

INSTRUCTIONS TO BIDDERS

PROVISION OF _____

RP NO. XXX

Sample
Month/Year

ASIAN DEVELOPMENT BANK

6 ADB AVENUE, MANDALUYONG CITY, 1550 METRO MANILA, PHILIPPINES

P.O. BOX 789, 0980 MANILA, PHILIPPINES

TEL. NO. (632) 632____ / (632) 632____; FAX NO. (632) 636____



Asian Development Bank

INSTRUCTIONS TO BIDDERS

PROVISION OF _____

A. General

1. Scope of Bid

- 1.1. The Asian Development Bank (hereinafter referred to as "ADB") wishes to receive bids from prospective Bidders for the Provision of _____ for ADB (hereinafter referred to as the "Services").
- 1.2. The Contractor shall provide ADB with the most reliable and efficient Services to host and maintain ADB's _____ in accordance with the policies, standards and procedures established by ADB. ADB will evaluate the performance of the Contractor in carrying out these Services against the standards set forth in the Work Performance Statement (see **Appendix 1**).
- 1.3. The Services shall be complete in all respect, and shall include the costs of supplies, materials, labor, tools and equipment, supervision, transportation, configuration and other costs incidental thereto.
- 1.4. The Successful Bidder will be contracted for an initial period of twelve (12) months, subject to yearly renewal on mutually agreed upon terms and conditions, and extendible up to a maximum of five (5) years.
- 1.5. The sealed bids should be completed and submitted to ADB in accordance with the provisions contained in the "Instructions to Bidders".

2. Qualifications of the Bidder

2.1. To be qualified for the Bidding, the Bidder must:

- (i) Have the nationality of eligible country in accordance with **Appendix 11** List of ADB Eligible Member Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen, or is constituted, or incorporated, and operates in conformity with the provisions of the Laws of that country;
- (ii) Have independent legal existence as a validly registered company, with a specialization in providing web hosting Services and other related Services;
- (iii) Have at least five ongoing and/or clients with similar scope/nature of Services rendered as describe in Appendix 1 (please provide documentary proof and contact persons for each project attached to the Technical Bid); and
- (iv) Not be under a declaration or record of ineligibility for corrupt and/or fraudulent practices issued or kept by ADB in accordance with Sub-Clause 2.3 (iii).

- 2.2. In the case of joint ventures (JV), the qualifications and experience of all firms in the JV will be considered as if the JV was a single bidder. Each firm in the JV must be a legally registered commercial enterprise established in the business of providing the required Services or a subsidiary of a legally registered company. ADB will require the identification of the JV partners and either a copy of the agreement entered into by the JV partners or the commitment to enter into a joint venture agreement (see Clause 8.1.vi). The Contract with ADB must be signed so as to be legally binding on all partners, while only one of the firms in the JV arrangement shall be authorized by other partner(s) to receive payments and instructions for and on behalf of any and/or all partners of the JV.
- 2.3. ADB's Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, suppliers, and contractors under ADB-financed contracts, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:
- (i) defines, for the purposes of this provision, the terms set forth below as follows:
 - (a) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
 - (b) A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
 - (c) A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
 - (d) A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
 - (ii) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
 - (iii) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.
 - (iv) sanction will include but not be limited to the forfeiture of the performance security depending what stage of the project when collusion was discovered.

- (v) will have the right to inspect the accounts and records of the Contractor relating to the performance of the Contract and to have them audited by auditors appointed by ADB.
- (vi) all Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in a bidding process, if they:
 - (a) have controlling shareholders in common; or
 - (b) receive or have received any direct or indirect subsidy from any of them;
 - (c) have the same legal representative for purposes of a bid; or
 - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on a bid of another Bidder, or influence the decisions of ADB regarding the bidding process;
 - (e) submit more than one (1) bid in the bidding process, except where alternative offers may be permitted under the bidding documents; this does not limit the participation of subcontractors in more than one bid, or Bidders and subcontractors in more than one bid, or as Bidders and subcontractors simultaneously; or
 - (f) participated as a consultant in preparing the design or technical specifications of the goods and related Services or works that are the subject of a bid.

2.4. Penalties on Collusion by Bidders

- (i) If any Bidder is found to have colluded with other Bidders to fix the bid prices prior to award of Contract, the Bidder shall be disqualified to bid for any future projects of ADB.
- (ii) If the collusion with other Bidders to fix the bid prices is discovered after award of Contract, ADB has the right to impose the following penalties on the successful Bidder:
 - (a) The Contract shall be terminated by ADB immediately.
 - (b) The Performance Security shall be withheld by ADB and will be called upon for deduction to meet all costs that are incurred due to termination of the Contract and re-bid processes.
 - (c) In addition, the successful Bidder shall be disqualified to bid for any future projects of ADB.

3. Bid Procedure

- 3.1. Each Bidder shall submit only one bid. A Bidder who submits or participates in more than one bid will be disqualified.
- 3.2. **A single stage - single envelope** bidding procedure shall be followed wherein; Bidders submit one sealed envelope containing the Technical (one original and one duplicate) and the Financial Bids (one original and one duplicate) enclosed together in an outer single envelope (refer to *Clause 14*).
- 3.3. The Technical Bids are evaluated by ADB to determine technical compliance of the Bidders without reference to price. No amendments or changes to the Technical Bids are permitted. The Technical Bids will be evaluated based on a "Weighted – Points System" Evaluation Framework established by ADB and as defined in *Clause 19.6*. Bidders must be able to pass all the specified requirements to be considered as technically compliant. Technical Bids which do not conform to the specified requirements will be rejected as non-responsive and deficient.
- 3.4. The Financial Bid will be used by ADB as a reference to determine the appropriate Contract amount for the Services to the successful Bidder.

4. Cost of Bid

The Bidder shall bear all the costs associated with the preparation and delivery of its bid, and ADB will in no case be responsible for such costs.

B. Bid Documents

5. Contents of Bid Documents

- 5.1. In addition to the Instructions to Bidders, the bid documents are composed of the following documents, which should be read in conjunction with any addendum issued in accordance with *Clause 8*:
 - i. Work Performance Statement (WPS) - Appendix 1
 - ii. Technical Bid Form - Appendix 2
 - iii. Technical Bid Proposal & Requirements - Appendix 3
 - iv. Financial Bid Form - Appendix 4
 - v. Secretary's Certificate Form - Appendix 5
 - vi. Letter of Acceptance of Bid - Appendix 6
 - vii. Performance Security Form - Appendix 7
 - viii. Form of Contract - Appendix 8
 - ix. Suppliers and Contractors Environment, Health and Safety Questionnaire (ISO/EHSMS Compliance) - Appendix 9

- x. Joint Venture Data - Appendix 10
- xi. List of ADB Eligible Member Countries - Appendix 11

- 5.2. The Bidder is expected to examine carefully the contents of the bid documents. Bids, which are not substantially responsive to the requirements of the bid documents will be rejected.
- 5.3. The Bidder shall fully disclose whether any of the Bidder's personnel [including the owner, the directors, the manager(s) or any of the employees] has been formerly connected with ADB in any capacity as a regular or contractual staff or as a consultant. Failure to disclose this information may be grounds for disqualifying the Bidder or for immediate termination of the Contract with the Bidder.
- 5.4. The Bidder shall furnish information as described in the Financial Bid Form on commissions or gratuities, if any, paid or to be paid relating to this bid, and to contract execution if the Bidder is awarded the Contract.

6. Clarification on Bid Documents

Bidders requiring any clarification on the bid documents may notify ADB in writing or by facsimile, at the address indicated in *Clause 14*. ADB will respond to any request for clarification, provided it is received not less than 7 calendar days prior to the deadline of submission of bids. Copies of ADB's response will be forwarded to all Bidders, including the description of the inquiry.

7. Amendment to Bid Documents

- 7.1. At any time prior to the deadline for submission of bids, ADB may for any reason modify the bid documents by issuing addenda.
- 7.2. Any addendum issued shall form part of the bid documents and shall be communicated in writing or by facsimile to all Bidders. The transmittal of the addendum to the Bidders on the addresses or facsimile numbers submitted shall relieve ADB of its obligations to notify the Bidders of the said addendum.
- 7.3. To afford prospective Bidders reasonable time to take an addendum into account in preparing their bids, ADB may extend the deadline for submission of bids.

C. Preparation of Bids

8. Composition of Bid (Bid Proposal)

- 8.1. **TECHNICAL BID** – it shall consist of and be structured as follows:
 - (i) Completed Technical Bid Form (**Appendix 2**);
 - (ii) Completed Technical Bid Requirements (**Appendix 3A – 3B**);

- (iii) Secretary's Certificate or Written Power of Attorney (**Appendix 5**). Furnish a notarized authorization letter stating the name and official position held by the person authorized to sign the bid and the formal contract for the Bidder. The person authorized to sign the bid should also sign the conforme in the certification.
- (iv) Joint Venture Commitment – In case of a joint venture, provide the official joint venture agreement or a written confirmation signed by all joint venture parties (under joint and several liability), duly notarized, stating that in case of award of contract, the parties will enter into a joint venture agreement and accept joint and several liability for all obligations under the contract (**Appendix 10**);
- (v) Completed Supplier and Contractors Environment, Health and Safety Questionnaire (ISO/EHSMS Form) (**Appendix 9**);
- (vi) All the documentary proofs as required in *Clause 5.1* (please use the forms provided as applicable).

8.2. **FINANCIAL BID** – It shall comprise of the **completed Financial Bid Form** (**Appendix 4**).

8.3. The bid documents as herein listed shall be duly completed with all entries typed or printed in ink.

8.4. The completed Technical and Financial Bid Forms shall be without interlineations or erasures except those required to correct errors made by the Bidder, in which case the erasures and interlineations shall be initialed by the person or persons signing the bid.

8.5. It is incumbent on the Bidder that when the documents mentioned above are duly completed, they should be submitted simultaneously by the Bidder in accordance with *Clauses 14 and 15*.

8.6. ADB is not bound to accept the lowest or any bid, nor is it obliged to give any reason for the rejection of any bid.

9. **Bid Language**

The bid and other documents including any correspondence related to the bid shall be in English language.

10. **Bid Currency**

The rates submitted by the Bidders shall be in US Dollars or any other easily convertible currency of ADB member countries. For purposes of evaluation of Financial Bids, all bids shall be converted in US Dollar at the exchange rate set by ADB Treasury at the time and date of the Financial Bid opening.

11. Bid Price

- 11.1 Unless otherwise specifically stated in the contract documents, the bid price shall be deemed to include, inter alia, (i) labor costs; (ii) transportation; (iii) administrative, supervision and overhead expenses; (iv) profit; and (v) incidental expenses for the provision of the required Services. Since ADB is exempted from paying taxes and duties under the Articles of Agreement Establishing the Asian Development Bank (Charter) and the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters Agreement), the Bidder shall calculate its prices for the Services items **exclusive of Contractor's tax, Value-Added Tax (VAT) and Expanded Value-Added Tax (EVAT).**
- 11.2 The bid price offered in the Bid Form will be flat rates for full execution of the Services in every respect. The Bidder will be deemed to have taken account of all the requirements, whether expressed or implied, covered by all parts of the bid documents and other stipulated documents, and to have priced the items in the Bid Form accordingly. The total bid price will be the basis for payments for the Services provided in accordance with the bid documents.
- 11.3 The bid price under the terms and conditions specified in the Contract shall be deemed to be firm and fixed. No claim for adjustments in the contract price based on the bids shall be considered by ADB for any change in foreign exchange rate, for any increase in wage rates, for any escalation costs of office materials and supplies. Any such change, increase or escalation shall be deemed to have been taken into account and included in the bid price.

12. Bid Validity

- 12.1 The bid shall remain valid for a period of ninety (90) calendar days from the specified deadline for the submission of bids.
- 12.2 Prior to the expiry of the bid validity period, ADB may request the Bidder for a specified extension in the period of bid validity. A Bidder may refuse the request or agree to the request without modifying the original bid. The request from ADB and responses by the Bidder shall be made in writing.

13. Bid Signing

A person duly authorized to bind the Bidder to the Contract shall sign the Bid. Proof of authorization shall be furnished in the form of a written Power-of-Authority or Secretary's Certificate which shall accompany the bid. **The name and position held by each person signing the authorization and the duly authorized person or persons must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid. Failure to do so will be grounds for disqualification of the Bidder.**

D. Bid Submission

14. Sealing and Marking of Bids

14.1 The Bidder shall prepare one original of the Technical Bid and one original of Financial Bid and clearly marked each "ORIGINAL TECHNICAL BID" and "ORIGINAL FINANCIAL BID". In addition, the Bidder shall submit a duplicate copy and a soft copy of the Technical Bid and the Financial Bid and clearly mark them "DUPLICATE COPY-TECHNICAL BID" and "DUPLICATE COPY-FINANCIAL BID". In the event of discrepancy between the original and the copy, the original shall prevail.

14.2 The Bidder shall enclose the original of the Technical and Financial Bid, and the duplicate copy of the Technical and Financial Bid, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL with SOFT COPY-TECHNICAL and FINANCIAL BID" and "DUPLICATE COPY-TECHNICAL and FINANCIAL BID," as appropriate. These envelopes containing the original and the copy shall then be enclosed in one single envelope.

14.3 The inner and outer envelopes shall:

(i) bear the name and address of the Bidder

NAME AND ADDRESS OF BIDDER

(ii) be addressed and submitted to:

**Unit Head, Procurement and Contracting
Institutional Services Division
Office of Administrative Services
Asian Development Bank Extension Office
Room XXX, 35th Floor, Joy-Nostalg Center
No. 17 ADB Avenue, Pasig City
1605 Metro Manila, Philippines
Fax No. (632) 636-____ / Tel No. 632-____**

(iii) bear the following identification:

"Provision of _____"

14.4 The outer envelopes and the inner envelopes containing the original and duplicate copies of bids shall bear a warning "DO NOT OPEN BEFORE 3:30pm, _____ 2011".

14.5 If all envelopes are not sealed and marked as required, ADB will assume no responsibility for the misplacement or premature opening of the bid.

15. Deadline for Submission of Bids

Sealed bids, should reach ADB not later than **3:00 P.M.**, _____ **2011**. The bids should be sent by courier mail or hand-carried to Room XXX to the attention of Unit Head, Procurement and Contracting of ADB Extension Office, Room XXX, 35th Floor, Joy-Nostalg Center, No. 17 ADB Avenue, Pasig City, 1605 Metro Manila, Philippines.

16. Late Bids

ADB shall not consider any bid that arrives after the deadline for submission of bids, in accordance with *Clause 15*. Any bid received by ADB after the deadline for submission of bids will be rejected and returned unopened to the Bidder.

17. Modification and Withdrawal of Bids

17.1. The Bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by ADB, prior to the deadline for the submission of bids. The Bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of *Clauses 14 and 15* with the envelope additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate.

17.2. No bid may be modified subsequent to the deadline for submission of bids.

17.3. No bid may be withdrawn 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 Bid Form.

E. Bid Opening and Evaluation

18. Bid Opening

18.1. ADB will open the Technical and Financial Bids, including modifications made pursuant to *Clause 17*, at the discretion of authorized ADB staff.

18.2. Envelopes marked "WITHDRAWAL" for which an acceptable notice of withdrawal has been submitted, pursuant to *Clause 17*, shall not be opened.

18.3. ADB will notify Bidders in writing who have been rejected on the grounds of being non-responsive and deficient to the requirements of the Bidding Document.

19. Bid Evaluation

19.1. To assist in the examination, evaluation and comparison of bids, ADB may, at its discretion, ask any Bidder for clarification of its bid. The request for clarification and response shall be in writing or by fax. Clarification on the Bidder's technical capability may also be done by way of inspecting Bidder's company premises and/or visits to one or more of the Bidder's clients by ADB's representatives. The Bidder should provide full cooperation if ADB deems necessary to do so.

- 19.2. Subject to *Sub-Clause 19.1*, no Bidder shall contact ADB on any matter relating to its bid from the time of the bid submission to the time the Contract is awarded. If the Bidder wishes to bring additional information to the notice of ADB, it should do so in writing.
- 19.3. Any effort by the Bidder to influence ADB in ADB's bid evaluation, bid comparison or contract award decisions may result in: (i) the rejection of the Bidder's bid; and (ii) disqualification of the concerned Bidder to bid for future procurement by ADB.
- 19.4. ADB will undertake a **post qualification** review of each Bidder based on the qualification criteria indicated in *Clause 2*. Bids submitted by the Bidders who meet the qualification criteria will be considered by ADB for further bid evaluation. Bids, which do not meet the qualification criteria, will be rejected.
- 19.5. ADB will determine whether each bid submitted by a qualified Bidder is (i) properly signed; and (ii) substantially responsive to the requirements of the bid documents.
- 19.6. **Technical Bids** will be evaluated based on a "WEIGHTED / POINTS SYSTEM" Evaluation framework established by ADB and the Technical Bid Proposal & Requirements provided in **Appendix 3** (refer to *Clause 3.4*). A substantially responsive bid is one that conforms to all terms, conditions and specifications of the bid documents without material deviation or reservation. A major deviation would normally occur when (i) the scope, quality or performance of the Services offered substantially differ from the bid documents; (ii) the bid offer limits in any substantial way, ADB's rights or the Bidder's obligations under the Contract; or (iii) any rectification would unfairly affect the competitive position of other Bidders with substantially responsive bids. A major deviation will result in the rejection of the Bidder's bid.
- 19.7. In case of discrepancies between price given in words and that given in figure for the same item, the prices given in words shall prevail. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price will be corrected. If the Bidder does not accept the corrected amount of bid, its bid will be considered as withdrawn.
- 19.8. Only the Financial Bids of the post-qualified bidders and technically compliant bids shall be considered in the Financial Bid evaluation. Bidders who do not conform to the specified requirements will be rejected as deficient and non-responsive Bids and will not be included in the financial evaluation.
- 19.9. The technical bids will have a weight of ___% of the total bid and the financial bids will have a weight of ___% of the total bid.

F. Award of Contract

20. Award

- 20.1. Following the post qualification review, technical and financial evaluation of each Bidder, the Bidder with the highest combined percentage score will be selected.
- 20.2. Subject to *Clause 21*, ADB will award the Contract to the Bidder whose bid has been determined to pass both the technical and financial criteria.

21. ADB's Right to Accept or Reject Any Bid

ADB reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for ADB's action.

22. Notification of Award

- 22.1. ADB will notify the successful Bidder by letter (Letter of Acceptance of Bid) that its bid has been accepted (see **Appendix 6**).
- 22.2. The Letter of Acceptance of Bid, together with the bid, will form a contract between ADB and the Successful Bidder, until the Contract has been effected pursuant to *Clause 23*.

23. Execution of the Contract

- 23.1. The Bidder to whom the Contract is awarded is required to enter into and execute a Contract Agreement (see **Appendix 8**) in accordance with the form, conditions and requirements in the Bid Documents, and to furnish the required stipulated documents within fifteen (15) calendar days from the date the Bidder receives ADB's Letter of Acceptance of Bid.
- 23.2. If the successful Bidder refuses or fails to enter into Contract Agreement within the stipulated time, the Bidder shall be disqualified to bid for any future projects of ADB.

24. Performance Security

- 24.1. The successful Bidder shall post a Performance Security in favor of ADB in the amount of ten percent (___%) of the total Contract price to guarantee its faithful performance of the contract. The Performance Security, payable in US Dollars, shall be in the proforma attached herewith (**Appendix 7**). The required Performance Security and other stipulated documents shall be furnished within fifteen (15) calendar days from the date the Bidder receives ADB's Contract.
- 24.2. Failure of the successful Bidder to submit to ADB the required Performance Security shall constitute sufficient ground for annulment of the award.

25. Special Character of ADB

The Bidder's special attention is drawn to the special character of ADB as an international financial institution with status, privileges and immunities as established under the Charter and the Headquarters Agreement. The Bidder is advised to study these documents, copies of which are available at ADB website (www.adb.org), in order to assess his or her rights and obligations under the Contract.

26. Confidentiality / Non-disclosure

26.1. The information contained in this bid documents, or accumulated through other written or verbal communications, is confidential. It is for information purposes only, and is not to be disclosed or used for any other purpose. All information contained herein is private and is protected by law.

26.2. Information received in response to this bid documents will be held in strict confidence, and will not be disclosed to any party other than ADB without written consent. A non-disclosure agreement can be arranged, if requested.

Sample

**WORK PERFORMANCE STATEMENT
PROVISION OF _____**

- 1. Background**
- 2. Provider Response**
- 3. Technical Support Specifications**
- 4. ADB Support**
- 5. Timetable**

Sample

TECHNICAL BID FORM

PROVISION OF _____
RP No. XXX

(Date)

To: Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines

Attention: Director
Institutional Services Division
Office of Administrative Services

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bid Documents;
- (b) We offer to provide the Services in conformity with the Bid Documents;
- (c) Our Bid shall be valid for a period of ninety (90) calendar days from the date fixed for the bid submission deadline in accordance with the Bid Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (d) We accept that upon discretion of ADB, we shall be disqualified from bidding in any or all future contracts with them by committing the following actions : (i) collusion with other Bidders to fix the bid prices prior to award of contract; (ii) withdrawal or modification of bids during the period of bid validity; and (iii) failure to sign the contract upon awarding;
- (e) We confirm that we are financially qualified and compliant to bid for this project in accordance with the minimum requirements for qualification of bidders for this project;
- (f) If our Bid is accepted, we commit to obtain a Performance Security in the amount of ___ percent (___%) of the Contract Price for the due performance of the Contract;
- (g) We are not participating, as Bidders, in more than one Bid in this bidding process in accordance with the Bid Documents;
- (h) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB;
- (i) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance of Bid, shall constitute a binding contract between us, until a formal Contract is prepared and executed;
- (j) We understand that you are not bound to accept the lowest bid or any other bid that you may receive.

Very truly yours,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Bidder/Company)

(Business Address)

(Telephone Number / Facsimile Number)

**RESPONSE TO TECHNICAL BID REQUIREMENTS/
TECHNICAL PROPOSAL**

PROVISION OF _____

Response to Technical Bid Requirements goes here.

Sample

FINANCIAL BID FORM

PROVISION OF _____

(Date)

To: Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila, Philippines

Attention: Director
Institutional Services Division
Office of Administrative Services

Gentlemen and/or Ladies:

1. Having examined the Bid Documents for the above project, I, the undersigned, offer to execute and complete the Services as described in and in conformity with the said Bid Documents at the following Contract Price:

Description	Price per Month	Total Price for One Year
Provision of _____		

Total Price for One Year in Words : _____

2. I undertake, if my Bid is accepted, to commence the Services on ___(Date)___, and to complete and deliver the whole of the Service in accordance with the Contract.
3. I agree to abide by this Bid for the period of 90 calendar days from the final date fixed for receiving the same, and it shall remain binding upon myself/us and may be accepted at any time before the expiration of that period.
4. If my Bid is accepted, I confirm that the rates submitted by myself in my Bid will be fixed and binding upon myself for the whole duration of the Contract in accordance with the said Conditions.
5. Unless and until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding Contract between myself/us.

- 6. I understand that you are not bound to accept this Bid or any other bid, which you may receive.
- 7. Commissions or gratuities, if any, paid or to be paid by myself to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

Name and Address of Agent	Amount and Currency	Purpose of Commission or Gratuities
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

Very truly yours,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Bidder/Company)

(Business Address)

(Telephone Number/Facsimile Number)

Sample

SECRETARY'S CERTIFICATE FORM**SECRETARY'S CERTIFICATE**

I, (name of corporate secretary), being the Corporate Secretary of (name of the company of bidder), hereinafter referred to as the "Corporation", a corporation organized under the laws of the _____, with office address at (complete address of the company), do hereby certify, that the following resolution was unanimously approved in a meeting of the Board of Directors of Corporation held on (date of the meeting) at its principal office, to wit:

Board Resolution No. _____ Series of _____

RESOLVED, the (name of company) be, as it hereby is hereby, authorized to participate in the bidding for the Provision of _____, RP No. XXX and in connection therewith the Corporation hereby appoints (name and designation of authorized person – same person who will sign the conforme below) as the duly authorized and designated representative of (name of company) who is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Corporation in the bidding.

The above resolution is now in full force and effect and that as of this date, no changes or amendments thereon have been made.

IN WITNESS WHEREOF, I have hereunto affixed my signature this (date) at (place).

Signature
(Name of corporate secretary)
Corporate Secretary

CONFORME

Signature
(Name of authorized person)
Designation:
Company:

SUBSCRIBED AND SWORN to before me this _____, affiant exhibiting to be her/his Community Tax Certificate Number _____ issued on _____ at _____.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.

SEAL AND SIGNATURE
NOTARY PUBLIC

Date: _____

Attention: _____

Sir:

Subject: Letter of Acceptance of Bid
Provision of _____
— Contract No. ADB/OAS-20XX/XXX

With reference to the execution of the above Service, this is to inform you that the Asian Development Bank (hereinafter referred to as ADB) hereby accepts your bid as contained in your Bid Form dated _____ in accordance with the terms, provisions and stipulations contained in the documents collectively referred to as the "Bid Documents".

The commencement date of this Contract shall be on ___ Month 20XX. A pre-mobilization meeting will be scheduled by Department of _____ before the commencement date of this Contract.

Three sets of Contract Documents are attached for your signature.

Yours truly,

Director
Institutional Services Division
Office of Administrative Services

**FORM OF PERFORMANCE SECURITY
(from Contractor's Bank)**

To: **ASIAN DEVELOPMENT BANK**
6 ADB Avenue
Mandaluyong City
Philippines

Dear Sir:

WHEREAS _____ (hereinafter called the "Contractor") and the Asian Development Bank have entered into, or will enter into a contract (Contract No. ADB/OAS-20XX/XXX) for the [Title] at ADB premises, ADB Headquarters Building, Mandaluyong City, Philippines (hereinafter called the "Contract");

WHEREAS the Contract provides that the Contractor shall furnish you with a Performance Security/Bank Guarantee by a recognized bank for the sum specified therein as security for fulfillment by the Contractor of its obligations under and in accordance with the Contract;

WHEREAS we have agreed to issue such a Performance Security/Bank Guarantee in your favor;

NOW THEREFORE we, [bank's name], hereby irrevocably and absolutely affirm that we are the Guarantor and responsible to you on behalf of the Contractor, up to a total amount of USDollars: (% of the Contract Price (USD), which we undertake to pay to you, upon your first written demand, without your having to assign any reason for such demand, and irrespective of whether or not there is any dispute between the Contractor and you in respect of any other matter and irrespective of whether or not such dispute, if any, has been settled, resolved, litigated or adjudicated.

This Security/Guarantee is effective from _____ to 30 days after the expiration date of the Contract (as stated in accordance with Art. of the Contract). This Security/Guarantee cannot be canceled without your express written approval.

The giving of time to the Contractor, or the neglect or forbearance by you in requiring or enforcing payment of the sum of USDollars: % of the Contract Price (USD) or other indulgence whether in relation to the Contract or otherwise, shall not, in any way, prejudice, affect, derogate, release or absolve us from our liability under this Security/Guarantee;

No change in organization or constitutional documents or in that of Asian Development Bank or the Contractor shall affect or impair our absolute liability herein.

Dated this _____ day of _____ 20XX.

Signature and Seal of the Guarantor
Name of Bank
Address

Contract No. ADB/OAS- 2011/___
 [*Title of Contract*]

THIS CONTRACT (hereinafter "Contract") made on the ___ day of _____ 2011 between the **ASIAN DEVELOPMENT BANK** of 6 ADB Avenue, Mandaluyong City, Metro Manila, Philippines (hereinafter " ADB "), of the one part, and _____ Name of the Contractor _____ (hereinafter " Contractor"), of the other part:

WHEREAS ADB desires that the Provision of Services known as Name of the Contract shall be executed by the Contractor and has accepted a Bid by the Contractor for the execution and completion of the provision of Services and the remedying of any defects therein,

ADB and the Contractor agree as follows:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to in the General Conditions of Contract indicated in Paragraph 2 below.

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

- a) Letter of Acceptance of Bid
- b) Form of Financial Bid
- c) Technical Bid Form
- d) Technical Bid Proposal
- e) Special Conditions of Contract
- f) General Conditions of Contract
- g) _____

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

3. In consideration of the payments to be made by ADB to the Contractor as indicated in this Contract, the Contractor hereby covenants with ADB to provide the Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. ADB hereby covenants to pay the Contractor in consideration of the execution and completion of 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 Contract to be executed in on the day, month and year indicated above.

Signed by _____

for and on behalf of ADB
in the presence of

Witness, Name, Signature, Address, Date

Signed by _____

for and on behalf the Contractor
in the presence of

Witness, Name, Signature, Address, Date

General Conditions of Contract
(Contract No. ADB/OAS-2011/___)

The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, is a complete document expressing the rights and obligations of ADB and the CONTRACTOR.

The GCC shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the SCC.

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1. DEFINITIONS

1.1. In these General Conditions of Contract:

- (a) "ADB" refers to the Asian Development Bank, the organization purchasing the Services named in the SCC.
- (b) "ADB Headquarters" or "Headquarters" refers to the Headquarters of ADB in Manila, Philippines.
- (c) "Charter" refers to the Charter signed by member states establishing ADB.
- (d) "Contract" means the agreement that ADB and the CONTRACTOR entered into, as recorded in the Contract Form that the parties signed, including all attachments and appendices and all documents incorporated by reference therein.
- (e) "CONTRACTOR" refers to the party (includes individual and entity, whether public, quasi-public or private) that performs the services or performs the services and supplies the related goods using its own means, methods or manner of accomplishing the desired result pursuant to a contract with ADB and named in the SCC. This includes the contractor's personnel, representatives, successors and permitted assignees.
- (f) "Contracts Administration Unit" or "CAU" refers to the sub-unit in the Procurement and Contracting Unit, Institutional Services Division, Office of Administrative Services that ensures ADB and the CONTRACTOR comply with their obligations under the Contract.
- (g) "Contract Documents" consists of the Contract and its Appendices, including but not limited to, the Work Performance Statement, Technical Bid Requirements, Technical and Financial Bid Proposals, Fee Schedule, Secretary's Certificate, Certificate of Site Inspection, Letter of Acceptance of Bid and Notice to Proceed, List of Facilities and Equipment to be provided by ADB, List of Equipment to be Provided by the CONTRACTOR, Performance Security, List of CONTRACTOR's Personnel, ADB's Fire, Safety and Security Regulations, Relevant Administrative Orders, Good Social Management Certificate including any amendments thereto.
- (h) "Contract Price" means the price stated in the SCC payable to the CONTRACTOR for the full and proper performance of its contractual obligations.
- (i) "Day" means calendar day.
- (j) "Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
- (k) "Delay" means postponement in the completion of a service/task in accordance with the terms and conditions set forth in the Contract.

- (l) "Effective Date" of the contract will be the date provided in the Notice to Proceed to be issued by ADB. Performance of all obligations shall be reckoned from the Effective Date of the Contract.
- (m) "Force Majeure" or "Fortuitous Event" – refers to events, which the CONTRACTOR could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the CONTRACTOR.
- (n) "GCC" means the General Conditions of Contract.
- (o) "Headquarters Agreement" refers to the Agreement between the Asian Development Bank and the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank.
- (p) "IPC" or "Institutional Procurement Committee" – the committee that the Director, OAS chairs and is convened to oversee institutional procurement of Services and delivering Related Goods.
- (q) "Notices" – refers to all written communication required under the Contract to be exchanged between the Parties, including but not limited to, requests, permissions or consent.
- (r) "OFA-SE" refers to Security and Services Unit of ADB.
- (s) "OAS" refers to the Institutional Services Division of OAS.
- (t) "OAS-PC" refers to the Procurement and Contracting Unit in OAS.
- (u) "OAS-PC/CAU" refers to the Contracts Administration Unit in OAS-PC.
- (v) "OAS" refers to the Office of Administrative Services of ADB.
- (w) "Party" or "Parties" refer to either or both ADB and the Contractor.
- (x) "Project Site," where applicable, means the place or places named in the SCC.
- (y) "Related Goods" means those goods necessarily required and or resulting from providing the Services, such as transportation and insurance, and any other incidental services, such as installation, commissioning, testing, provision of technical assistance, training, and other such obligations of the CONTRACTOR covered under the Contract.
- (z) "SCC" refers to the Special Conditions of Contract.
- (aa) "Service Level Agreement" or "SLA" – refers to terms agreed between the Parties to determine satisfactory performance under the Contract.
- (bb) "Services" refers to the service specifically described in the SCC.
- (cc) "User Unit" refers to the organizational unit in ADB which requested the Services and related goods, and is responsible for receiving and accounting for the Services and elated goods and/or administering and

monitoring performance of the services in accordance with the work-performance standards stipulated in the Contract.

(dd) "Verified Report" refers to the report submitted by the Head, OAI-PC/CAU in coordination with the User Unit, to the appropriate approving authority reporting the existence of grounds or causes for termination and explicitly recommending the issuance of a Notice to Terminate.

2. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF ADB

- 2.1. The CONTRACTOR acknowledges the special character of ADB as an international financial institution with status, privileges and immunities provided under the Charter and the Headquarters Agreement. None of the provisions of this Contract shall derogate from the provisions of the Charter and the Headquarters Agreement. To better assess its rights and obligations under the Contract, the CONTRACTOR can view copies of the Charter and the Headquarters Agreement from ADB website: www.adb.org.
- 2.2. The CONTRACTOR recognizes that under Article 50(1) of the Charter and Section 34 of the Headquarters Agreement, ADB, its property, operations and transactions are exempt from taxation and any obligation for the payment, withholding or collection of any tax or duty. The CONTRACTOR shall be solely responsible for payment of taxes on its income.
- 2.3. The CONTRACTOR and ADB shall explore alternative arrangements to implement the Contract, if any tax or duty other than taxes on net income is levied or if there is an attempt to levy any such duty or tax in connection with the performance of the Contract.

3. GOVERNING LAW AND LANGUAGE

- 3.1. Unless otherwise specified in the SCC, the Contract shall be governed and interpreted according to Philippine law, subject to the privileges and immunities accorded to ADB under the Charter and the Headquarters Agreement.
- 3.2. The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning and/or interpretation of the Contract, unless otherwise specified in the SCC. Notices and other correspondences pertaining to the Contract that the parties would exchange shall likewise be in English.

4. NOTICES AND COMMUNICATION

- 4.1. Notices and communication required under the Contract, including, but not limited to, requests, permissions or consent, shall be in writing. Notices and communication may be personally exchanged, sent in electronic format or by traditional means of communication such as registered mail, telex, telegram, or facsimile.
- 4.2. Notices shall be effective when sent to the address specified in the SCC and personally received by the addressee or constructively through the addressee's duly authorized representative. Notices sent by registered mail shall be effective on the date of delivery, as shown in the return card for

registered mail or the postmaster's certification. Otherwise, notices sent by telex, facsimile or similar means shall be effective upon successful transmission to the Party in accordance with the contact details specified in the SCC or on the notice's effective date, whichever is later.

5. AUTHORIZED REPRESENTATIVE

- 5.1. For purposes of giving Notices or communicating with each other, the contact details and authorized representative of the Parties shall be as indicated in the SCC. A Party may change or update its contact details for Notice purposes by duly notifying the other Party in advance, following the provisions listed in the SCC.
- 5.2. Orders, directives, and instructions given on behalf of ADB to the CONTRACTOR shall be communicated by the Director, OAIS, or an officer duly designated under ADB's rules and notified in advance to the CONTRACTOR under the SCC.
- 5.3. The Head of the User Unit is the designated officer in charge of monitoring the CONTRACTOR's performance and shall recommend, among others, proper disposition of technical issues in implementing the Contract. Communications regarding these technical issues shall be addressed to the Head of the User Unit in ADB.
- 5.4. The CONTRACTOR shall not take from unauthorized ADB staff any order beyond those related to the Services specified in the SCC. Questions regarding the authority of orders, directives or instructions given in the name of ADB should be reported to the Head of the User Unit.

6. CORRUPT, FRAUDULENT, COERCIVE AND COLLUSIVE PRACTICES

- 6.1. For the purposes of this section, the terms above shall have the following meaning:
 - (a) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
 - (b) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
 - (c) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
 - (d) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- 6.2. ADB, bidders, manufacturers, or distributors, and the CONTRACTOR shall observe the highest standard of ethics during the institutional procurement exercises of ADB and implementation of the Contract.

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

7. CONFLICT OF INTEREST

- 7.1. The CONTRACTOR shall take appropriate steps to ensure that neither the CONTRACTOR nor its Personnel is placed in a position where, in the reasonable opinion of ADB, there is or may be an actual or potential conflict between the pecuniary or personal interests of the CONTRACTOR and performance of the CONTRACTOR's obligations under the Contract. The CONTRACTOR shall disclose to ADB in the manner and form prescribed in the SCC full particulars of any such conflict of interest which may arise.

- 7.2. ADB shall undertake measures to manage actual or potential conflicts of interest, including termination of the Contract, as circumstances may warrant. This is without prejudice to other remedies or rights of action which shall have accrued or shall thereafter accrue to ADB under the Contract.
- 7.3. During and twelve [12] months after the Contract Period, the Parties shall not employ or offer employment to any of the other Party's personnel who have been associated with the procurement and/or management of the Contract without that other Party's prior written consent.

8. SCOPE OF THE CONTRACT

- 8.1. The Services to be provided are specified in the SCC.
- 8.2. The Services shall also include Related Goods or items that are not specifically mentioned but are necessarily required to complete performance of the Contract, as if such items were expressly mentioned herein. The Related Goods and additional requirements for complete delivery of this Contract shall be provided in the SCC.
- 8.3. In case of discrepancy, the provisions of this Contract shall prevail over the Contract Documents enumerated. In interpreting the provisions of this Contract, ADB and the CONTRACTOR may further refer to the applicable Invitation to Bid and the Bid Documents of ADB.

9. CONTRACT PRICE

- 9.1. For and in consideration of the CONTRACTOR's full and faithful performance of the Services specified in the SCC during the Contract Period in Paragraph 10 below, ADB shall pay the CONTRACTOR the Contract Price stated in the SCC. The Contract Price shall not vary from the price that the CONTRACTOR quoted in its Bid, except for any change resulting from a Change Order issued in accordance with Subparagraph 9.5 below.
- 9.2. The Contract Price is payable on the date and in the manner provided in the SCC.
- 9.3. Unless otherwise specified in the SCC, ADB and the CONTRACTOR agree that the Contract Price is a firm and fixed lump sum. The CONTRACTOR warrants that the Contract Price tendered already covers actual and contingent costs that the CONTRACTOR would incur in performing the Services, including additional compulsory statutory benefits and social contributions that the CONTRACTOR's employees may be legally or officially declared entitled to after execution of this Contract.
- 9.4. The Parties may agree to adjust the Contract Price following the price adjustment provisions specified in the SCC, as applicable. However, the CONTRACTOR shall not demand price adjustments due to fluctuations in the foreign exchange rate, increase in CONTRACTOR'S actual or contingent costs, or such other similar causes.
- 9.5. Should ADB require additional services not covered by the Work Performance Statement referred to in the SCC, ADB shall pay the CONTRACTOR for such contingency services in terms of person-hours and/or materials at the

rates/prices that ADB and the CONTRACTOR shall negotiate and agree when the need arises.

- 9.6. When the performance of the CONTRACTOR falls below the satisfactory standards provided in ADB's Contractor's Performance Evaluation Report, Work Performance Standards (WPS), Work Performance Measurement (WPM) or Service Level Agreement (SLA) referred to in the SCC, ADB shall compute the corresponding deduction/s to be applied to the total Contract Price following the Scheduled Rate of Deductions referred to in the SCC. ADB shall deduct the aforementioned amount from the CONTRACTOR's succeeding payments, as applicable.

10. CONTRACT PERIOD

- 10.1. Unless sooner terminated pursuant to Paragraphs 22 to 25 below, the Contract shall remain valid for the period stated in the SCC. The CONTRACTOR shall deliver the Services from the Starting Date until the Completion Date indicated in the SCC.
- 10.2. The CONTRACTOR gives ADB the option to unilaterally renew this Contract for another period of at least one [1] year, provided ADB sends a written notice to the CONTRACTOR at least 30 calendar days before the expiration of the initial or extended term of the Contract. All the terms and conditions, except the Contract Period and Contract Price when successfully renegotiated before expiration of the initial or extended term, shall apply during the renewed contract period.
- 10.3. The CONTRACTOR may submit to ADB a written proposal to adjust the Contract Price for the renewed contract period at least 30 calendar days before the expiration of the initial or extended term of the Contract or within 10 calendar days from receipt of a notice to renew from ADB. The contract price or rates shall remain unchanged for the renewed contract period, if ADB exercises its option to renew, and the CONTRACTOR does not submit to ADB a proposal to increase the Contract Price within 10 calendar days from receipt of a notice to renew from ADB.
- 10.4. If ADB and the CONTRACTOR fail to agree on a new Contract Price for the renewed contract period before the initial or extended term of this Contract expires, then the Contract shall be deemed extended for a period of up to four [4] months, at the election of ADB, under the same terms and conditions. ADB shall send to the CONTRACTOR three [3] days before expiration of the Contract a written notice of provisional extension indicating the period of provisional extension. During the period of provisional extension, the CONTRACTOR and ADB shall continue to negotiate in good faith and agree on a new Contract Price.

11. CONTRACTOR'S OBLIGATIONS

- 11.1. The CONTRACTOR shall perform the Services according to ADB's requirements specifically described in the SCC and other contract documents [as applicable] during the Contract Period and in consideration for the payment of the Contract Price.

- 11.2. The CONTRACTOR shall further deliver such Related Goods that necessarily result from performing the Services, if there are any.
- 11.3. Timely provision of the Service, including commencing the supply of the Services within the time agreed or on a specified date, shall be of the essence of the Contract. The CONTRACTOR shall perform the CONTRACTOR'S obligations according to the Performance Standards provided in the SCC.

12. SECURITY AND INSURANCE

Performance Security

- 12.1. To secure performance of its obligations under the Contract, the CONTRACTOR shall post sufficient security worth at least ___% of the contract value, as OAI-PC or the IPC may fix and indicate in the SCC. The proceeds of the Performance Security shall be payable to the ADB as compensation for any loss resulting from the CONTRACTOR's failure to complete its obligations under this Contract.
- 12.2. The Performance Security shall be denominated in Philippine Pesos/US Dollars, or in a freely convertible currency acceptable to ADB. The Performance Security shall be in one of the following forms:
- (a) Cash, cashier's check, manager's check, or bank draft;
 - (b) Bank guarantee or an irrevocable or stand-by letter of credit issued by a reputable bank in Manila, Philippines or abroad and acceptable to ADB;
 - (c) Sovereign guarantee in the amount of one hundred percent (100%) of the Contract Price;
 - (d) Such form as may be specified in the SCC.
- 12.3. The CONTRACTOR shall submit the performance security within fifteen (15) calendar days from receipt of the Notice of Award from ADB, unless otherwise specified in the SCC but in no case later than the signing of the contract by both parties.
- 12.4. Unless otherwise specified in the SCC, ADB shall discharge and return the performance security to the CONTRACTOR not later than thirty (30) days following the date of complete performance of the CONTRACTOR's obligations under the Contract, including warranty obligations, and upon issuance by the ADB of a certification to that effect.
- 12.5. ADB shall have the right to unilaterally call the Performance Security when ADB determines that:
- (a) The CONTRACTOR, in violation of or contrary to its warranties under this Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under this Contract; or
 - (b) The CONTRACTOR breached the Contract and failed to remedy the breach, if ADB deems such breach remediable, within seven [7] calendar days from receipt of notice from ADB.

General Liability Insurance and Indemnity

12.6. Before commencing performance, the CONTRACTOR shall be required to acquire Comprehensive General Liability Insurance taking into account such conditions acceptable to ADB, including, but not limited to the following:

(a) The CONTRACTOR shall be liable for and shall indemnify and hold ADB harmless against the costs of claims against ADB arising out of injury to or death of any person, or any loss of or damage to property, including the property of ADB, due to the negligence of the CONTRACTOR or person's acting for the CONTRACTOR.

(b) The face value of the insurance shall not be less than Pesos: _____ (P _____) for each occurrence, and the insurance shall be automatically renewed after the face value has been expended and/or validity has expired.

Good Social Management (GSMC)

12.7. The CONTRACTOR shall perform its obligations under this Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders of competent government agencies or authorities concerning the employees of the CONTRACTOR engaged in performing the Services.

12.8. The CONTRACTOR shall submit to ADB the Good Social Management Certificate [*Ref. to Appendix X: Form of Good Social Management*] within fifteen calendar days from the effective date of the Contract, and subsequently on a bi-annual basis during the effectivity of the Contract, as indicated in the SCC.

12.9. The CONTRACTOR shall indemnify and hold ADB free and harmless from any and all claims made by the CONTRACTOR's personnel under Philippine labor laws and other related legislation, including but not limited to, the minimum wage law.

General Conditions for Performance Security, Insurance and GSMC

12.10. The CONTRACTOR shall furnish evidence that the securities, insurance and/or GSMC were taken at the time required and continues to be in effect before executing the Contract; during the Contract Period and after termination for a period specified in the SCC. The CONTRACTOR shall deposit with ADB a copy of the required GSMC, securities, insurance policy/ies and receipts for payment of the corresponding premium, as applicable, within the time required above.

12.11. The CONTRACTOR shall obtain and maintain such GSMC, insurance and/or performance securities as the Parties may agree, as indicated in the SCC

12.12. When the CONTRACTOR fails to submit, validate and/or renew any or all of the following contract requirements, namely: (a) Performance Security, (b) Comprehensive General Liability Insurance and (c) Good Social Management Certificate, ADB reserves the right to withhold payment attributed to the Contract Price until the aforesaid requirement/s is/are provided.

12.13. The CONTRACTOR shall not pass on under whatever form the penalty referred to in Subparagraph 12.12 above or any part thereof to its employees.

12.14. OAS-PC/CAU, in coordination with the User Units, shall monitor compliance with these requirements.

13. CONTRACTOR'S UNDERTAKING

13.1. The CONTRACTOR shall immediately notify ADB in writing when:

(a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;

(b) any person or entity acquires directly or indirectly the beneficial ownership of equity securities and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR, or otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR;

(c) the CONTRACTOR is dissolved; applies for insolvency or bankruptcy; or otherwise admits in writing its inability to pay its outstanding obligations;

(d) the CONTRACTOR is administratively or judicially declared insolvent or bankrupt, placed under receivership, administration, rehabilitation or liquidation;

(e) the CONTRACTOR's financial condition becomes significantly unstable and threatens to jeopardize the CONTRACTOR's ability to perform its obligations under the Contract;

(f) the CONTRACTOR loses any license or authorization required to perform its obligations under the Contract; or

(g) the CONTRACTOR faces any event beyond the control of the CONTRACTOR or a situation that makes it impossible for the CONTRACTOR to carry out its obligations under this Contract.

ADB and the CONTRACTOR shall explore alternative arrangements to ensure full performance of this Contract under any or all of the above circumstances.

13.2. Machines or equipment that ADB issues to the CONTRACTOR for free, as indicated in the SCC, shall remain the property of ADB; and ADB may recover them from the CONTRACTOR at any time. The CONTRACTOR shall not, under any circumstances, have a lien or any other interest on such machines or equipment; and the CONTRACTOR shall at all times possess them only as fiduciary agent and bailee of ADB. The CONTRACTOR shall not commingle the machines or equipment with its own, and shall accordingly advise all sub-contractors and other interested third parties of ADB's ownership of such machines or equipment.

13.3. The CONTRACTOR shall compensate ADB for the loss of or damage to machines or equipment that ADB has provided to the CONTRACTOR when ADB finds that the loss or damage resulted from the willful act or gross negligence of the CONTRACTOR's personnel. Upon expiration or termination of the Contract, the CONTRACTOR shall immediately return, without need of demand, the machine(s)/equipment that ADB had supplied.

- 13.4. The CONTRACTOR shall, at all times, provide ADB with an adequate number of suitably qualified and experienced managerial, service and support staff, as appropriate, to perform the Services and/or deliver the Related Goods in accordance with the Contract documents. The CONTRACTOR shall supervise and control the CONTRACTOR's personnel at all times, but ADB may recommend re-assignment of CONTRACTOR's personnel when ADB finds their qualifications and training are inconsistent with the personal and professional qualifications agreed with the CONTRACTOR.
- 13.5. The CONTRACTOR shall, at its own expense, provide personnel performing the Services and/or delivering the Related Goods with uniforms acceptable to ADB. Such uniforms shall afford adequate protection from the usual working hazards encountered by the CONTRACTOR's personnel; distinctly identify the CONTRACTOR's personnel so that it is clear that they are not ADB personnel; and be neat and worn properly at all times by the CONTRACTOR's personnel during the performance of the CONTRACTOR's obligations under this Contract.
- 13.6. The CONTRACTOR shall ensure that the CONTRACTOR's personnel behave according to generally acceptable standards in performing the Services and/or delivering the Related Goods under the Contract. The CONTRACTOR shall further require its personnel to comply with ADB's safety and security regulations and other regulations concerning the movement and conduct of persons on ADB premises, including but not limited to, the requirement to wear appropriate identification cards while on ADB premises.
- 13.7. ADB reserves the right to refuse admittance to or remove from ADB Premises CONTRACTOR's personnel who, in ADB's judgment, are under the influence of alcohol or other drugs or, for any reason, are deemed incapable of safely and reliably performing assigned work or whose behavior does not conform to generally accepted standards.
- 13.8. CONTRACTOR's personnel who commit an offense on ADB Premises shall be removed from ADB Premises and/or surrendered to local law enforcement authorities. For this purpose, the CONTRACTOR recognizes the authority of OAFSA-SE to summon CONTRACTOR's employees for investigation. Such offenses include, but are not limited to, the following:
- (a) Theft/Pilferage. Removing or attempting to remove from ADB Premises, without Gate Pass or authority to do so, ADB properties, regardless of the condition or value of such property; or stealing personal properties while on ADB Premises.
 - (b) Damage or Disruption. Deliberately or through culpable negligence disrupting ADB operations, and/or otherwise causing damage to or destroying ADB's property.
 - (c) Drunkenness/Alcoholism. Consuming intoxicating beverages on ADB Premises or reporting for work under the influence of alcohol.
 - (d) Using Prohibited Drugs. Includes possessing, pushing, consuming or otherwise using prohibited drugs, hallucinogenic substances or narcotics on ADB Premises.

- (e) Gambling. Gambling in any form while on ADB Premises.
 - (f) Violence. Using force, physical assault, coercion, threat, intimidation, extortion, bribery, or engaging in other unlawful activities with ADB or non-ADB personnel for any purpose whatsoever.
 - (g) Possessing Firearms and/or other deadly weapons. Carrying firearms, licensed or unlicensed, and/or other deadly weapons while on ADB Premises.
- 13.9. OAFA-SE shall issue identity cards for the CONTRACTOR's employees. The CONTRACTOR shall ensure that terminated or separated personnel return the identity cards to ADB not later than their last working day.
- 13.10. The CONTRACTOR's personnel are urged to remain within the location(s)/area(s) where they are authorized to be and/or are assigned. However, the CONTRACTOR's personnel may use ADB's cafeteria for their normal breakfast or lunch (12:30PM to 1:30PM only) while on duty. The CONTRACTOR's personnel should leave ADB Premises within a reasonable time after completing their daily functions.
- 13.11. The CONTRACTOR shall not pay any commissions, or fees, grant any rebates or give gifts or favors; or otherwise enter into any financial or business arrangements with ADB personnel or their dependents during the effectivity of the Contract.
- 13.12. In rendering the Service, the CONTRACTOR shall not unlawfully discriminate against ADB personnel either directly or indirectly on the basis of race, colour, ethnic or national origin, disability, sex, or sexual orientation, religion or belief, or age.
- 13.13. The CONTRACTOR shall, when working on the Premises, perform its obligations under the Contract according to ADB's environmental policy to, among others, conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 13.14. The CONTRACTOR shall comply with health and safety measures of ADB. The CONTRACTOR shall promptly notify ADB of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. ADB shall promptly notify the CONTRACTOR of any health and safety hazards which may exist or arise on ADB's premises and which may affect the CONTRACTOR in performing its obligations under the Contract.
- 13.15. The CONTRACTOR shall notify ADB immediately of any incident occurring in connection with or as a result of performing its obligations under the Contract on ADB premises, particularly where the incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.16. The CONTRACTOR shall give notices and obtain certificates, permits, and other documents required under applicable laws, regulations and decrees and necessary to perform the Services under the Contract.

13.17. The CONTRACTOR is an independent contractor of ADB. The Contract shall not nor be deemed to create the relationship of employer and employee, master and servant, or principal and agent between ADB and the CONTRACTOR or the CONTRACTOR's employees, agents or any other persons engaged by the CONTRACTOR to perform its obligations under this Contract. Accordingly, neither Party shall be authorized to act in the name or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of the Contract.

14. PERFORMANCE STANDARDS

14.1. To confirm the continued adequacy of the Service and/or compliance with the required standards, the CONTRACTOR shall allow ADB to test and/or evaluate the Service regularly or randomly during normal business hours on reasonable notice. The CONTRACTOR or its subcontractor(s) shall furnish all reasonable facilities and assistance, including access to drawings and production data and other relevant documents at no cost to ADB. Details of the tests and/or evaluation that ADB requires, if there are any, shall be specified in the SCC.

14.2. The ADB may reject the Service when it is evaluated to be inadequate or not conforming to the specifications referred to in the SCC. ADB shall ask the CONTRACTOR to either rectify or modify/improve the Service, as necessary and at no cost to ADB, to meet the required standard.

14.3. The CONTRACTOR's consent to the testing and/or evaluation of the Service or inspection of the Related Goods or any part thereof shall not release the CONTRACTOR from its warranties or other obligations under the Contract.

15. SERVICE LEVEL AGREEMENT (SLA)

15.1. To achieve and maintain a high level of performance and where applicable, ADB and the CONTRACTOR shall execute an SLA that sets their mutual expectations, specifies the aspects of delivery of the Goods and Related Services under the Contract, and identifies indicators to measure the CONTRACTOR's level of performance.

15.2. The SLA between ADB and the CONTRACTOR may include conditions for incurring service level credits or earning incentives. At least 80% of the total service level incentives shall be distributed among deserving personnel of the CONTRACTOR.

15.3. The CONTRACTOR shall report to ADB, as necessary, actual use and/or disposition of service level incentives.

16. WARRANTIES AND REPRESENTATIONS

16.1. The CONTRACTOR warrants that it has full capacity, authority and consent, including the consent of its parent company, where applicable, and that it possesses the necessary licenses, permits, and power to execute and perform its obligations under the Contract. The CONTRACTOR further warrants that the Contract is executed by a duly authorized representative of the CONTRACTOR.

- 16.2. As of the Commencement Date, all information contained in the CONTRACTOR's Bid remains true, accurate and not misleading, except those that the CONTRACTOR may have specifically disclosed in writing to ADB before executing the Contract;
- 16.3. To the best of the CONTRACTOR's knowledge and belief, no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, pending or being threatened against the CONTRACTOR or any of its assets that could materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract.
- 16.4. The CONTRACTOR is not subject to any contractual obligation that would materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract; nor has the CONTRACTOR done or omitted to do anything that could materially and adversely affect its assets, financial condition or position as a going business concern.
- 16.5. The CONTRACTOR has not filed nor is it facing proceedings for winding up its business or for dissolution, insolvency, bankruptcy, or the appointment of a receiver, liquidator, administrator or similar officer in relation to any of the CONTRACTOR's assets or revenue. The CONTRACTOR expressly warrants its financial viability and shall permit ADB to inspect the CONTRACTOR's accounts, financial statements and other records relevant to the performance of the CONTRACTOR under the Contract, or otherwise have these accounts and records audited externally, as ADB may deem necessary.
- 16.6. The CONTRACTOR has undertaken all financial accounting and reporting activities required under the generally accepted accounting principles that apply to the CONTRACTOR and in the country where it is registered and has complied with applicable securities and tax laws and regulations.
- 16.7. The CONTRACTOR further warrants that Related Goods supplied under this Contract have no defects arising from design, materials, workmanship; or damage resulting from any act or omission of the CONTRACTOR, or those that may develop under normal use of the Related Goods.
- 16.8. To ensure that the CONTRACTOR would correct or cause the correction of all defects, the CONTRACTOR extends the warranty against defects for a minimum period of three (3) months for supplies and/or one (1) year for equipment, counted after complete performance of the Contract or other such period as may be specified in the SCC. When applicable, the extended warranty shall be secured by, at the CONTRACTOR's option, retention of at least ten percent (10%) of every progress payment, or a special bank guarantee of at least ten percent (10%) of the total Contract Price, or such amount as may be specified in the SCC. The security shall be released only after the lapse of the extended warranty period, after the Related Goods provided are confirmed to be free from patent and latent defects, and all the conditions imposed under the Contract have been fully met.
- 16.9. The CONTRACTOR shall further be liable for implied warranties under applicable laws.
- 16.10. ADB shall promptly notify the CONTRACTOR in writing of any claims arising under any or all of the express and implied warranties provided in the Contract. Upon receipt of such notice, the CONTRACTOR shall, within the

period specified in Subparagraph 16.8, repair or replace the defective Related Goods or parts thereof, without costs to ADB.

16.11. If the CONTRACTOR, after notice, fails to remedy the defect(s) within the period specified in Subparagraph 16.8, ADB may take remedial action, as necessary, at the CONTRACTOR's risk and expense and without prejudice to any other rights which ADB may have against the CONTRACTOR under the Contract and other applicable laws.

17. ADB'S RESPONSIBILITIES

17.1. ADB shall pay the Contract Price, according to the agreed terms and manner of payment therein and subject to the following conditions:

(a) Unless otherwise specified in the SCC payments shall be made only after the Head of the User Unit certifies that the Services were evaluated and found to have been performed according to the terms of the Contract.

(b) Except with the prior approval of Head of the User Unit, no payment shall be made for Services not yet performed under this Contract. At the election of the CONTRACTOR, ten percent (10%) of the amount of each payment may be retained by ADB to cover the CONTRACTOR's warranty obligations described in Paragraph 15 above.

(c) The CONTRACTOR's request(s) for payment shall be made to ADB in writing; accompanied by an invoice describing the Services performed and/or Related Goods delivered and documents required in the SCC; and upon fulfillment of other obligations stipulated in the Contract.

(d) ADB shall pay promptly and not later than thirty (30) days after the CONTRACTOR submits an invoice or claim. The CONTRACTOR shall accept payments as full satisfaction of the CONTRACTOR's entire claim arising out of or in connection with the Contract.

(e) The CONTRACTOR shall submit such documents supporting the CONTRACTOR's invoice or statement of account, as ADB may reasonably require.

(f) Unless otherwise agreed with the CONTRACTOR, ADB shall remit payment of the Contract Price by electronic transfer. The CONTRACTOR shall provide ADB the CONTRACTOR's bank details such as bank name, bank address/branch, account name, and account number on its invoices or request for payment.

17.2. When performance of the obligations in the Contract requires the CONTRACTOR to obtain permits, approvals, or import and other licenses from local public authorities and the CONTRACTOR requests ADB's assistance in this regard, ADB may exert best efforts to assist the CONTRACTOR in completing such requirements in a timely and expeditious manner.

18. DELAY

- 18.1. Performance of the Service and/or delivery of the Related Goods shall be made by the CONTRACTOR according to the time schedule that ADB has provided in the SCC.
- 18.2. If the CONTRACTOR or its Subcontractor(s) encounters conditions impeding timely performance of the Service and/or delivery of the Related Goods, the CONTRACTOR shall notify ADB in writing of the fact of the delay, its likely duration and cause(s) within three (3) days of its occurrence. ADB shall evaluate the situation and advise the CONTRACTOR if the time for performance can be extended.
- 18.3. Delay in performing the obligations under the Contract shall render the CONTRACTOR liable for liquidated damages provided below, unless ADB extends the time of performance or when ADB determines that the delay was due to *Force Majeure*, as defined below and subject further to the conditions in the Contract.

19. LIQUIDATED DAMAGES

- 19.1. If the CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in this Contract, ADB shall deduct from the Contract Price, Liquidated Damages equivalent to a percentage of the Contract price for every week of delay or part thereof until actual delivery or performance. The actual rate and factor of deduction and the maximum allowable deduction are specified in the SCC.
- 19.2. Liquidated damages shall be imposed without prejudice to other remedies under this Contract and under applicable laws. Once the maximum cumulative amount of Liquidated Damages provided in the SCC is reached, ADB may consider terminating the Contract pursuant to Paragraph 21 below.

20. FORCE MAJEURE

- 20.1. Neither Party shall be liable to the other for any delay in performing, or failure to perform, its obligations under the Contract when the delay or failure is caused by *Force Majeure* or fortuitous event, as defined in Paragraph 1 above. In these cases, ADB shall not call the CONTRACTOR's Performance Security, impose liquidated damages, or terminate this Contract for default.
- 20.2. In cases of *Force Majeure*, the CONTRACTOR shall promptly notify ADB in writing of the relevant circumstances. Unless otherwise directed by ADB in writing, the CONTRACTOR shall continue performing as much of its obligations as reasonably practical, and undertake reasonable alternative means of performance not prevented by the *Force Majeure*.

21. CONTRACT AMENDMENT

- 21.1. ADB and the CONTRACTOR shall not vary or modify the terms of the Contract except by prior written amendment signed duly executed by the parties.

21.2. The CONTRACTOR shall submit to the Director, OASIS, through OASIS-PC/CAU, a written proposal to amend and/or modify this Contract. Proposals to amend may include, but not be limited to, changes in the scope of the Services, payment terms or completion schedule. The proposed amendment and/or modification shall not take effect until endorsed by the Director, OASIS and approved by the appropriate approving authority.

22. TERMINATION FOR DEFAULT

22.1. ADB shall terminate this Contract for default when:

(a) The CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in the Contract or extended periods that ADB would grant under Paragraph 17 above and before incurring delay; and the undelivered Services and/or Related Goods amount to at least ten percent (10%) of the Contract Price;

(b) The CONTRACTOR fails to continue delivering or performing the Services amounting to at least ten percent (10%) of the Contract Price within sixty (60) calendar days after receipt of written notice from ADB informing the CONTRACTOR that the Force Majeure had ceased; or

(c) The CONTRACTOR fails to perform any other obligation under the Contract.

22.2. When ADB terminates the Contract in whole or in part, ADB may procure services and/or related goods similar to those to be provided under the Contract, and the CONTRACTOR shall be liable for any excess costs that ADB may incur in procuring similar Services. The CONTRACTOR shall continue performing its obligations provided under parts of the Contract that remain effective.

22.3. Delay in performing the Services and/or delivering the Related Goods for a period equivalent to ten percent (10%) of the specified Contract Period including any extensions granted to the CONTRACTOR shall constitute default that may result in terminating the Contract, forfeiting the CONTRACTOR's Performance Security and/or awarding the Contract to another qualified Contractor.

23. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL

23.1. ADB may terminate the Contract when:

(a) the CONTRACTOR undertakes legal proceedings to dissolve or wind up its business, or be declared bankrupt and/or insolvent.

(b) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the CONTRACTOR's assets and such attachment or process is not discharged within fifteen [15] days; or,

(c) where applicable, the CONTRACTOR dies or otherwise loses legal capacity to contract.

- 23.2. Termination for insolvency shall not entitle the CONTRACTOR to compensation other than for Services already rendered; it shall be without prejudice to any right of action or remedy that has accrued or will accrue thereafter to ADB and/or the CONTRACTOR.
- 23.3. If a significant change in the ownership and/or control of the CONTRACTOR threatens to disrupt or adversely affect delivery of the Service, ADB may terminate the Contract for change of control when:
- (a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;
 - (b) any person or entity acquires directly or indirectly the beneficial ownership of the CONTRACTOR and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR; or
 - (c) any person or entity otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR.

24. TERMINATION FOR UNLAWFUL ACTS

- 24.1. ADB may terminate this Contract if ADB determines that the CONTRACTOR has committed unlawful acts during the procurement of the Service or implementation of the Contract. Unlawful acts include, but are not limited to, the following:
- (a) Corrupt, fraudulent, and coercive practices as defined in Paragraph 6 above;
 - (b) Forging or using forged documents;
 - (c) Using adulterated materials, means or methods; or using production methods contrary to the rules of science or the trade; and
 - (d) Any other act analogous to the foregoing.

25. TERMINATION FOR OTHER CAUSES

- 25.1. ADB may terminate the Contract, in whole or in part, at any time and for other causes, as ADB deems fit. These causes include, but are not limited to, the existence of conditions that make performance of the Service economically, financially or technically impractical and/or unnecessary; or unexpected, extraordinary circumstances that do not constitute fortuitous event(s); or changes in the law and national government policies that apply to the CONTRACTOR.
- 25.2. The Services that were already performed and/or otherwise ready for performance within thirty (30) calendar days after the CONTRACTOR's receipt of Notice to Terminate shall be accepted by the ADB under the terms and for the price/s provided in this Contract. For Services not yet performed and/or ready for performance, ADB may elect to:
- (a) have any portion delivered and/or performed and paid at the existing contract terms and prices; and/or

(b) cancel the remainder and pay the CONTRACTOR an agreed amount to cover partially performance and materials, parts or other necessary expenses already incurred by the CONTRACTOR.

25.3. The CONTRACTOR shall be allowed to recover partial loss/es incurred as a result of termination under this Paragraph, including but not limited to those resulting from purchase of raw materials for Related Goods specially manufactured for ADB and cannot be sold in open market, on a *quantum meruit* basis, as ADB and the CONTRACTOR may agree. However, the CONTRACTOR must first establish the fact of loss to the satisfaction of the ADB.

26. PROCEDURES FOR TERMINATION

26.1. OAS-PC/CAU, on its own or, within seven [7] days upon receipt of a written report from the Head of the User Unit alleging acts or causes that may constitute ground(s) for termination, shall verify the existence of ground(s) for termination.

26.2. OAS-PC/CAU shall submit to the Director, OAS, a Verified Report with supporting documents or evidence and a corresponding recommendation to commence termination. Upon approval of the Director, OAS, OAS-PC/CAU shall send to the CONTRACTOR a copy of the Verified Report and a written notice stating:

(a) that the Contract is being terminated for the ground(s) mentioned above, with summary statement of the acts/omissions that constitute the ground(s) for terminating;

(b) the extent of termination, whether in whole or in part;

(c) that the CONTRACTOR must show cause why the Contract should not be terminated; and

(d) special instructions of ADB, if there are any.

26.3. Within seven (7) calendar days from receipt of the notice, the CONTRACTOR shall submit to OAS-PC/CAU an answer stating why the Contract should not be terminated. If the CONTRACTOR fails to answer, or OAS-PC/CAU, in consultation with the user Unit, deems the answer unacceptable, OAS-PC/CAU shall recommend termination to Director, OAS.

26.4. ADB may, at anytime before receipt of the CONTRACTOR's answer, decide to withdraw the Notice to Terminate if ADB determines that the CONTRACTOR had already completed, delivered, or performed the Service before receiving the Notice.

26.5. Within a non-extendable period of ten (10) calendar days from receipt of the the CONTRACTOR's answer or endorsement of termination from Director, OAS, as applicable, the approving authority of the Contract shall decide to terminate the Contract or not. ADB shall serve a written notice to the CONTRACTOR of the decision and, unless otherwise provided in the notice, the Contract shall be deemed terminated from the CONTRACTOR's receipt of the notice.

26.6. PD, OAS or the IPC, as appropriate, may create a Contract Termination Review Committee (CTRC) to assist them in discharging this function. Decisions recommended by the CTRC shall be subject to the approval of the applicable approving authority.

27. TRANSITION

27.1. After the Contract period or when the Contract is pre-terminated for any of the causes provided above, the CONTRACTOR shall participate in ensuring the smooth, well-organized and seamless transition to a new Contractor. ADB and the CONTRACTOR agree to be bound by the following conditions:

(a) The CONTRACTOR shall submit a business continuation or transition plan, which ADB must first approve before implementation.

(b) The CONTRACTOR shall render all outstanding Service until termination date without further delay or according to a schedule agreed with ADB and the User Unit. The CONTRACTOR shall deploy an adequate staff complement of the appropriate level or seniority to ensure efficient performance of the outstanding Service, including but not limited to, turn-over to the succeeding Contractor.

(c) The CONTRACTOR shall account for all equipment, facility or property of ADB, including documents and information in whatever format that the CONTRACTOR possesses or otherwise uses in performing the Services.

(d) The CONTRACTOR agrees to transfer or turn-over the technology, knowledge or information required to allow continuation of the function and deploy the required personnel for this purpose at costs chargeable to the new Contractor.

27.2. ADB and the CONTRACTOR shall agree on other conditions necessary to ensure smooth transition of the business and uninterrupted delivery of the Service.

28. TRANSFER AND SUBCONTRACTING

28.1. The CONTRACTOR shall not assign or transfer the Contract or specific rights or obligations under it without ADB's prior written consent.

28.2. When allowed by the nature of the Service or not prohibited in the SCC, and subject to the conditions under applicable labor legislation and provided in the SCC, the CONTRACTOR may engage a Subcontractor or a Consultant to perform the Service and/or deliver the Related Goods. The Performance Standards and other relevant provisions of the Contract shall apply to the Subcontractor, Consultant or their respective employees, as if they were employees of the CONTRACTOR. However, the CONTRACTOR shall be solely liable to ADB for the work of the Subcontractor or Consultant.

28.3. Where ADB has consented to subcontracting, copies of each sub-contract shall, at the request of ADB, be sent by the CONTRACTOR to ADB as soon as reasonably practicable.

29. WAIVER

- 29.1. The failure of either Party to insist upon strict performance of any provision of the Contract; or the failure of either Party to exercise, or any delay in exercising, any right or remedy under the Contract shall not constitute a waiver of that right or remedy nor diminish the obligations established by the Contract.
- 29.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing according to Paragraph 30.
- 29.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

30. ENTIRETY AND SEPARABILITY

- 30.1. The Contract supersedes all prior written or verbal agreements between ADB and the CONTRACTOR and contains the reciprocal obligations of the parties pertaining to or arising out of the delivery of the Service. However, this shall not excuse any Party from liability arising from fraud or fraudulent misrepresentation.
- 30.2. Should any Paragraph, Subparagraph or part of the Contract be held by Arbitration Court to be invalid, unenforceable, or void, the decision shall not affect the validity of the entire contract or of those parts that are not so declared or otherwise remain capable of partial or separable performance.

31. USE OF CONTRACT DOCUMENTS AND INFORMATION

- 31.1. Except with prior consent of ADB as provided in the SCC or where disclosure is expressly permitted under the Contract, the CONTRACTOR shall not communicate or otherwise disclose to a third party the Contract, any of its provisions, or other information mentioned or incorporated in the Contract. The parties shall treat each other's Confidential Information as confidential and exert diligent efforts to safeguard and avoid disclosure of the other party's Confidential Information to third parties without the owner's prior written consent.
- 31.2. Unless ADB states otherwise, disclosures by ADB shall be deemed confidential. The CONTRACTOR may only disclose ADB's Confidential Information to the CONTRACTOR's Personnel who are directly involved and who need to know the information in providing the Service. The CONTRACTOR shall ensure that such CONTRACTOR's Personnel are aware of and shall comply with the CONTRACTOR's obligations as to confidentiality. When ADB deems fit due to the nature of the Services, ADB may request the CONTRACTOR to require its Personnel to sign a confidentiality undertaking before commencing any work related to the Services covered by the Contract.
- 31.3. The CONTRACTOR shall not make any press announcement; publicize the Contract or any part thereof; or use ADB's name in publicity releases or advertisements during and after the term of this Contract, except with ADB's written consent and subject to the conditions provided in the SCC.

- 31.4. The Contract and Contract Documents are properties of ADB. All copies shall be returned to OAIS-PC/CAU upon completion of the CONTRACTOR's obligations and termination of the Contract.
- 31.5. The CONTRACTOR shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by ADB under the Contract. The CONTRACTOR shall extend to ADB or its representatives access to those records that ADB may request in connection with the Contract.

32. SETTLEMENT OF DISPUTES

- 32.1. ADB and the CONTRACTOR shall exert effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of this Contract within thirty [30] days of either Party's notice of the dispute to the other. During this period, the User Unit, in consultation with OAIS-PC/CAU, and the CONTRACTOR's personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalation to the Director, OAIS and Principal Director, OAS and their respective counterpart/s.
- 32.2. After the initial thirty [30] day-period, the Parties shall consider referring unresolved disputes to mediation, unless ADB considers the dispute not suitable for mediation or the CONTRACTOR does not consent. The Parties shall appoint a neutral mediator from a reputable association of accredited mediators or their own shortlist of dispute resolution professionals. The mediator shall formulate a simplified procedure for mediation and complete the mediation within fifteen [15] days from his appointment.
- 32.3. Should efforts to resolve disputes under the preceding Subparagraphs fail, either party shall commence arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. The International Chamber of Commerce's [ICC] Rules of Arbitration in force upon commencement of arbitration shall apply. The arbitration shall be in English; it shall take place in Manila and be governed by Philippine law. Each party shall pay its own costs.
- 32.4. Notwithstanding unresolved disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Goods.

33. COUNTERPART

- 33.1. This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

SPECIAL CONDITIONS OF CONTRACT

(Contract No. ADB/OAS-2011/___)

Nature of Service: _____

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is conflict, the provisions herein shall prevail over those in GCC.

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(e)	The CONTRACTOR is _____.
3.1	The Governing Law is Philippine Law.
3.2	The language is English.
4.2	<p>The addresses are:</p> <p>Asian Development Bank (ADB): 6 ADB Avenue, Mandaluyong City, Metro Manila, Philippines</p> <p>Attention: Director, Institutional Services Division</p> <p>Telephone: +63 2 632 _____</p> <p>Facsimile: +63 2 636 _____</p> <p>CONTRACTOR: _____</p> <p>Attention: _____</p> <p>Telephone: _____</p> <p>Facsimile: _____</p>
5.1	<p>The Authorized Representatives are:</p> <p>For ADB: 1. _____</p> <p>2. _____</p> <p>For the CONTRACTOR: _____</p> <p>Either Party may designate a new Authorized Representative by serving written notice on the other. The designation shall take effect immediately upon receipt of the Notice.</p>
7.1	<p>Does the CONTRACTOR have actual and/or potential conflict of interest?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(See Appendix XX: Conflict of Interest Disclosure Form)</p>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
8.1	The CONTRACTOR shall provide the following Services: (See Appendix XX: Work Performance Statement)
8.2	The CONTRACTOR shall provide the following Related Goods, subject to the conditions specified below: (See Appendix XX : Work Performance Statement)
9.1	The Contract Price is _____ [words and figures]. (See Appendix XX : Financial Bid)
9.2	<p>Payment shall be made within 30 calendar days from the date of receipt of covering invoice in a form satisfactory to ADB.</p> <p>Other payments (when applicable):</p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by ADB, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <ul style="list-style-type: none"> ➤ _____ (indicate milestone and/or percentage) _____ ➤ _____ (indicate milestone and/or percentage) _____ and ➤ _____ (indicate milestone and/or percentage) _____ <p>Should the certification not be provided, or refused in writing by ADB within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached ___% of the contract price and shall be completed when the progress payments have reached ___%. <p>The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.</p>
9.3	The Contract Price is a [Fixed Lump-sum]
9.4	The Parties agree to adjust the Contract Price following the formula and conditions below:

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
9.6	The applicable Scheduled Rate of Deduction is:
10.1	The Contract Period will be for an initial period of 12 months. The Starting Date for the commencement of Services is _____. The Intended Completion Date is _____.
12.1	The Performance Security is ___% of the Total Contract Price [amount or rate].
12.2	The Performance Security shall be in the form of a Manager's or Cashier's check; or a Bank Guarantee (see Appendix 7).
12.3	The Performance Security shall be submitted within fifteen (15) calendar days from the date the Bidder received ADB's Contract.
12.4	ADB shall discharge the Performance Security within 60 days from the date of Contract termination.
12.6	The Comprehensive General Liability Insurance is in the amount of Pesos: _____.
12.8	Form of Good Social Management (See Appendix XX)
12.12	The Performance Security [and other indemnities as may be applicable] shall continue after expiration of the Contract Period or Termination of the Contract for a period of XXX days.
13.2	ADB shall provide the following machines and/or equipment:
13.12	Prevention of Harassment (See Appendix XX)
13.14	Safety and Security Procedures for Contractors' Personnel in the Headquarters Building of ADB (See Appendix XX)
14.1	The CONTRACTOR shall render the Services according to the following Performance Standards:
15.1	The CONTRACTOR shall achieve a high level of performance as specified in the SLA (See Appendix XX).
16.8	The extended warranty period is _____ days after complete performance. For purposes of this warranty, the CONTRACTOR consents to a retention sum at the rate of _____.

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
17.1	<p>The conditions for payment are:</p> <p>In support of invoices, the CONTRACTOR shall submit the following supporting documents:</p> <p>The CONTRACTOR's bank details for payment are:</p>
19.1	<p>The liquidated damages rate is _____ per day.</p> <p>The maximum allowable deduction is _____</p>
27.1	Other conditions for transition:
28.2	Conditions for sub-contracting, as applicable.
31.3	Conditions for making announcements:

Sample

Asian Development Bank

SUPPLIERS AND CONTRACTORS ENVIRONMENT, HEALTH, AND SAFETY QUESTIONNAIRE

Asian Development Bank (ADB) promotes the environment, safety, and health (EHS) of its staff, business partners and the immediate community.

As a potential supplier or contractor of ADB, we hope that you will find time to answer and return the completed questionnaire to us.

Please tick where appropriate. Where necessary, attach additional sheets.	YES	NO	SCORE (For ADB use only)
<p>1. Is your company certified to ISO 14001, OHSAS 18001 or any standard relevant to the environment, health, and safety?</p> <p>If yes or the implementation is on going, state when the certification was obtained or the target date of certification.</p> <p>_____</p> <p>_____</p> <p>2. Is your company aware of the possible environment, health and safety (EHS) hazards of yours operations, products or services?</p> <p>3. Does your company have any program or initiative to manage and control the EHS hazards of your operations, products and services?</p> <p>If yes, list the programs or initiatives being implemented by the company.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Housekeeping Program <input type="checkbox"/> Waste Segregation <input type="checkbox"/> Use of Personal Protective Equipment (PPE) <input type="checkbox"/> Emergency Preparedness and Response <input type="checkbox"/> Others, specify <p>_____</p> <p>_____</p> <p>4. Does your company practice recycling or re-use of materials and other resources, where practicable? Does your company sell wastes and by-products to recycling institutions?</p> <p>If yes, list the resources/ materials being recycled/ re-used or sold to recyclers.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			

<i>Please tick where appropriate. Where necessary, attach additional sheets.</i>	YES	NO	SCORE (For ADB use only)
<p>5. Has your company ever received complaints or concerns from customers, nearby community or any member of the public, which are related to the environment, health, and safety?</p> <p>If yes, list the nature of concern/ complaints and where applicable, the actions taken by the company.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>6. Has the company ever been prosecuted for not complying with legislation or regulations relevant to your operations, products or services?</p> <p>If yes, list nature and status of legal non-compliance(s)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			

Sample

- END -

Joint Venture Data

Financial Data

In case the joint venture agreement is not acceptable to ADB, the joint venture may be requested to modify the agreement accordingly. Failure to submit a modified joint venture agreement within 21 days upon receipt by the Applicant of the request for modification will disqualify the Applicant for further consideration.

Names of all Partners of a Joint Venture	
1. Lead Partner	
2. Partner	
3. Partner	
4. Partner	
5. Partner	
6. Partner	

Total value of annual sales turnover, in terms of items/work billed to clients, in US\$ equivalent, converted at the rate of exchange at the end of the period reported.

Annual Turnover Data for the Last Three Years (US\$ Equivalent)			
Partner	Year 1	Year 2	Year 3
1. Lead Partner			
2. Partner			
3. Partner			
4. Partner			
5. Partner			
6. Partner			
Totals			

LIST OF ADB MEMBER COUNTRIES

As of 2 February 2007

1. Afghanistan
2. Armenia
3. Australia
4. Austria
5. Azerbaijan
6. Bangladesh
7. Belgium
8. Bhutan
9. Brunei Darussalam
10. Cambodia
11. Canada
12. China, People's Republic of
13. Cook Islands
14. Denmark
15. Fiji Islands
16. Finland
17. France
18. Georgia
19. Germany
20. Hong Kong, China
21. India
22. Indonesia
23. Ireland
24. Italy
25. Japan
26. Kazakhstan
27. Kiribati
28. Korea, Republic of
29. Kyrgyz Republic
30. Lao PDR
31. Luxembourg
32. Malaysia
33. Maldives
34. Marshall Islands
35. Micronesia, Federated States of
36. Mongolia
37. Myanmar
38. Nauru
39. Nepal
40. The Netherlands
41. New Zealand
42. Norway
43. Pakistan
44. Palau
45. Papua New Guinea
46. Philippines
47. Portugal
48. Samoa
49. Singapore
50. Solomon Islands
51. Spain
52. Sri Lanka
53. Sweden
54. Switzerland
55. Taipei, China
56. Tajikistan
57. Thailand
58. Timor-Leste
59. Tonga
60. Turkey
61. Turkmenistan
62. Tuvalu
63. United Kingdom
64. United States
65. Uzbekistan
66. Vanuatu
67. Viet Nam