
Etc.			Etc.	
[Base Date]	Item 2		Base Price	%
[Date 2]			Price Date 2	
[Date 3]			Price Date 3	
Etc.			Etc.	

Price Adjustment Formula

Price per unit to be paid by Purchaser = (Base Price x Price Date Used / Base Price) + Bidders Margin on Price Date Used

Appendix 13. Software License Agreement

[Agreed license to be inserted or attached]

Appendix 14. Schedule of Requirements

[SOR to be attached or inserted]

Appendix 15. Minutes of Contract Finalization Discussions and Agreed Contract Amendments

The attached Contract amendments (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the relevant clauses in the General Conditions (GC), Particular Conditions (PC), Schedule of Requirements (SOR), or other parts of this Contract as defined in General Conditions of Contract (GCC) Clause 1.1.

2. Performance and Advance Payment Security Forms

2.1 Performance Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Purchaser]*

Date: *[Date]*

PERFORMANCE GUARANTEE No.: *[Performance Guarantee Number]*

We have been informed that on *[date of award]* you awarded Contract No. *[Contract number]* for *[title and/or brief description of the Contract]* (hereinafter called “the Contract”) to *[complete name of Supplier]* (hereinafter called “the Supplier”). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[amount(s)]*¹ *in figures and words* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing to the Supplier the Operational Acceptance Certificate for the information technology (IT) products and services, the value of this guarantee will be reduced to any sum(s) not exceeding *[amount(s) in figures and words]*. This remaining guarantee shall expire no later than *[number and select of months/of years (of the warranty period that needs to be covered by the remaining guarantee)]* from the date of the Operational Acceptance Certificate for the IT Products and Services,² and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.³

[Signature(s)]

Note to Bidder:

If the bank issuing performance security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country.

¹ The Bank shall insert the amount(s) specified and denominated in the Particular Conditions (PC) for General Conditions of Contract (GCC) Clauses 13.3(a) and 13.3(d) respectively, either in the currency(ies) of the Contract or in any freely convertible currency acceptable to the Purchaser.

² In this sample form, the formulation of this paragraph reflects the usual PC provisions for GCC Clause 13.3. However, if the PC for GCC Clauses 13.3(a) and 13.3(d) varies from the usual provisions, this paragraph, and possibly the previous paragraph, need to be adjusted to precisely reflect the provisions specified in the PC.

³ Or the purchaser may use “Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded” as appropriate.

2.2 Advance Payment Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: [Name and Address of Purchaser]

Date: [Date]

ADVANCE PAYMENT GUARANTEE No.: [Advance Payment Guarantee Number]

We have been informed that on [date of award] you awarded Contract No. [Contract number] for [title and/or brief description of the Contract] (hereinafter called "the Contract") to [complete name of Supplier] (hereinafter called "the Supplier"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of [amount in numbers and words, for each currency of the advance payment] is to be made to the Supplier against an advance payment guarantee.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total the amount of the advance payment referred to above, upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligations under the Contract because the Supplier used the advance payment for purposes other than toward the proper execution of the Contract.

It is a condition for any claim and payment to be made under this guarantee that the advance payment referred to above must have been received by the Supplier on its account [number and domicile of the account].

For each payment after the advance payment that you will make to the Supplier under this Contract, the maximum amount of this guarantee shall be reduced by the ninth part of such payment.¹ At the time at which the amount guaranteed becomes nil, this guarantee shall become null and void, whether the original is returned to us or not.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revisions, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.²

[Signature(s)]

Note to Bidder:

If the bank issuing advance payment security is located outside the Purchaser's country, it shall be counter-guaranteed or encashable by a bank in the Purchaser's country.

¹ This sample formulation assumes an Advance Payment of 10% of the Contract Price excluding Recurrent Costs, and implementation of the main option proposed by this SBD in the Particular Conditions (PC) for General Conditions of Contract (GCC) Clause 13.2(b) for gradually reducing the value of the Advance Payment Security. If the Advance Payment is other than 10%, or if the reduction in amount of the security follows a different approach, this paragraph would need to be adjusted and edited accordingly.

² Or the Purchaser may use "Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded" as appropriate.

3. Installation and Acceptance Certificates

3.1 Installation Certificate

Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]

IFB: [title and number of IFB]

Contract: [name and number of Contract]

To: [name and address of Supplier]

Dear Sir or Madam:

Pursuant to General Conditions of Contract (GCC) Clause 26 (Installation of the IT Products and Services) of the Contract entered into between yourselves and the [name of Purchaser] (hereinafter the “Purchaser”) dated [date of Contract], relating to the [brief description of the IT Products and Services], we hereby notify you that the IT Products and Services (or a subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the IT Products and Services (or relevant subsystem or major component):
2. Date of Installation:

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve operational acceptance of the IT Products and Services in accordance with the Contract nor of your obligations during the warranty period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [state “Project Manager” or state the title of a higher level authority in the Purchaser’s organization]

3.2 Operational Acceptance Certificate

Date: [date]
Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
IFB: [title and number of IFB]
Contract: [name of information technology (IT) products and services or subsystem and number of Contract]

To: [name and address of Supplier]

Dear Sir or Madam:

Pursuant to General Conditions of Contract (GCC) Clause 27 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the [name of Purchaser] (hereinafter the “Purchaser”) dated [date of Contract], relating to the [brief description of the IT Products and Services], we hereby notify you the IT Products and Services (or the subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Purchaser hereby takes over the IT Products and Services (or the subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the IT Products and Services (or subsystem or major component):
2. Date of Operational Acceptance:

This letter shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the warranty period.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [state “Project Manager” or higher level authority in the Purchaser’s organization]

4. Change Order Procedures and Forms

Date: *[date]*
 Loan/Credit Number: *[loan or credit number from Invitation for Bids (IFB)]*
 IFB: *[title and number of IFB]*
 Contract: *[name of information technology (IT) products and services or sub-system and number of contract]*

General

This section provides samples of procedures and forms for carrying out changes to the IT Products and Services during the performance of the Contract in accordance with General Conditions of Contract (GCC) Clause 43 (Changes to the IT Products and Services) of the Contract.

Change Order Log

The Supplier shall keep an up-to-date Change Order Log to show the current status of requests for change and change orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Supplier shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Purchaser.

References to Changes

- (1) Request for Change Proposals (including Application for Change Proposals) shall be serially numbered CR-nnn, commencing CR-001.
- (2) Change Estimate Proposals shall be numbered CN-nnn, commencing CN-001.
- (3) Estimate Acceptances shall be numbered CA-nnn, commencing CA-001.
- (4) Change Proposals shall be numbered CP-nnn, commencing CP-001.
- (5) Change Orders shall be numbered CO-nnn, commencing CO-001.

On all forms, the numbering shall be determined by the original CR-nnn.

Annexes

- 4.1 Request for Change Proposal Form
- 4.2 Change Estimate Proposal Form
- 4.3 Estimate Acceptance Form
- 4.4 Change Proposal Form
- 4.5 Change Order Form
- 4.6 Application for Change Proposal Form

4.1 Request for Change Proposal Form (Purchaser)

(Purchaser's Letterhead)

Date: [date]
 Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
 IFB: [title and number of IFB]
 Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Supplier and address]

Attention: [name and title]

Dear Sir or Madam:

With reference to the above-referenced Contract, you are requested to prepare and submit a Change Proposal for the Change noted below, in accordance with the following instructions within [number] days of the date of this letter.

1. Title of Change: [title]
2. Request for Change No./Rev.: [request number/revision]
3. Originator of Change: [select Purchaser/Supplier (by Application for Change Proposal), and add name of originator]
4. Brief description of Change: [description]
5. Subsystem or major component affected by requested Change): [description]
6. Technical documents and/or drawings for the request of Change:

Document or Drawing No.	Description
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7. Detailed conditions or special requirements of the requested Change: [description]
8. Procedures to be followed:
 - (a) Your Change Proposal will have to show what effect the requested Change will have on the Contract Price.
 - (b) Your Change Proposal shall explain the time it will take to complete the requested Change and the impact, if any, it will have on the date when operational acceptance of the entire IT Products and Services agreed in the Contract.
 - (c) If you believe implementation of the requested Change will have a negative impact on the quality, operability, or integrity of the IT Products and Services, please provide a detailed explanation, including other approaches that might achieve the same impact as the requested Change.
 - (d) You should also indicate what impact the Change will have on the number and mix of staff needed by the Supplier to perform the Contract.
 - (e) You shall not proceed with the execution of work related to the requested Change until we have accepted and confirmed the impact it will have on the Contract Price and the Implementation Schedule in writing.

9. As a next step, please respond using the Change Estimate Proposal form, indicating how much it will cost you to prepare a concrete Change Proposal that will describe the proposed approach for implementing the Change and all its elements, and will also address the points in para. 8 above pursuant to General Conditions of Contract (GCC) Clause 43.2. Your Change Estimate Proposal should contain a first approximation of the proposed approach, and implications for schedule and cost, of the Change.

For and on behalf of the *Purchaser*

Signed:

Date:

in the capacity of: *[state "Project Manager" or higher level authority in the Purchaser's organization]*

4.2 Change Estimate Proposal Form (Supplier)

(Supplier's Letterhead)

Date: [date]
 Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
 IFB: [title and number of IFB]
 Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Purchaser and address]

Attention: [name and title]

Dear Sir or Madam:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change, in accordance with General Conditions of Contract (GCC) Clause 43.2 of the Contract. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Clause 43.2, is required before we proceed to prepare the actual Change Proposal including a detailed estimate of the cost of implementing the Change itself.

1. Title of Change: [title]
2. Request for Change No./Rev.: [request number/revision]
3. Brief description of Change (including proposed implementation approach): [description]
4. Schedule Impact of Change (initial estimate): [description]
5. Initial cost estimate for implementing the Change: [initial cost estimate]
6. Cost for preparation of Change Proposal: [cost in the currencies of the Contract, as detailed below in the breakdown of prices, rates, and quantities]

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: [state "Supplier's Representative" or other higher level authority in the Supplier's organization]

4.3 Estimate Acceptance Form (Purchaser)

(Purchaser's Letterhead)

Date: [date]
Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
IFB: [title and number of IFB]
Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Supplier and address]

Attention: [name and title]

Dear Sir or Madam:

We hereby accept your Change Estimate and agree that you should proceed with the preparation of a formal Change Proposal.

1. Title of Change: [title]
2. Request for Change No./Rev.: [request number/revision]
3. Change Estimate Proposal No./Rev.: [proposal number/revision]
4. Estimate Acceptance No./Rev.: [estimate number/revision]
5. Brief description of Change: [description]
6. Other terms and conditions:

In the event that we decide not to order the Change referenced above, you shall be entitled to compensation for the cost of preparing the Change Proposal up to the amount estimated for this purpose in the Change Estimate Proposal, in accordance with General Conditions of Contract (GCC) Clause 43 of the General Conditions of Contract.

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [state "Project Manager" or higher level authority in the Purchaser's organization]

4.4 Change Proposal Form (Supplier)

(Supplier's Letterhead)

Date: [date]
 Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
 IFB: [title and number of IFB]
 Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Purchaser and address]

Attention: [name and title]

Dear Sir or Madam:

In response to your Request for Change Proposal No. [number], we hereby submit our proposal as follows:

1. Title of Change: [name]
2. Change Proposal No./Rev.: [proposal number/revision]
3. Originator of Change: [select Purchaser/Supplier, and add name]
4. Brief description of Change: [description]
5. Reasons for Change: [reason]
6. The IT Products and Services subsystem, major component, or equipment that will be affected by the requested Change: [description]
7. Technical documents and/or drawings for the requested Change:

Document or Drawing No.	Description
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8. Estimate of the increase/decrease to the Contract Price resulting from the proposed Change: [amount in currencies of Contract], as detailed below in the breakdown of prices, rates, and quantities.
 Total lump sum cost of the Change:
 Cost to prepare this Change Proposal (i.e., the amount payable if the Change is not accepted, limited as provided by General Conditions of Contract (GCC) Clause 39.2.6):
9. Additional time for achieving operational acceptance required due to the Change: [amount in days/weeks]
10. Effect on the functional guarantees: [description]
11. Effect on the other terms and conditions of the Contract: [description]
12. Validity of this Proposal: for a period of [number] days after receipt of this Proposal by the Purchaser

13. Procedures to be followed:
- (a) You are requested to notify us of your acceptance, comments, or rejection of this detailed Change Proposal within *[number]* days from your receipt of this Proposal.
 - (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: *[state "Supplier's Representative" or other higher level authority in the Supplier's organization]*

4.5 Change Order Form (Purchaser)

(Purchaser's Letterhead)

Date: [date]
 Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
 IFB: [title and number of IFB]
 Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Supplier and address]

Attention: [name and title]

Dear Sir or Madam:

We hereby approve the Change Order for the work specified in Change Proposal No. [number], and agree to adjust the Contract Price, Time for Completion, and/or other conditions of the Contract in accordance with General Conditions of Contract (GCC) Clause 39 of the Contract.

1. Title of Change: [name]
2. Request for Change No./Rev.: [request number/revision]
3. Change Order No./Rev.: [order number/revision]
4. Originator of Change: [select Purchaser /Supplier, and add name]
5. Authorized price for the Change:
 Ref. No.: [number] Date: [date]
 [amount in foreign currency A] plus [amount in foreign currency B] plus [amount in foreign currency C] plus [amount in local currency]
6. Adjustment of time for achieving operational acceptance: [amount and description of adjustment]
7. Other effects, if any: [state "None" or provide description]

For and on behalf of the Purchaser

Signed:

Date:

in the capacity of: [state "Project Manager" or higher level authority in the Purchaser's organization]

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: [state "Supplier's Representative" or higher level authority in the Supplier's organization]

4.6 Application for Change Proposal Form (Supplier)

(Supplier's Letterhead)

Date: [date]
Loan/Credit Number: [loan or credit number from Invitation for Bids (IFB)]
IFB: [title and number of IFB]
Contract: [name of information technology (IT) products and services or sub-system or number of Contract]

To: [name of Purchaser and address]

Attention: [name and title]

Dear Sir or Madam:

We hereby propose that the below-mentioned work be treated as a Change to the IT Products and Services.

1. Title of Change: [name]
2. Application for Change Proposal No./Rev.: [number/revision] dated [date]
3. Brief description of Change: [description]
4. Reasons for Change: [description]
5. Order of magnitude estimation: [amount in currencies of the Contract]
6. Schedule Impact of Change: [description]
7. Effect on functional guarantees, if any: [description]
8. Appendix: [titles (if any); otherwise, state "None"]

For and on behalf of the Supplier

Signed:

Date:

in the capacity of: [state "Supplier's Representative" or higher level authority in the Supplier's organization]

User Guide for Procurement of Information Technology Products and Services

Standard Bidding Document

This user's guide covers the Asian Development Bank's *Standard Bidding Document for the Procurement of Information Technology Products and Services* using a single-stage: one-envelope or a two-stage bidding procedure. The guide facilitates successful installation, integration, and operation of a range of information technology applications—from straightforward supply and maintenance of technology products and services, to complex development, integration, and operation of information systems.

About the Asian Development Bank

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members—49 from the region. Its main instruments for helping its developing members are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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