



**CONTRACT NO. PURRef**

**BETWEEN**

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**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**AND**

**FULL NAME OF THE CONTRACTOR**

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**FOR THE PROVISION OF**

**WORKS – SHORT SUMMARY**

## WORKS TERMSHEET

**This Termsheet forms an integral part of the Works Contract.**

Contract Date	InsertDate
Contractor Firm	FirmName (the “ <b>Contractor</b> ”)
Incorporation Country	Country
Contractor Address, Facsimile Number and e-mail address to be used for the purpose of Notice (Section 31.2)	ContactNameAndFirmAddress
Contractor Works	BriefOne-SentenceSummary  As further described in Schedule 1
EBRD Department	e.g. IT, Administrative Works, etc.
Site of Works (Definitions)	EBRD HQ London / EBRD RO office (pick one)
Contact Person in EBRD Department (include telephone number and email, facsimile number) to be used for the purpose of Notice (Section 31.2)	OLNameandContactDetails  With a copy to: Corporate Procurement Unit CPUinbox@ebrd.com
Start Date	Same as the Contract Date [(if different, note that obligations begin on the Start Date, not on Contract Date as per Sec 3.1)]
Termination Date (expected)	InsertDate
Contract Price (Schedule 4)	£xxx
Payments Currency (Section 20.3)	e.g. GBP (pound sterling)/Euros
Required Contractor’s Insurance Coverage Amount (Public Liability) (See Section 17.1)	£1,000,000
Required Contractor’s Insurance Coverage Amount (Professional Liability) (See Section 17.2)	£1,000,000
Contractor’s Maximum Liability Amount (Bank Property) (See Section 28.2)	£xxx
Contractor’s Maximum Liability Amount (Breach of Contract) (See Section 28.2)	£xxx

**CONTRACT NO. PURRef**  
**FOR THE PROVISION OF WORKS**

**THIS CONTRACT** is dated as of the Contract Date and concluded between:

- (1) **European Bank for Reconstruction and Development**, an international financial institution established pursuant to the Agreement Establishing the European Bank for Reconstruction and Development, a multilateral treaty signed in Paris on 29th May 1990, having its headquarters at One Exchange Square, London EC2A 2JN, United Kingdom (the “**Bank**” or the “**EBRD**”);

**AND**

- (2) The Contractor.

**WHEREAS:**

- (A) The Bank wishes to acquire certain Works as described in Schedule 1 for the Site as defined in the Termsheet (as defined below).
- (B) The Bank, relying on the specialist skills of and the Proposal submitted by the Contractor, wishes to appoint the Contractor, on a non-exclusive basis to provide the Works described in and upon the terms and conditions of this Contract.
- (C) The Contractor has agreed to provide the Works to the Bank, upon the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1 Wherever used in this Contract, unless the context otherwise requires, the following terms have the following meanings:-

“**Acceptance**” means the process of the acceptance of the Works for and on behalf of the Bank as described in Schedule 1.

“**Additional Fees**” means the fees payable by the Bank in consideration of the provision of the Additional Works as set out in the Variation Order, duly accepted and signed by the Bank's Representative pursuant to the terms and conditions of Section 7.

“**Additional Works**” means any services:- (i) which are not specified in the Contract but which are directly related to the Works; and/or (ii) additional services required from the Contractor due to the change of the scope of the Works pursuant to a Variation Order as provided in Section 7.

“**Audits**” means the audits and reviews carried out by the Bank or the Bank's auditors, experts and insurers, as the case may be, in accordance with the terms and conditions set out in Section 18.

“**Background Checks**” means the Bank's procedures for the vetting of personnel working in its premises as advised to the Contractor by the Bank from time to time.

“**Bank's Project Manager**” means the Project Manager appointed by the Bank who will monitor the Works done by the Contractor and the performance of the Contractor and represent the Bank to ensure that the Works, as far as reasonably practicable, have been performed in accordance with this Contract.

“**Bank's Representative**” means the person nominated or such person for the time being or from time to time duly appointed by the Bank to represent the Bank in connection with the Contract, as set out in [Section 31.2](#).

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the [City of London](#).

“**Confidential Information**” means any non-public, proprietary information concerning the business, administration, operations, assets, finances, systems, internal processes and know-how of the Bank contained in:- (i) written documents delivered or made available to the Contractor marked confidential or similar confidentiality wording on the cover; or (ii) electronic data delivered or made available to the Contractor which indicate that the data are confidential; or (iii) written documents or electronic data delivered or made available to the Contractor where the Bank advised the Contractor that their content is confidential.

“**Control**” means that a person possesses, either directly or indirectly, the power to direct or cause the direction of the management and policies of the Contractor whether through the ownership of voting shares, by contract or otherwise and “**Change Control Event**” means any change of Control in relation to the Contractor.

“**Contract**” means this contract for the provision of the Works to the Bank, together with all Schedules attached hereto, as the same may be amended from time to time by the Parties in accordance with the terms and conditions of [Section 35.9](#).

“**Contract Date**” means the date specified in the Termsheet.

“**Contract Price**” means the total fees and other compensation (exclusive of any applicable VAT) payable to the Contractor under the Contract by the Bank, as set out in [Schedule 4](#) for the full and proper performance of the Works and the obligations of the Contractor under this Contract.

“**Contractor**” has the meaning ascribed to it in the Termsheet.

“**Contractor's Maximum Liability Amount (Bank Property)**” has the meaning or amount ascribed to it in the Termsheet.

“**Contractor's Maximum Liability Amount (Breach of Contract)**” has the meaning or amount ascribed to it in the Termsheet.

“**Contractor's Personnel**” or “**Personnel**” means any person(s) whose services are to be provided by the Contractor in order to discharge its obligations under this Contract and, where the context permits, shall include persons provided by or through the Contractor's permitted subcontractor(s).

“**Contractor's Project Manager**” or the “**Contractor's Engineer**” shall mean the person designated by the Contractor to manage and supervise the Works carried out on the Site.

“**Contractor's Representative**” means the person nominated or such person for the time being or from time to time duly appointed by the Contractor to represent the Contractor in relation to the Contract, as set out in [Section 31.2](#).

“**Contractor's Equipment**” or “**Equipment**” means all of the Contractor's equipment, goods and materials which the Contractor is required to supply to the Bank and/or install to the Site in accordance with this Contract in order to perform the Works.

“**Escalation Procedure**” has the meaning ascribed thereto in [Section 36](#).

“**Event of Force Majeure**” means in relation to either Party any event or circumstance which is beyond the reasonable control of that Party and which results in, or causes the failure of, that Party to perform any or all of its obligations under this Contract including an Act of God, fire, explosion, epidemic, war, terrorist acts, blockades and embargoes, strikes and riots, insurrection, civil commotion, save that, for the avoidance of doubt, strikes and lock-out of the Contractor's employees or Personnel shall not be deemed to be beyond the Contractor's reasonable control, nor an inability to obtain any requisite licence, authorisations or consent required to be obtained by the Contractor to perform its obligations, nor the failings of a subcontractor engaged by the Contractor.

“**Good Industry Practice**” means in relation to any undertaking and any circumstances, the exercise of all due skill, care, prudence and foresight which would be expected in those circumstances from a recognised industry leading service provider providing services and suitably skilled, trained and experienced in that undertaking.

“**Incorporation Country**” has the meaning ascribed to it in the Termsheet.

“**Materials**” means reports, memoranda, documentation, guidance, drawings, models, designs and information prepared by the Contractor and provided to the Bank in connection with this Contract.

“**Party**” means each of the Contractor or the Bank and “**Parties**” means both.

“**Payment Schedule**” means the payment schedule on the basis which the Contract Price will be paid by the Bank as set out in [Schedule 4](#).

“**Plans**” means the plans and drawings on the basis of which the Works are to be done by the Contractor pursuant this Contract. Plans are prepared and provided by the Bank to the Contractor in accordance with the procedure described in [Section 21](#). The Plans are attached to this Contract in [Schedule 3](#).

“**Prohibited Practices**” has the meaning ascribed to it in [Section 30.3\(b\)](#).

“**Project Timetable**” means the timetable and plan for the performance of the Works under the terms of this Contract, which is agreed between the Parties in accordance with **Section 21** and attached hereto as **Schedule 3**.

“**Project Manager(s)**” means the Contractor's Project Manager and the Bank's Project Manager appointed by each of the Parties in accordance with **Section 6**. The initial Project Managers and their contact details are described in **Schedule 5**.

“**Proposal**” means the Contractor's bid or proposal on the delivery of the Works to the Bank in response to the Request for Proposals as attached in **Schedule 10**.

“**Contractor’s Maximum Liability Amount (Bank Property)**” has the meaning or amount ascribed to it in the Termsheet.

“**Contractor’s Maximum Liability Amount (Breach of Contract)**” has the meaning or amount ascribed to it in the Termsheet.

“**Quality Standards**” means the quality standards detailed in the **Schedule 2**.

“**Specification**” means the description and specification of the Works to be provided by the Contractor to the Bank pursuant to this Contract as specified in as specified in **Schedule 2** together with the approved Plans.

“**Site**” has the meaning ascribed to it in the Termsheet.

“**Start Date**” has the meaning set out in the Termsheet.

“**Term**” means the period between the Start Date until the Termination Date, inclusive.

“**Termination Date**” means the date on which:- (i) this Contract is expected to expire as set out in the Termsheet; or (ii) the date of termination or partial termination of the Contract in accordance with the applicable law or **Section 25** or **Section 26** of the Contract.

“**Variation Order**” has the meaning ascribed thereto in **Section 7.1**.

“**Warranty Period**” means a period of **twelve (12)** months commencing on the date when the Works are accepted by the Bank in accordance with the Acceptance procedures provided for in **Schedule 1**.

“**Works**” means the specific services to be provided by the Contractor during the Term to the Bank as specified in **Schedule 1**.

1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and *vice versa* and references to any gender shall include all other genders. References to any person shall include the person's successors and assigns in accordance with this Contract.

1.3 The Schedules attached to this Contract form part of this Contract and, subject to the terms set out in **Section 1.7** below, they shall have the same force and effect as if set out in the main body of this Contract.

- 1.4 References to recitals, schedules and sections are to (respectively) recitals, sections and clauses of this Contract (unless otherwise specified) and references within a schedule to sections are to sections of that schedule (unless otherwise specified).
- 1.5 References in this Contract to any Act of Parliament of the United Kingdom, to the regulations made pursuant to such Act, any statute, statutory provision or a regulation or a directive of the relevant institution of the European Union or other legislation include a reference to that Act of Parliament or regulations made pursuant to such Act, any statute, statutory provision, directive or legislation as amended, extended, consolidated or replaced from time to time (whether before or after the Commencement Date of this Contract) and include any order, regulation, instrument or other subordinate legislation made under the relevant statute, statutory provision, directive or legislation.
- 1.6 The words “*other*”, “*include*” and “*including*” do not connote limitation in any way. Any reference to “*writing*” or “*written*” includes faxes and any legible reproduction of words delivered in permanent and tangible form.
- 1.7 In the event of any conflict or inconsistency between the terms and conditions of the main body of the Contract and any Schedules or any Variation Orders, the provisions of those documents shall, only to the extent of any such conflict or inconsistency, take precedence in the following order:-
- (i) the Variation Order(s);
  - (ii) the Schedules attached to the Contract; and
  - (iii) the main body of the Contract.

## **2. Appointment of the Contractor, the Works**

- 2.1 The Contractor shall:- (i) perform and complete all of the Works; (ii) deliver the Works in accordance with the Project Timetable and in accordance with the Specifications and the Plans; and (iii) the Contractor shall be responsible for the delivery and Acceptance process set out herein and cooperate with the Bank during the Acceptance process.
- 2.2 In providing the Works hereunder, the Contractor shall at all times ensure the diligent, due and proper execution of the Works by its Personnel. The Contractor shall use up-to-date, relevant professional techniques and standards in order to carry out the Works with the care, skill and diligence required in accordance with the Good Industry Practice, the Quality Standards, all applicable laws, enactments, orders, regulations, standards and other statutory instruments and all applicable terms and conditions of this Contract, including compliance with the Specifications and the Plans. Any work required under the Works, for which the quality and/or method of which has not been specified in this Contract, shall conform to best practice for the type of work involved.
- 2.3 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Bank by the Contractor in connection with the supply of the Works, including the information included in the Plans.
- 2.4 The Bank may inspect and examine the manner in which the Contractor provides the Works on reasonable notice given by electronic mail to the Contractor's Project

Manager. The Bank's Project Manager will have the right to receive samples or inspect of any Equipment proposed to be used pursuant to this Contract before used in the Site.

- 2.5 Any date, deadline, or period mentioned in this Contract may be extended by the Bank but otherwise time shall be of the essence for the date of completion of the Works set out in the Project Timetable attached to this Contract.
- 2.6 The Contractor shall provide all necessary and proper supervision on the Site and all Personnel must be familiar with and experienced in the specific works being undertaken. The Contractor shall liaise at all times and provide information/advice as and when required with the Bank. The Contractor's Project Manager shall be designated in writing to assume responsibility for Site management and shall direct the Personnel until the Acceptance process has been completed by the Bank's Project Manager.
- 2.7 The Contractor will assume the role of principal contractor as described within the Construction (Design and Management) Regulations 2007. The Contractor shall liaise at all times and provide information/advice as and when required with its approved subcontractors and the Bank. The Contractor's Project Manager shall have charge of all documents, drawings, Specifications and the like concerning the Works and shall receive and execute any instructions which may be given from time to time by the Bank's Project Manager. The Contractor's Project Manager shall be responsible for the Site copy of the description of the Works and shall make it available to the Bank's Project Manager upon request. The Contractor's Project Manager shall promptly inform and liaise with the Bank and the staff of the Bank in connection with all areas of the Works.
- 2.8 The Contractor shall provide a contractual guarantee for the Equipment installed to the Site during the performance of the Works in accordance with terms set out in **Section 16**.
- 2.9 The inspections, acceptance tests and the process of Acceptance under this Contract shall be described in **Schedule 1** attached hereto.

### **3. Term**

- 3.1 This Contract concluded hereunder by the Parties shall enter into force on the Start Date and expires (or terminates early, as the case may be) on the Termination Date.

### **4. The Contractor's Personnel**

- 4.1 The Contractor shall:- (i) provide experienced and high quality individuals for the provision of the Works; (ii) ensure that all Personnel providing the Works to the Bank shall be adequately skilled, qualified and trained for the tasks they are to perform; (iii) unless otherwise permitted by the Bank, ensure that all of its Personnel engaged in the provision of the Works are in the employment of the Contractor. Work involving the Works must be carried out by qualified and experienced Personnel and such Personnel shall be fully familiar with all aspects of the Contract.
- 4.2 If in the opinion of the Bank any of the Contractor's Personnel is:- (i) incapable of carrying out his/her duties; or (ii) is unsuitable to provide the Works for whatever

reason, the Bank may require that the Contractor replace such Personnel. Upon receipt of such a request, the Contractor shall forthwith substitute a satisfactory individual for such Personnel. The cost of such replacement shall be at the Contractor's expense and the substitute shall be no less experienced or qualified than the Personnel being replaced.

- 4.3 The Contractor may, with the consent of the Bank (such consent not to be unreasonably withheld or delayed) and upon reasonable written notice to the Bank (unless in the incidence of emergency or sickness) substitute for its Personnel other suitable individuals. Such substitution shall be in all respects at the expense of the Contractor and the substitute shall be no less experienced or qualified than the Personnel are being replaced.
- 4.4 For the purpose of and during the Term of this Contract, the Contractor's Personnel shall, and shall be deemed to, be employees, consultants, contractors or agents of the Contractor (as the case may be) and nothing in this Contract shall establish the relation of employer and employee as between the Bank and the Contractor's Personnel. The Contractor's Personnel shall not be members of the Bank's staff and they cannot claim to have the status of a member of staff or an official of the Bank nor the benefits, privileges and immunities attached to the status of being a staff member or official of the Bank.
- 4.5 Unless otherwise agreed between the Contractor and the Bank, all equipment furnished to the Contractor's Personnel by the Bank, used or purchased by the Contractor's Personnel with funds supplied or reimbursed by the Bank hereunder shall be the property of the Bank and upon termination of the Services shall be disposed of as the Bank shall direct.

## **5. Working at the Site**

- 5.1 The Contractor's Personnel shall work such hours at the Site as are required to provide the Works as agreed by the Bank's Project Manager from time to time. The Contractor shall not deliver any Equipment nor begin any work (including preparatory work necessary for the Works) on the Site without obtaining prior approval from the Bank's Project Manager. The Contractor shall take reasonable care to ensure that in carrying out the Works, its Personnel do not interfere with the operations of the Bank.
- 5.2 The Bank shall have the right, at any time, to refuse admittance to, or order the removal from, the Site of any Personnel, subcontractor, or other person acting on behalf of the Contractor or subcontractor who in the opinion of the Bank is not a fit and proper person to be on the Site. Any steps taken under this Section 5.2 shall be confirmed to the Contractor's Project Manager by the Bank and shall not relieve the Contractor of its obligations under the Contract. For avoidance of doubt, the Contractor agrees that: (i) any access to the Site shall be strictly limited to those areas of the Site, as determined by the Bank, necessary for the Contractor to fulfil the Contractor's obligations to deliver equipment or perform the Works under this Contract; (ii) where applicable, any access to Bank information or systems while on the Site shall be strictly limited to such information or systems, as determined by the Bank, necessary for the Contractor to fulfil the Contractor's obligations to perform the Works under this Contract; (iii) while working on the Site or, as the case may be, accessing the Bank's systems, the Contractor shall be accompanied by a representative of the Bank at all times or, as the case may be, supervised by a representative from the

Bank's IT department; and (iv) in no event shall the Contractor copy or remove any information or documents from the Site without the prior written consent of the Bank. The Contractor acknowledges and agrees that any such access granted by the Bank to the Site or, where applicable, to the Bank's information or systems whether accessed on the Site or remotely, shall not constitute a waiver, renunciation or modification of any of the immunities, privileges or exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990, international convention or any applicable law.

- 5.3 The Bank will ensure that the Site is reasonably safe for the purposes of the performance of the Works. The Contractor will report immediately to the Bank any:- (i) circumstances or events which might reasonably be expected to affect the safety of any person or the Site; (ii) accident or injury to any person and any damage to the property of the Bank or any third party at the Site; or (iii) circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Works. The Contractor is deemed to have inspected the Site before submitting its Proposal and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 5.4 The Contractor shall be responsible at its own risk and expense for the delivery to, unloading at and removal from the Site of Equipment, materials and tools necessary for carrying out the Works. Unless otherwise agreed with the Bank, all such items shall remain the responsibility of the Contractor who shall be liable for the care, safety and storage thereof and shall remove them at the end of each visit or upon termination or expiry of the Contract (as may be agreed) and leave the Site in a clean, tidy and safe condition. The Contractor shall, at the Bank's written request, at its own expense and as soon as reasonably practicable:- (i) remove from the Site any equipment which in the reasonable opinion of the Bank is either hazardous, noxious or not in accordance with the Contract; and (ii) replace such item with a suitable substitute item of equipment.
- 5.5 The Contractor's Project Manager shall be responsible for the compliance with the relevant health and safety legislation and regulations by the Personnel working on the Site and shall ensure completion of all appropriate documents and drawings required and the issuing of all instructions to other Personnel to further ensure compliance with current legislation and regulations.

## **6. Project Managers**

Each Party shall appoint a Project Manager who shall:- (i) provide professional and prompt liaison with the other Party in connection with the Works; and (ii) have the necessary expertise in the subject matter of this Contract. Each Party is entitled to change its Project Manager(s) by providing a prior written notification to the other Party.

## **7. Variation Orders**

- 7.1 If the Bank:- (i) requires any services which are not specified in as part of the Works but which are related to or supplement the Works; or (ii) proposes any change to the scope of the Works, these changes will be treated as Additional Works. The provision of Additional Works (and the charges for these) must be agreed in accordance with the procedure set out in this **Section 7** in writing by the Parties (the "**Variation Order**").

Once the Additional Works have been agreed, they shall be treated as part of the Works and will be provided by the Contractor accordingly. Additional Works shall be paid for in accordance with the terms of the relevant Variation Order.

- 7.2 The Bank or the Contractor may, during the Term, propose to the other Party that Additional Works are to be provided. If the Contractor proposes to implement Additional Works or if such a proposal has been made by the Bank, the Contractor shall, subject to the terms of Section 7.5, serve on the Bank a notice specifying:- (i) how the Additional Works will be provided; (ii) the timetable for providing the Additional Works, including the number of days of work, the Additional Fees and which of the Contractor's Personnel will carry out the work (in case of new services) or the change of the Contract Price charged under this Contract (in case a change of the scope of the Works); (iii) and terms of payment in respect of the Additional Fees or the change of the terms of payment in respect of the revised Contract Price (in case a change of the scope of the Works).
- 7.3 Within ten (10) days of receipt of the notice described in Section 7.2 above, the Bank shall advise whether or not it wishes to receive the Additional Works on the terms set out in the aforementioned notice. In this case, the Bank shall issue a Variation Order and forward it to the Contractor for acceptance.
- 7.4 The Bank will not be responsible for payment and will not be charged for the investigations by the Contractor or implementation of any Additional Works that have not been expressly agreed to in writing by the Bank.

## **8. Subcontractors**

The Contractor shall notify the Bank in writing of all sub-contracts awarded under the Contract. The use of subcontractors shall not relieve the Contractor from any of its liabilities or obligations under the Contract and the Contractor shall ensure that its subcontractors comply with all applicable provisions of the Contract. The Contractor shall fully responsible for its subcontractors involved in the completion of the present Contract.

## **9. Materials**

The Contractor acknowledges that all Materials, in whatever medium or format, produced for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract, shall be the sole property of the Bank upon receipt by the Bank.

## **10. Announcements and EBRD Logo**

The Contractor shall obtain written approval from the Bank prior to making publicity releases, advertisements or announcements or other publicity relating to its appointment under, or disclosing any provision or term of, this Contract. The Bank's logo is a registered service mark and as such may not be reproduced without the express written permission of the Bank. The Contractor undertakes that it shall not use the Bank's name in any public announcements, promotional, marketing or sales materials without the prior written consent of the Bank.

## 11. Confidential Information

- 11.1 The Contractor will keep the Confidential Information confidential and will not disclose that Confidential Information to any third party or make any use of the Confidential Information for any purpose other than fulfilling its obligations under this Contract. The Contractor will, on request from the Bank, promptly return or destroy any Confidential Information belonging to the Bank.
- 11.2 Notwithstanding the foregoing, the Contractor may disclose Confidential Information to its Personnel or a permitted subcontractor involved in providing or supervising the performance of the obligations of the Contractor under this Contract on a need-to-know basis, provided that, if disclosed to the Contractor's Personnel or a subcontractor, the Contractor undertakes to ensure that such Personnel or subcontractors are bound by an obligation of confidentiality on terms materially similar to this Section 11.
- 11.3 Confidential Information shall not include information which:-
- (i) in the public domain otherwise than as a result of breach by the Contractor of its obligations under this Contract;
  - (ii) is already in the possession of the Contractor at the time of disclosure to it and which was not provided by the Bank or by a third party in breach of a confidentiality undertaking;
  - (iii) is received after disclosure to the Contractor from a third party without an accompanying obligation of confidentiality;
  - (iv) is independently developed by the Contractor without reference to Confidential Information of the Bank;
  - (v) subject to the Bank's privileges and immunities, is required to be disclosed by law or order of a court or a governmental agency, provided that the Contractor shall forthwith provide the Bank with notice of the disclosure requirement prior to making any such disclosure.
- 11.4 On expiration of the Term or earlier termination of this Contract for whatever reason, the Contractor shall as soon as reasonably practicable return to the Bank all of the Bank's Confidential Information and the Materials and all copies thereof held by the Contractor in connection with the provision of Works or otherwise relating to this Contract.

## 12. Conduct of Contactors and Personnel

- 12.1 The Contractor and their Personnel shall observe the highest standards of integrity and ethical conduct and shall act with honesty and propriety. The Contractor shall ensure that no circumstances arise during the Term in which the activities of the Contractor or their Personnel under the Contract conflict or might conflict with the Contractor's interests or Personnel's personal interests or with any services which the Contractor or their Personnel may render to third parties. The Bank, without prejudice to any other remedy for breach of contract may, by written notice, terminate this Contract in accordance with Section 25.1, if in its judgment, such a conflict of interest has arisen.
- 12.2 The Contractor shall ensure that Contractor's Personnel who have, or are likely to have, access to the Site and/or to documents and information relating to the Bank's policies or operations, agree to comply with the Bank's Policy on Use of Bank IT

Facilities, Information Security Policy, Access Control Policy and Procedures Detailing Bank Access to Bank IT Facilities and Information Assets, each available on the Bank's intranet at <http://www.is.ebrd.com/content/policies-and-procedures/landingpage-book.shtml>, as may be updated from time to time, and, when operating at all times in the Site, the Health, Safety and Security Policy, available on the Bank's intranet at <http://intranet.ebrd.com/ebdnet/services/hss/health/policy/health-and-safety-policy.pdf>, as may be updated from time to time, and, in addition, to the relevant policy or policies attached in Schedule 6, if any, as may be amended from time to time. Such policy or policies shall form an integral part of this Contract and their compliance shall form a material term of this Contract.

- 12.3 Contractor's Personnel must protect and preserve Bank property and assets and must use such resources as efficiently as possible, guarding against waste and abuse.

### **13. Change Control**

- 13.1 The Contractor shall notify the Bank on any Change Control Event in writing in **thirty (30) days**, specifying:- (i) the details of the Change Control Event; and the (ii) impact of the Change Control Event to the Works.
- 13.2 The Bank may, by written notice, terminate this Contract if it finds, at its discretion, that the Change Control Event is not acceptable. The Bank shall not be permitted to terminate the Contract where an approval was granted by the Bank to the change of Control prior to the Change Control Event.

### **14. Background Checks**

In relation to the Contractor's Personnel who have access to the Site, the Contractor shall be obliged to carry out Background Checks in accordance with the requirements of the Bank to ensure that the individual is suitable to work in the Site prior to commencing their assignment.

### **15. Title and Risk in Equipment installed in the Site**

Without prejudice to any right or remedy, which the Bank may have whether at law or under the Contract, title to and risk in the Equipment installed in the Site as part of the Works shall vest in the Bank on the date following the day when the Bank's Project Manager completed the Acceptance process and the Works are accepted by the Bank per the terms of this Contract. The Contractor warrants that after the title to the Equipment will be transferred to the Bank free of liens, claims and encumbrances of third parties.

### **16. Warranty Period**

- 16.1 Where materials and manufacturers of Equipment have not been specified in the Schedules of this Contract, the materials used in the Equipment shall be of the highest possible grades of their respective kinds. All Equipment proposed for use by the Contractor will be approved by the Bank's Project Manager before installation to the Site if not specified in the **Schedule 1** attached to this Contract.
- 16.2 All specified materials used as Equipment and installed in the Site as part of the Works shall be new. On delivery to Site, Equipment shall not be removed without the

consent of the Bank's Project Manager. If any Equipment is considered by the Bank's Project Manager to be in any way unsuitable or inferior in quality, damaged, or not of the required standard it shall be removed by the Contractor forthwith at the Contractor's own expense.

- 16.3 Any of the Equipment on or off the Site must be properly stored and protected to prevent damage to the material itself and is to be packed or protected even on a temporary basis so as to prevent any form of safety hazard.
- 16.4 The Warranty Period shall commence from the completion of the Acceptance process and shall continue in force for the Warranty Period.
- 16.5 During the Warranty Period, the Contractor shall make good or replace at his own expense any part of the installed Equipment that shall be found to be defective or show signs of any weakness or undue wear in consequence of faulty design, workmanship or material.

## **17. Insurance**

- 17.1 During the Term, the Contractor shall carry and maintain adequate:- (i) public liability insurance for any single event or series of related events in a single calendar year, up to the maximum amount of the Required Contractor's Insurance Coverage Amount (Public Liability); and (ii) employers' liability insurance, covering its Personnel and subcontractor(s) engaged in performance of the Works with cover up to a limit not less than required by law in the applicable location. Unless otherwise advised by the Bank, the Contractor agrees that it shall not be able to claim or benefit from any insurance policy of the Bank while performing its obligations under this Contract.
- 17.2 During the Term, and for a period of one (1) year following the Termination Date, the Contractor shall carry and maintain for the benefit of itself and the Bank adequate professional liability insurance cover up to the maximum limit (for each single event or series of related events in a single calendar year) of the Required Contractor's Insurance Coverage Amount (Professional Liability).
- 17.3 Proof of insurance certifying compliance with Section 17.1 and Section 17.2 above must be furnished to the Bank within fifteen (15) days of request. Failure to provide the insurance certificate may be taken by the Bank to indicate that the Contractor has failed to meet his obligations to provide adequate insurance cover under this Contract and treat this event as a material breach of the Contractor's obligations pursuant to Section 25.1 (i).

## **18. Bank's right to audit the Contractor**

- 18.1 The Bank shall have the right to perform Audits in connection with this Contract. The Contractor shall, without charge to the Bank, provide reasonable access to the Bank and/or its auditors, experts and insurers:- (i) any premises from which the Works are being performed together with its records related to the provision of the Works; and (ii) the Contractor's officers, Personnel and subcontractor(s) engaged in the performance of the Works to enable the Bank and/or its auditors, experts and insurers, to conduct appropriate audits and examinations of the operations of the Contractor in relation to the performance of the Works.

- 18.2 The Audits will be for the purpose of verifying:- (i) the accuracy of the Contractor's invoices to the Bank in respect of the Works rendered to the Bank; (ii) that Works are being provided in accordance with the Specifications, Quality Standards and the Plans and that the Contractor is complying with its obligations under the Contract; (iii) the compliance with the requirement to conduct Background Checks; and (iv) any matter relevant to the provision of the Works by the Contractor which the Bank's insurers may require for the purposes of the Bank maintaining or obtaining insurance cover.
- 18.3 The Bank shall provide reasonable written notice to the Contractor prior of exercising its right to Audit. Audits shall be carried out during the Contractor's normal working hours.
- 18.4 During the conduct of any Audit, the Contractor shall permit access to all records and information relating to the Works and their provision, except that the Contractor may refuse to provide access to:- (i) any information proprietary or relating to the Contractor's other customers or its third party licensors; and (ii) any other Confidential Information unconnected with the provision of the Works other than Confidential Information as defined in the Contract.

## 19. Force Majeure

- 19.1 Neither Party shall be liable for any delay in performance or breach of its obligations hereunder resulting from an Event of Force Majeure, provided that such Party:- (i) has taken all reasonable steps to prevent and avoid the Event of Force Majeure; (ii) takes all reasonable steps to overcome and mitigate the effects of the Event of Force Majeure as soon as reasonably practicable; and (iii) on becoming aware of the Event of Force Majeure, promptly informs the other Party and confirms in writing the Event of Force Majeure in accordance with [Section 19.2](#) below.
- 19.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure. The notice shall contain:- (i) details of the circumstances giving rise to the Event of Force Majeure; (ii) the known or anticipated impact of the Event of Force Majeure; and (iii) a reasonable estimate of the period during which the Event of Force Majeure will continue and details of how the affected Party will deal with such Event of Force Majeure.
- 19.3 If the Event of Force Majeure shall continue for more than [thirty \(30\)](#) calendar days, then the Party unaffected by the Event of Force Majeure shall be entitled to terminate the Contract with immediate effect by providing a written notice to the Party affected by the Event of Force Majeure in accordance with [Section 25.1 \(vi\)](#) and [Section 26 \(iii\)](#).

## 20. Payment terms

- 20.1 The Parties agree that in consideration of the Works, the Bank will pay the Contract Price as provided in [Schedule 4](#).
- 20.2 The Bank shall pay the invoice amount to the Contractor, within [thirty \(30\)](#) days of receipt of a valid invoice, providing there is no dispute as to the amount payable. In the event of a dispute of the amount payable, the Bank will only pay the undisputed proportion of the invoice, and the outstanding sum shall be paid once the dispute has been resolved.

- 20.3 The Contractor shall ensure that all invoices bear the Contract reference number and if applicable a valid authorised purchase order number. Failure to adhere to this requirement may delay payment by the Bank. Payments will be made (unless agreed otherwise by the Parties) in the currency indicated in the Termsheet.
- 20.4 Value added tax, if applicable, shall be shown separately on all invoices as a strictly net extra charge and shall, subject to the Bank's privileges and immunities, be borne by the Bank. The Contractor shall be responsible for all other taxes, charges, and levies relating to this Contract.
- 20.5 Payment by the Bank of invoices concerning the Works shall be subject to satisfactory delivery of the Works in accordance with the Specifications and the Plans.
- 20.6 Unless expressly stated otherwise in this Contract, all costs and expenses arising in relation to or incurred in providing the Works will be borne by the Contractor outside of the Contract Price and the Additional Fees, including travel, accommodation and other expenses.

## **21. The Plans and Project Timeline**

- 21.1 The Contractor will send the draft Plans to the Bank in ten (10) days from the date this Contract is signed together with the draft Project Timeline. Upon receipt of these drafts Plans and Project Timeline, the Bank shall review the Plans and the draft Project Timeline and provide the Contractor with its comments in ten (10) days. In case there is a disagreement, the Project Managers must meet and agree on the final Plans and Project Timeline in ten (10) days.
- 21.2 Once the Bank and the Contractor have agreed on the final content of the Plans and Project Timeline shall be signed by each the Bank's Representative and the Contractor's Representative and shall form an integral part of and be subject to the terms and conditions of this Contract. The final Plans and Project Timeline will be attached to this Contract in Schedule 3.
- 21.3 In the event the Bank and the Contractor cannot agree on the final Plans and Project Timeline, the Bank shall be entitled to terminate this Contract with immediate effect by sending a written notice to the Contractor in accordance with Section 25.3.

## **22. The Contractor's Representations and Warranties**

- 22.1 The Contractor hereby represents and warrants to the Bank that:- (i) it is duly incorporated under the laws of the Incorporation Country; (ii) there are no insolvency proceedings against it of any kind; (iii) it has all licenses and permits and fulfils all legal and administrative requirements that are necessary for the performance of this Contract; (iv) it has the sufficient resources and expertise to perform its obligations hereunder; (v) entry into and performance of this Contract shall not result in the breach of the relevant laws and its other agreements made with third persons; and (vi) upon the entry into the Contract it is not aware of any infringement of any rights of third parties caused by entering into this Contract.
- 22.2 The Contractor hereby represents and warrants to the Bank that the Works:- (i) conform in all respects to the description, design, technical Specifications,

requirements or standards contained/or referred to in the Contract and in particular with the Specifications, Quality Standards and the Plans; (ii) conform to any representations made by the Contractor or on behalf of the Contractor in its Proposal or during the process of contract negotiations; (iii) conform to all relevant Quality Standards and Good Industry Practice; (iv) shall be provided in a way that the Contractor shall comply with any and all professional rules, regulations and requirements applicable to providing the Services; and (v) shall be provided in accordance with the Project Timeline.

## **23. The Bank's Obligations**

23.1 The Bank shall co-operate with the Contractor under this Contract. This obligation includes that:-

- (i) upon the written request of the Contractor, indicating the persons and dates and/or intervals of the requested entry, the Bank permits the entrance to the Site in its normal working hours provided that and to the extent it is necessary for the performance hereunder. However, should the Bank have a reason to do so, it may either postpone the permission to enter or exclude certain persons from entrance into the Site, and in the latter case the Contractor shall appoint another person for the job and submit a new request for entrance without any unreasonable delay;
- (ii) the Bank shall provide for conditions required for the inspection and testing as specified in this Contract;
- (iii) the Bank shall provide data and information, subject to the privileges and immunities of the Bank, if and when and to the extent it is reasonably necessary and required by the Contractor to perform the Works under this Contract; and
- (iv) the Bank shall appoint one or more Project Manager(s) responsible for the administration of this Contract.

23.2 The Bank shall pay the Contract Price and the Additional Fee in accordance with the provisions of this Contract and the relevant Variation Order(s).

## **24. Non-Conforming Works**

24.1 Special Remedies for Non-conforming Works

24.1.1 If the Bank has a complaint about the standard of Works or about the manner in which the Works have been performed or about the Equipment used or about any other matter connected with the performance of the Contractor's obligations under the Contract, it shall notify the Contractor, and where considered appropriate by the Bank, investigate the complaint.

24.1.2 In the event that the Bank is of the reasonable opinion that the Contractor failed to perform the Works in accordance with the terms and conditions of this Contract then the Bank may elect, in addition to any other remedies that may be available to it either under the Contract or under the applicable law, one or more of the following remedies:-

- (i) without terminating the Contract, the Bank may require the Contractor, at the Contractor's expense, promptly to remedy any default by re-performing any non-conforming Works; or
- (ii) where the non-conforming or non-performed Works are specifically itemised in the Payment Schedule, the Bank may withhold from any payment to the Contractor under this Contract an amount equivalent to such portion of the Contract Price that is directly allocated to such Works; or
- (iii) the Bank may remedy any default or re-perform any non-conforming Works itself or have them remedied by a third party on its behalf, and in either case the Contractor will pay any costs and expenses so incurred by the Bank. In such case, the Bank may set-off such costs against any other amounts payable by the Bank to the Contractor under this Contract; or
- (iv) terminate the Contract in accordance with the terms of Section 25.1 (i).

## 24.2 Delay in Contractor's Performance

24.2.1 Performance of the Works shall be made by the Contractor in accordance with the Project Timeline specified in Schedule 3.

24.2.2 An unexcused delay by the Contractor in the performance of its obligations shall render the Contractor liable to any or all of the following sanctions:-

- (i) imposition of liquidated damages pursuant to Section 24.3; or
- (ii) terminate the Contract, in accordance with Section 25.1 (i).

24.2.3 If at any time during performance of the Contract, the Contractor should encounter conditions impeding timely performance of Works, the Contractor shall promptly notify the Bank in writing of the fact of the delay, its likely duration and its cause. As soon as practicable after receipt of the Contractor's notice, the Bank shall evaluate the situation and may at its sole discretion extend the Contractor's time for performance.

## 24.3 Liquidated Damages

Subject to Section 19 and Section 24.2, if the Contractor fails to perform the Works within the time period specified in the Contract, the Bank may without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to one percent (1%) of the Contract Price for each week or part thereof of delay until actual delivery or performance or until the Contract is terminated.

## 25. Termination by the Bank

25.1 Without prejudice to any of its other rights under the Contract and/or under applicable law, the Bank may terminate or partially terminate this Contract immediately upon written notice to the Contractor at any time if:-

- (i) the Contractor fails to perform any material term or condition of this Contract and (if the breach is remediable) fails to cure such default within thirty (30) days of receipt of a written notice sent by the Bank, identifying the default and requiring its remedy; or

- (ii) the Contractor has engaged in Prohibited Practices and/or Retaliation as provided for in Section 30.2; or
- (iii) there is any Change of Control Event which is unacceptable to the Bank for any reason in accordance with Section 13.2; or
- (iv) the Contractor makes any voluntary arrangement with its creditors or becomes subject to an administration order or Contractor becomes insolvent or goes into liquidation or convenes a meeting to consider a resolution that it be placed in liquidation or suffers a petition to be presented that it be placed in liquidation or has an administrative receiver, receiver or company appointed in respect of all or any of its assets, makes an assignment for the benefit of, or any composition with, its creditors or takes advantages of any insolvency act (or in each case the equivalent in any jurisdiction); or
- (v) the Contractor ceases to function as a going concern or ceases to conduct its operation in the normal course of business; or
- (vi) the Contractor is affected by an Event of Force Majeure, which prevails for a continuous period in excess of thirty (30) days; or
- (vii) the Bank has determined that circumstances have arisen in which the activities of the Contractor or their Personnel under the Contract conflict or might conflict with the Contractor's interests or Personnel's personal interests in relation to any services which the Contractor or their Personnel may render to third parties, as provided for in Section 12.1.

25.2 The Bank may terminate this Contract, at any time for its convenience. The notice of termination shall specify that termination is for the Bank's convenience and the date on which the termination becomes effective, which shall be not less than sixty (60) days from the date of the notice.

25.3 The Bank may terminate this Contract immediately upon written notice to the Contractor in case the Parties cannot agree on the Plans and the Project Plan as provided by Section 21 above.

## 26. Termination by the Contractor

Without prejudice to any of its other rights under the Contract under the applicable law, the Contractor may terminate this Contract upon written notice to the Bank, if the Bank:-

- (i) fails to perform any other material term or condition of this Contract and (if the breach remediable) fails to cure such default within thirty (30) days of receipt of written notice sent by the Contractor identifying the default and requiring its remedy;
- (ii) ceases to function as a going concern or ceases to conduct its operation in the normal course of business; or
- (iii) is affected by an Event of Force Majeure, which prevails for a continuous period in excess of thirty (30) days.

## 27. Effects of Termination

- 27.1 If this Contract is terminated for convenience by the Bank pursuant to Section 25.2, the Bank shall:- (i) pay the Contractor for all Works satisfactorily completed as at the Termination Date; and (ii) reimburse the Contractor for reasonable and documented expenditure which represent an unavoidable and uninsured direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. The Contractor will be responsible for producing written evidence of the Works completed up to the Termination Date. Payment will become due to the Contractor thirty (30) days from the date of submission of the evidence by the Contractor to the Bank, unless the Bank disputes the amount payable. The amount in dispute will become payable within thirty (30) days of resolving the dispute in accordance with the Escalation Procedure or by arbitration in accordance with the terms set out in Section 33.2 below.
- 27.2 For the avoidance of doubt, the Bank shall not be liable or reimburse to the Contractor under Section 27.1 and Section 27.3 any sum which:- (i) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the relevant insurance policy; (ii) when added to any sums paid or due to the Contractor under the Contract, exceeds the total Contract Price that would have been payable to the Contractor if the Contract had not been terminated by the Bank; or (iii) claims by the Contractor for loss of profit or consequential losses due to early termination of the Contract by the Bank.
- 27.3 If this Contract is terminated pursuant to Section 25.1 (vi) by the Bank or by the Contractor pursuant to Section 26 (iii) due to an Event of Force Majeure or if the Contract is terminated in accordance with Section 25.3 by the Bank, the Bank shall pay the Contractor for all Works satisfactorily completed as at the Termination Date. Payment will become due to the Contractor thirty (30) days from the date of submission of the evidence of the completion of the Works by the Contractor to the Bank, unless the Bank disputes the amount payable. The amount in dispute will become payable within thirty (30) days of resolving the dispute in accordance with the Escalation Procedure or by arbitration in accordance with Section 33.2.
- 27.4 If this Contract is terminated by the Bank pursuant to Section 25.1, except for Section 25.1 (viii), the Contractor shall be liable to and indemnify the Bank for all losses suffered by the Bank as the consequence of termination of the Contract in accordance with the terms and conditions set out in Section 28 below. The Bank shall have the right to recover from the Contractor the amount of any loss suffered by the Bank resulting from the termination, including the cost reasonably incurred by the Bank of making other arrangements for the supply of the Works and any additional costs and expenses incurred by the Bank in connection with the breach of the Contractor taken into account any limitation of liability of the Contractor as set out in Section 28 below and the obligations of the Contractor in connection with an Intellectual Property Infringement, as set out in Section 30.
- 27.5 If this Contract is terminated by the Contractor pursuant to Section 26, except Section 26 (iii), the Bank shall remain liable to pay to the Contractor all sums which have accrued due and owing to the Contractor under this Contract, taken into account any limitation of liability of the Bank as set out in Section 29 below.

## 28. Liability of the Contractor

- 28.1 Subject to the terms and conditions of Section 28.2 and Section 28.3 described below, the Contractor shall be liable and indemnify the Bank and keep the Bank indemnified for all actions, suits, claims, demands, losses, charges, damages, costs and expenses, taxes, penalties, and other liabilities incurred and/or suffered by the Bank arising from, out of or in connection with:- (i) any act or omission, whether negligent, tortious or otherwise of the Contractor, its directors, officers, Personnel, employees, subcontractors or agents relating to matters contemplated in this Contract; and (ii) any breach by the Contractor, its directors, officers, employees, subcontractors or agents of any of the Contractor's obligation under this Contract.
- 28.2 The liability of the Contractor to the Bank shall not exceed the following sums:- (i) in respect of damage to Bank's property, the Contractor's Maximum Liability Amount (Bank Property); and (ii) in respect of non-performance, delay or other breach of the Contract, the Contractor's Maximum Liability Amount (Breach of Contract).
- 28.3 Subject to Section 28.4 below, the Contractor shall not be liable to the Bank under or in connection with this Contract for any indirect or consequential loss or damage including, loss of profit, loss of goodwill or loss of contracts or opportunity.
- 28.4 The limitation of liability set out in Section 28.2 shall not apply actions, suits, claims, demands, losses, charges, damages, costs and expenses, taxes, penalties, and other liabilities caused by:- (i) the fraudulent behaviour or misrepresentation of the Contractor, its directors, officers, Personnel, employees, subcontractors or agents; or (ii) any death or injury to a person resulting from the Contractor's, its directors', officers', Personnel' employees', sub-contractors' or agents' negligence; or (iii) any failure of the Contractor, its directors, officers, Personnel employees, sub-contractors or agents to comply with any applicable law, rule or regulation; or (iv) any event where liability which cannot be limited under applicable law.

## 29. Liability of the Bank

- 29.1 Notwithstanding any other provision of this Contract, the Bank shall not be liable to the Contractor under or in connection with this Contract for any loss or damage (outside the obligation of the Bank to pay the Contract Price for Works delivered by the Contractor in accordance with this Contract) whether direct, indirect, financial, economic, or consequential, whether or not caused by the negligent act or omission of the Bank.
- 29.2 The limitation of liability in Section 29.1 shall not apply in relation to:- (i) any negligent act or omission of the Bank which gives rise to death or personal injury in connection with the Contract; or (ii) fraudulent misrepresentation, fraudulent concealment or other fraudulent action; or (iii) any other liability which cannot be excluded or limited under applicable law.

## 30. Prohibited Practices and Retaliation

- 30.1 The Contractor agrees:
- (a) that the Contractor and the Personnel shall, at all times during the term of this Contract, comply with the Bank's Enforcement Policy and Procedures

including reporting to the Bank any suspicion the Contractor and/or the Personnel have, or is/are informed of, regarding the use of a Prohibited Practice in relation to a Bank Project; and

- (b) not to undertake any Retaliation, or permit any Retaliation to be undertaken by any of its Personnel, employees, managers, officers, directors, subcontractors, consortium members or associates or other persons engaged by the Contractor against any Personnel who reported or intends to report a Prohibited Practice.

30.2 The Bank, without prejudice to any other remedy for breach of contract may, by written notice, terminate this Contract if in its judgement, the Contractor has engaged in Prohibited Practices and/or Retaliation in accordance with Section 25.1 (ii) of this Contract.

30.3 For the purposes of this Section,

- (a) “**Bank Project**” has the meaning given to it in the Bank’s Enforcement Policy and Procedures<sup>1</sup>.
- (b) “**Prohibited Practices**” are one or more of the following, as defined in the Bank’s Enforcement Policy and Procedures as of the date of this Contract:
  - (i) a “coercive practice” which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (ii) a “collusive practice” which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (iii) a “corrupt practice” which means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (iv) a “fraudulent practice” which means any act or omission, including a misrepresentation, that knowingly or recklessly<sup>2</sup> misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; and
  - (v) a “theft” which means the misappropriation of property belonging to another party.
- (c) “**Retaliation**” is any direct or indirect detrimental action recommended, threatened or taken because an individual reported to the Bank any suspicion or

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<sup>1</sup> Currently defined as: “Bank Project means any activity or project which the Bank has financed or committed to finance from its ordinary capital resources (including the purchase of the goods, works or services for the Bank) or Special Funds resources, or from cooperation funds administered by the Bank.”

<sup>2</sup> To act knowingly or recklessly requires that the information or representation being conveyed is false or that the actor is indifferent as to whether the information or representation is true or false. Mere inaccuracy in information or representation, committed through simple negligence, is not tantamount to a fraudulent practice.

information received regarding the use of a Prohibited Practice in relation to a Bank Project.

### 31. Notices

- 31.1 Any notice or other communication given by one Party to the other pursuant to this Contract shall be in writing, sent by:- (i) first class mail; or (ii) by facsimile. Any notice given by facsimile shall be immediately confirmed by the sending of a copy of the notice or communication by ordinary first class mail.
- 31.2 Communications shall be sent to the address of the relevant Party or the facsimile number indicated in the Termsheet or to such other address or facsimile number as may previously have been communicated to the other Party in accordance with this Section 31.2. Each communication shall be marked for the attention of the relevant person. The initial addresses and e-mail addresses of the Parties are indicated in the Termsheet.
- 31.3 A notice or communication shall be effective when:- (i) if sent by first class mail, the time when delivered to the recipient or at the expiration of five (5) clear days after the time of posting, whichever is earlier, or the date when transmitted in the case of facsimile; or (ii) on the notice's effective date, whichever is later.
- 31.4 The Bank and the Contractor shall be entitled to change their respective addresses set out in Section 31.2 by providing a written notice to the other Party. A Party may notify the other Party to this Contract of a change to its name, relevant person, address or facsimile number for the purposes of Section 31.2 such notification shall only be effective on:- (i) the date specified in the notification as the date on which the change is to take place; or (ii) if no date is specified or the date specified is less than three (3) clear days after the date on which notice is deemed to have been served.

### 32. The Escalation Procedure

Except as otherwise provided in this Contract, any dispute between the Parties shall be initially resolved by using the escalation procedure by either Party as follows (the “Escalation Procedure”):

- (i) upon the written request of either Party, the Bank's Representative and the Contractor's Representative shall meet for the purpose of endeavouring to resolve such dispute within ten (10) days from the request of such meeting by a Party;
- (ii) the Bank's Representative and the Contractor's Representative will meet as often as necessary to gather and furnish to the other all information with respect to the matter in issue which is appropriate in connection with its resolution;
- (iii) the Bank's Representative and the Contractor's Representative will discuss the problem and negotiate in good faith in an effort to resolve the dispute and to try to avoid arbitration. The format for such discussions will be agreed by the Bank's Representative and the Contractor's Representative having regard to the nature and importance of the subject matter in dispute;
- (iv) if the Bank's Representative and the Contractor's Representative cannot resolve the dispute in thirty (30) days since the commencement of the Escalation Procedure, then the dispute will be escalated to the Bank's representative as

- indicated in the Termsheet and the representative of the Contractor as indicated in the Termsheet for their review and resolution; and
- (v) if the dispute cannot be resolved in accordance with the above, the Parties may, without prejudice to any other remedy permitted under this Contract, refer the dispute to arbitration in accordance with the provisions of Section 33.2 below, however, such arbitration may not be commenced until forty-five (45) days after the initial request to negotiate such dispute is made pursuant to Section 32 (i) above.

### **33. Governing Law and Dispute Resolution**

- 33.1 This Contract shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Contract shall be governed by and construed in accordance with English law.
- 33.2 Any dispute, controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity hereof or any non-contractual obligations arising out of or in connection with this Contract which cannot be amicably settled, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force and effect on the date of this Contract. There shall be one (1) arbitrator, and the appointing authority for the purposes of the UNCITRAL Rules shall be the LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England or elsewhere. The arbitrator shall not be authorised to grant, and the Contractor agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank, any provisions of the UNCITRAL Arbitration Rules notwithstanding.
- 33.3 Unless the Bank directs otherwise, the Contractor shall continue performing its respective obligations under this Contract while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Contract.
- 33.4 Nothing in this Contract shall be construed as a waiver, renunciation or modification by the Bank of any immunities, privileges and exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, the Bank has made an express submission to arbitration under Section 33.2 of this Contract and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5 (2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 33.2 of this Contract.

### **34. Survival**

Termination or expiration of all or part of this Contract shall not affect either of the Party's accrued rights or liabilities or affect the coming into force or the continuance in

force of Sections 9-11, 17.2, 18 and 27-29 and 31-35 which shall continue to be in force on or after the termination or expiration of the Contract.

### **35. Miscellaneous**

- 35.1 This Contract supersedes any previous conditions, understandings, commitments, agreements or representations (except fraudulent misrepresentations) whatsoever whether oral or written, and represents the entire understanding between the Parties, in relation to the subject matter of this Contract.
- 35.2 Each Party acknowledges and agrees that the provisions of this Contract have been the subject of discussion and negotiation and, with particular reference to any exclusion clauses set out herein, are fair and reasonable having regard to the circumstances as at the date of this Contract.
- 35.3 Neither Party shall be entitled to assign or transfer its rights or obligations under this Contract to any third Party without the prior consent of the other Party. This Contract shall be binding upon the successors and permitted assigns of the Contractor.
- 35.4 No omission to exercise or delay in exercising on the part of any Party to this Contract any right, power or remedy provided by law or under this Contract shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Contract. Any waiver of any right, power or remedy under this Contract must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated any waiver shall be effective only in the instance and only for the purpose for which it is given.
- 35.5 All expenses incurred by or on behalf of the Parties (including all fees of agents, solicitors and accountants employed by either of the Parties) in connection with the negotiation, preparation and execution of this Contract shall be borne solely by the Party which incurred them.
- 35.6 Notwithstanding that the whole or any part of any provision of this Contract may prove to be illegal or unenforceable the other provisions of this Contract and the remainder of the provision in question shall remain in full force and effect.
- 35.7 The Bank may at any time, without notice to the Contractor, set off any liability of the Contractor to the Bank against any liability of the Bank to the Contractor, whether any such liability is present or future, liquidated or unliquidated, under this Contract or not and irrespective of the currency of its denomination. If the liabilities to be set off are expressed in different currencies, the Bank may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Bank of its rights under this Section 35.7 shall be without prejudice to any other rights or remedies available to it under this Contract or otherwise.
- 35.8 No variation to this Contract shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.

- 35.9 Each Party shall at all times act as independent parties and nothing contained in this Contract shall be construed or implied to create an agency or partnership. Neither Party shall have the authority to agree to or incur expenses on behalf of the other except as may be expressly authorised by this Contract.
- 35.10 Provided that the terms and conditions of this Contract do not prescribe otherwise, nothing in this Contract is intended to confer on any person any right to enforce any term of this Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS WHEREOF**, the Parties hereto, acting through their duly authorised representatives, have caused this Contract to be signed as of the Contract Date.

**SIGNED** by for and on behalf of  
**European Bank for Reconstruction  
and Development**

**SIGNED** by for and on behalf of  
**FullNameOfTheContractor**

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**Schedule 1**  
**Works and Acceptance**

**Schedule 2**  
**Quality Standards and Specifications**

**Schedule 3**  
**Project Timeline**  
**Plans**

## Schedule 4

### Rules for the Preparation of Invoices

**The Bank will only make payment against invoices quoting a valid Purchase Order Number.** Invoices may be submitted by post or email. The following points shall be observed when submitting invoices for payment:-

- I. Invoices and Statements sent via Email

**Invoices should be sent from a valid vendor email account to:**

**EBRDinvoices@ebrd.com. The vendor's name and invoice number must be noted in the subject field of the email. Invoices and statements can only be accepted in PDF format.**

- II. Invoices and Statements sent via post

**All documents being sent by post must use the address shown below:**

**European Bank for Reconstruction and Development  
Accounts Control Department  
One Exchange Square  
London  
EC2A 2JN**

- III. the correct purchase order number and the name of the Bank's Representative must be quoted on the invoice;
- IV. invoices shall be marked to show the Contractor's business address, invoice number and date. The name and telephone number of a person who may be contacted in case of need to raise queries shall be quoted on the invoice;
- V. the Bank will only make payments after the original signed copy of the Contract has been returned to the Bank's Corporate Procurement Unit and only on submission of original/PDF invoices (stating the correct purchase order number) and original supporting receipts (no faxes or copies shall be acceptable) ;
- VI. full details of the Contractor's bank account, where payment shall be made must be supplied on the invoices, including currency of the account;
- VII. period during which Works were performed must be stated;
- VIII. any change to the Contract necessitating an amendment to the Contract should be completed prior to submission of an invoice;
- IX. The last of the invoices (or, as the case may be, the only invoice) issued by the Contractor for the Works shall be called the 'Final Invoice' and shall be indicated as such. The final invoice shall not be issued until all the Contractor's obligations for performing the Works have been satisfactorily fulfilled. The final invoice must be submitted within three (3) months of the completion of the Works;
- X. prior to issuing the first invoice, in accordance with the Contract, the Contractor should confirm with the Bank whether VAT can be charged or whether the invoice(s) should be zero rated for VAT purposes due to the Bank's privileges and immunities.
- XI. any applicable VAT charged by Contractor shall be separately itemised on the invoices.

**Schedule 5**  
**Project Managers**

**Schedule 6**

**Relevant Policies of the Bank**