

**African Development Bank Group  
South SUDAN Country Office**



tender@afdb.org  
Date: July 29<sup>th</sup> 2013

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**REQUEST FOR PROPOSALS (RFP)**

**CLEANING AND TEA SERVICES AT THE AFRICAN DEVELOPMENT BANK SOUTH  
SUDAN COUNTRY OFFICE**

**ADB/NCB/SSFO/2013/0100**

(Please quote this reference on all communications pertaining to this bid)

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**LETTER OF INVITATION**

Name of the Bidder \_\_\_\_\_

Dear Sir/ Madam,

1. The African Development Bank (hereinafter referred to as "AFDB" or the "Bank") requests for a quotation for cleaning and tea services at its South Sudan Country Offices situated, Juba, South Sudan. The successful Bidder shall enter into a contract with the Bank and will be expected to commence the duties on the 1<sup>st</sup> December 2013.
2. Only Companies having offices in Juba shall bid for this cleaning services contract. Your proposal should be received on or before 29<sup>th</sup> August, 2013 at 15.00hrs. through postal mail, courier or by hand-delivery at the address given below:

The Resident Representative  
The African Development Bank,  
South Sudan Country Office (SSFO),  
UNDP Compound, Ministries Road  
P.O.Box.622,  
Juba, South Sudan

#### 4. Qualification of Bidder

4.1 All bidders shall provide in Section II - Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary, including the people who will be involved in the works.

4.2 To qualify for award of the Contract, bidders shall meet the minimum qualifying criteria specified in the ITB.

5. This bid dossier includes the letter of invitation together with the annexes and the appendices, which are as follows:

<b>Annex 1</b>	<b>: Terms of Reference.</b>
<b>Annex 2</b>	<b>: Contents of the Proposal to be submitted + Appendix A, B, C</b>
<b>Annex 3</b>	<b>: Evaluation Criteria</b>
<b>Annex 4</b>	<b>: List of the Member Countries of the Bank</b>
<b>Annex 5</b>	<b>: General Terms and Conditions of Purchase</b>
<b>Annex 6</b>	<b>: Sample Contract</b>

6. Bidders should ensure that technical and financial proposals are sealed in two separate envelopes and both envelopes are enclosed in one big envelope (**both the Technical and the Financial Proposal in separate sealed envelopes**) and the big envelope should be sealed addressed to the African Development Bank Representation, tender delivery address given above.

7. Each bidder will submit their proposals in **ONE** original copy and **FOUR** duplicate copies: the original proposal must carry the mention "**ORIGINAL**" and each of the four copies the mention "**COPY**". The technical proposal (one original + 4 copies) and the financial proposal (one original + 4 copies) will each be placed in two separate sealed envelopes (the "internal envelopes").

The following mention should appear on each internal envelope:

- a) the purpose of the present bid,
- b) the mention "Technical Proposal" or "Financial Proposal" as the case may be,
- c) the name and address of the bidder.

The two internal envelopes should be placed together in a large single sealed envelope called "**external envelope**", which must be anonymous and, carry only the following label which should be photocopied and placed on the external envelope:

The Resident Representative  
South Sudan Country Office (SSFO),  
UNDP Compound, Ministries Road  
P. O. Box. 622  
Juba, South Sudan

**REQUEST FOR PROPOSALS – DO NOT OPEN UNTIL ON BID  
OPENING DAY**

**REFERENCE: ADB/NCB/SSFO/2013/0100**

**BID Closing Date and Time: 29<sup>th</sup> August, 2013, 15.300 hrs.**

**The Opening shall be on the same date at 15.30 hrs bid shall be opened  
publicly.**

4. It is the sole responsibility of the bidders to ensure that the sealed envelope containing the proposal reaches the above address before the time and date indicated in Article 4 above. When delivered by hand, the proposals must be delivered at the above delivery address during the South Sudan government working hours from 08h00 to 12h00 and from 14h00 to 16h00, Monday through Wednesday except for holidays observed by the South Sudan government. Delivery to any other office of the African Development Bank will be at the risk of the bidder and will not constitute any delivery to this bid.
5. **Proposals received after the submission date and times shall be rejected.** There shall be a public opening bid immediately after the closure of the bid.
6. At any time before the submission of proposals, the Bank may, for any reason, whether at its own initiative or in response to a clarification requested by the Bidder, amend the bid. The amendment shall be sent in writing by telefax or email to all invited firms and will be binding on them. The Bank may at its sole discretion extend the deadline for the submission of proposals.
7. Proposals must be submitted in the English language in **One Original + Four Copies** (any attachments or appendices and annexes thereto must also be submitted in **One Original + Four Copies**). **The Technical Proposal** must include information in sufficient detail to allow the Bank to consider whether your company has the necessary capability, experience, knowledge, expertise, and the required capacity to perform satisfactorily the services specified along with any other information that may be requested by Annex 2 of this BID. In accordance with the provisions of Annex 3, the technical proposal must include :
  - the statement of conformity (**Appendix A**);
  - project plan for the management of the contract;

- a description of your relevant experience on this particular field, supported with an example of similar services provided;
  - the audited financial statements for the last three (3) fiscal years;
  - qualifications and level of competency of each key staff to be assigned to the execution of the contract (use format as described in **Appendix C**);
  - insurance certificate for professional liability of the bidder.
8. You are advised to separate the envelope for financial proposal from the envelope for technical proposal. It is mandatory for the bidders to submit the **Financial Proposal** by using the bid submission form, attached as **Appendix B** of this BID, including a description of the proposed services. Any deviation from the requested requirements (see TOR on **Annex I**) shall be highlighted and explained. Please note that the Bank will only consider those deviations that have an effect of improving the services requested.
9. The evaluation method of the proposal is described in detail in *under Evaluation Criteria*. For this procurement, evaluation will be based on combined technical and financial proposals. Only bidders, whose technical proposal meet or exceed the minimum qualification points, will be considered for financial evaluation.
10. By submitting the proposal, the bidders confirm that they have taken into account all the documents of this BID including the addenda (if any), all the annexes and as the case may be, the appendices to annexes. The Bank is not bound by any other terms and conditions unless agreed in writing by the Bank.
11. The prices quoted shall be net free and clear of all applicable taxes including withholding tax duties, fees, levies or indirect taxes including customs duties. Surcharges imposed by, or pursuant to the laws, statutes or regulations of any governmental agency or authority as the Bank, its property, other assets, income and its operations and transactions are exempt from any obligation relating to the payment, withholding, or collection of any tax or duty, by virtue of article 57 of the Agreement establishing the Bank.
12. By submitting their bids, each bidder also warrants that they are legally authorized to perform the services and that they are not in default with the Tax and Social Security obligations in their country. The Bank may, at its sole discretion, ask any bidder to provide documentary evidence establishing the same.
13. Proposals should remain valid for a period of not less than sixty (90) days after the deadline date specified for submission.
14. The Bank will award the contract to the bidder whose technical proposal has been determined to be substantially responsive and who has offered the lowest financial proposal in accordance with the evaluation criteria given in under Evaluation Criteria. Responsiveness will be judged by conformance to all the terms, conditions and specifications of the BID.
15. The Contract shall be governed by the Terms of References (attached in **Annex I** of this BID), and the General terms and Conditions (attached as **Annex5** of this BID). Any such contract will require compliance with all factual statements and representations made in the proposal.

16. Unless otherwise specified in this BID, the rates quoted should be fixed for the duration of the contract and should not be subject to adjustment on any account.
17. Notwithstanding the above, the Bank reserves the right to amend the content of this BID and to accept or reject any or all proposals and to cancel the bidding process at any time prior to the award of the contract without incurring any liability to any bidder.
18. Please note that it is the policy of the Bank that bidders, observe the highest standard of ethics during the procurement process and execution of such contracts. In pursuance of this policy, the Bank will reject a bid if it determines that the Bidder has engaged in corrupt or fraudulent practices in competing for the contract in question. In terms of clarity, corrupt or fraudulent practices are;
- *corrupt practice* is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - *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;
  - *coercive practice* is an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;
  - *collusive practice* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
  - *An unethical practice*: Conduct of behavior that is contrary to the provisions or other published requirements of doing business with the Bank pertaining to the conflict of interest, gifts and hospitality, post-employment, etc.
  - *If there is Conflict of interest, it should be declared and disclosed by Bidders.*
19. Bidders are specifically directed NOT to contact any of the Bank's officers involved in procurement and contract management, or its consultants for meetings, conferences, discussions etc that are specifically related to this bid at any-time prior to any award and execution of a contract.
20. Bidders are advised to enquire for clarity through [tender@afdb.org](mailto:tender@afdb.org), citing the bid reference number. Unauthorized contact with any personnel of the Bank stipulated on Article 19 above may cause for rejection of the bidder's bid.
21. We look forward to receiving your proposal and thank you for your interest in the African Development Bank.



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**JEREMIAH MUTONGA**  
Resident Representative, SSFO

**ANNEX 1**  
**African Development Bank Group**



Date: 29<sup>th</sup> July 2013

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**TERMS OF REFERENCE FOR CLEANING AND TEA SERVICES (TOR)**

1. The Contractor will be responsible for Cleaning, and tea services when required by the Bank's supervisor. The cleaning services and will ensure that all areas are maintained, using environmentally friendly products. The services are to be provided continuously for Five (5) working days per week. The Contractor will carry out periodic deep cleaning on regular basis as and when required, including the supply, installation, service and re-fill of hygiene equipment in line with the provisions of the Health and safety standards.
2. The contractor should provide the cleaning materials, and should have cleaning equipment, which its charges on monthly basis will be indicated on the financial bid;
3. The Contractor's Project Manager, together with the Bank's Contracting Officer will ensure that the following tasks are performed and monitored for South Sudan Field Office, and most of the important aspects will include the following on the list;

**2.1 Office Space**

The general cleaning of the Bank's office space, including staff offices, meeting rooms, corridors and reception area, storage and public information areas, corners and edges, and the entire office building premises will cover:

- (a) **Floors:** Sweeping, moping and washing floor surfaces including ceramic tile surfaces, carpets and mats;
- (b) **Partition Walls:** Cleaning partitions and fittings, glass surfaces, baseboards, doors and ledges, external surfaces of ducts and vents, including removal of cobwebs, dust and other natural debris;
- (c) **Windows:** Cleaning internal and external window surfaces, ledges and sills;
- (d) **Waste Collection:** emptying waste baskets and receptacles, collecting and disposing of trash and litter;
- (e) **Blinds:** Dusting and cleaning of window blinds will be carried out every three months;

**2.2 Office Items**

The general cleaning of office items including all movable items within the Bank's office space;

- (a) **Furniture:** Dusting, cleaning and arranging office furniture, desks, chairs, shelves, cabinets, mats and upholstery;
- (b) **Equipment:** Dusting and cleaning exterior of computers and other office equipment;
- (c) **Fixtures:** Dusting, cleaning and setting office fixtures, picture frames, mirrors, stands, and displays, washing of all the Bank's Office Flags, whenever required;

### **2.3 Washrooms, Closets and Kitchens:**

The general cleaning of washrooms, closets and kitchens within the Bank's office space, covering:

- (a) **Walls:** Cleaning walls and wall tiles, including removing of cobwebs, dust and other natural debris;
- (b) **Floors:** Sweeping, mopping and washing floor surfaces including ceramic tile surfaces.
- (c) **Countertops:** Cleaning and sanitizing countertops, sinks, hand driers, soap and paper dispensers including cabinet interiors;
- (d) **Fittings:** Cleaning, dusting, sanitizing and polishing all washroom fittings and metal items such as faucets and handles, mirrors and all glass surfaces, light fixtures, air vents;
- (e) **Kitchen Work:** Collecting and cleaning and setting utensils, provision of refreshments, tea, coffee, hot water and beverage refilling;
- (f) **Garden Services,** daily cleaning of gardens and provision of flowers within the surroundings.

### **2.4 Schedule, Materials and Staffing:**

The Contractor shall indicate the range of general and detailed cleaning activities to be undertaken daily, weekly, monthly or quarterly and will provide a schedule indicating the proposed dates of the activities. The Contractor shall in all instances be responsible for provision of:

- (a) **Apparatus:** All tools and equipment necessary for cleaning, washing and sanitizing including; vacuum cleaners, floor scrubbing, polishing and suction equipment, carpet shampooing and extraction machines, and all general cleaning and maintenance accessories;
- (b) **Hygiene Equipment:** Supply, Install, Service and replenish of all relevant toilet equipment;
- (c) **Consumables:** Any complementary products required for carrying out the services such as detergents, disinfectants, cleaning sprays, polishing materials and fragrances;
- (d) **Replenishment:** Replenishing and refilling toiletries and other consumable washroom items.

- (e) **Staff:** Adequate staff to cover the indicated scope of services, preferably;
- One (1) Supervisor and one (1) Cleaner

#### 4. **CONTRACTOR'S WORK SCHEDULE**

The Contractor is required to perform the services hereinabove on the hours and days according to the itemized list set forth below:

##### **3.1 Contractor's Work Schedule:**

###### **3.1.1 Daily**

- Sweeping and mopping ceramic floors;
- Dusting, damp wiping and polishing furniture and fixtures;
- Cleaning and disinfecting of washrooms;
- Sweeping and cleaning carpets and mats, including the doormats;
- Emptying and cleaning Desk waste bins;
- Replenishing toiletries in the washrooms;
- Upkeep and maintenance of kitchens and replenishment of consumables;
- Collecting, cleaning and setting utensils, hot water and replenishing/refilling beverages;
- Preparing Boardrooms or meeting rooms for meetings;
- Preparation of Tea, coffee, refreshments, hot and cold water as required;
- Responding to any accidental spillages or similar problems in all office prestigious areas.

###### **3.1.2 Weekly**

- Vacuum cleaning floor carpets and mats;
- Cleaning accessible interior and exterior of window and door surfaces;
- Cleaning and removing of cobwebs on walls;
- Sporting of the walls;
- Thorough garden works.

###### **3.1.3 Monthly**

- Stripping of the ceramic floors;
- Thorough garden works.

###### **3.1.4 Quarterly**

- Dusting and cleaning of Window blinds;
- Shampooing of carpets and mats.

###### **3.1.5 Working Hours:**

Daily: Monday to Wednesday from 07h00 to 16h00

Weekly: Saturday from 08h00 to 13h00

Monthly: Saturday from 8h00 to 13h00

Quarterly: Saturday from 08h00 to 13h00

ANNEX 2

African Development Bank Group



Appendix A

(To be included in the Technical Proposal)

A statement of conformity

To the African Development Bank  
PO 323, 1002 Juba Belvedere  
Tunis, Tunisia

Dear Sir/Madam,

Having examined the Request for Proposals documents bid N° ADB/NCB/SSFO/2013/0100, we, the undersigned, offer to provide the Bank, with [the services], in conformity with the Request for Proposals mentioned above, in the amount indicated in the Price Schedule form included in our Financial Proposal.

We undertake, if our Proposal is accepted, to commence and complete delivery of all services required in this Request for Proposals within the time frame stipulated in our Proposal.

We agree to abide by this proposal for a period of sixty (90) days from the date of the submission of the proposals in the Request for Proposals, and it shall remain binding on us and may be accepted by the Bank at any time before the expiration of that period.

Dated

Signature

In the capacity of

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

(To be included in the Financial Proposal)

**Bid submission Form**

To the African Development Bank  
PO 323, 1002 Juba Belvedere  
Tunisia

Dear Sir/Madam,

Having examined the Request for Proposals N°ADB/NCB/SSFO/2013/0100, the receipt of which is hereby acknowledged, we the undersigned, offer to provide the requested services in full conformity with the said Request for Proposals in the total amount (free and clear of all taxes)of *[amount in words]*, *[amount in figures]*.

We agree to abide by this proposal, for a period of sixty (90) days from the proposal submission date as stipulated in the Request for Proposals, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

Until a formal contract is prepared and executed between us, this bid, together with your written acceptance thereof and your notification of award shall constitute a binding contract between us.

Dated:

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

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*[Signature]*

In the capacity of

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*[Position]*

Appendix C

**Format of Curriculum Vitae (CV) For Proposed Key Staff to work at the Bank's office, ensuring cleaning and tea services are offered;**

Proposed Position:

Name of Firm:

Name of Staff:

Profession:

Date of Birth:

Years with Firm:

Nationality:

Membership in Professional Societies: N/A

Detailed Tasks Assigned:

Key Qualifications:

[Give an outline of key staff member's experience and training most pertinent to tasks assignment. Describe *degree of responsibility held* by each staff member on relevant previous assignments and give dates and locations. Use up to half a page.]

Education:

[Summarize college/university and other specialized education of each staff member, giving names of schools, dates attended and degrees obtained. Use up to a quarter page.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by each staff member since graduation, giving dates, names of employing organization, title of positions held and location of assignments. For experience in *last ten years*, also give types of activities performed and client references, where appropriate. Use up to three-quarters of a page.]

Languages:

[Indicate proficiency in speaking, reading and writing of each language: excellent, good, fair, or poor.]

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, these bio-data correctly describe me, my qualifications and my experience.

*Signature of or authorized officer from the bidding firm*

Date:

*Day/Month/Year*

African Development Bank Group



Date: 29th July 2013

Evaluation Criteria

**1. PASS FAIL CRITERIA**

The Minimum Qualification Criteria shall first apply, and only those firms which satisfy the requirements shall be evaluated on the next stage of Technical Evaluation. **The financial bids for the firms that do not qualify at this stage shall be returned to the Bidder(s) unopened.** The qualification criteria shall be as follows;

- 1.1 Only those bidders that are nationals of member countries of the Bank and whose services that are provided originate from the member countries of the Bank are eligible to submit a bid in accordance with the BID. The Bidder will enclose certificate of incorporation in order for the Bank to establish the eligibility. The list of member countries is given as in Annex 4.
- 1.2 The annual average turnover for the last three years, (2008, 2009, and 2010) should be USA 50,000 and should be extrapolated from the audited financial statements for the last three (3) fiscal years;
- 1.3 Experience of service delivery in the Office Cleaning services industry with at least three clients for a similar nature and complexity to the services required under this tender, over the last three years;
- 1.4 Proof of compliance to Social Security of the Country (e.g. Tax Clearance, etc.)
- 1.5 the statement of conformity (**Appendix A**);
- 1.6 Qualification of the Supervisors should be backed by a CV.
- 1.7 a description of your relevant experience on this particular field, supported with an example of similar services provided;
- 1.8 qualifications and level of competency of each key staff to be assigned to the execution of the contract (use format as described in **Appendix C**);
- 1.9 insurance certificate for professional liability of the bidder.

## 2. TECHNICAL EVALUATION (100 POINTS) (weight = 70%)

A two-stage procedure shall be adopted in evaluating the proposals. The technical evaluation shall be carried out first, followed by the financial evaluation. Firms shall be ranked using a combined technical (Nt)/financial scores (Nf), as indicated below.

To be responsive, offers must contain all the information required in each envelop as described above.

Responsive offers will be the subject of a technical analysis according to the following criteria:

- a. **Technical Qualification : 60 points**, to be dispatched as follows :
  - Experience in the Field of cleaning services \_\_\_\_\_ (30 points)
  - Practical experience vis-a-vis the TOR \_\_\_\_\_ (20 points)
  - Describe a similar service currently provided to another client \_\_\_\_\_ (10 points)
- b. **Intervention methodology, how your company will carry out the services** (for similar services) : **20 points**
- c. **qualifications and the level of competency of each key staff to be assigned to the execution of the contract** (use format as described in Appendix C) : **20 points**

**TOTAL: 100 points**

An offer is declared technically valid and is considered for the financial analysis if it obtains a minimum score of seventy (70) points. **The financial bids for the firms that do not qualify at this stage shall be returned to the Bidder(s) unopened.**

## 3. FINANCIAL EVALUATION (weight = 40%)

1. Bidders obtaining the qualifying minimum technical score will be advised so, and it shall be notified to them (by email or by fax) the date and time of the opening of their financial envelope.
2. The financial proposals should indicate the monthly charges per cleaner, the list of monthly supply and this will first be checked for completeness and corrected for computational errors.
3. Detailed financial evaluation will then be carried out. The Bidder making the lowest financial proposal (*Fm*) shall be given 100 points.
4. The financial scores of the other Bidders (*F*) shall be computed as follows:

$$Nf \text{ (financial score)} = 100 \times Fm / F$$

(*F* = amount of financial proposal converted in the common currency).

### 3. Final Ranking

Proposals shall finally be ranked according to their combined technical ( $Nt$ ) and financial ( $Nf$ ) scores using the weights ( $T$  = the weight given to the technical proposal, 60%);  $f$  = the weight given to the financial proposal, 40%;  $T + f = 1$ ) indicated in the above:

$$\text{Final Score (NG)} = Nt \times T\% + Nf \times f\%$$

**The bidder making the highest combined score will be ranked first, and be eligible for award of the contract.**

For purpose of evaluation, the Bank will convert all bid prices expressed in the currency of the BID in which the bid price is payable, into the Bank's Units of Accounts (UA) by using the Bank's monthly moving average rate for the applicable month (deadline for submission of proposals).

### Schedule of Pricing – Bidders shall include this in the financial bid proposal

Bidders shall quote for services and materials from member states;

1. price per cleaner per 8 hours
2. Toilet paper per month
3. Cleaning chemicals and detergent
4. Hand towels
5. Accessories
6. Hygiene sanitary bins and refills
7. Soap dispensers and refills
8. Air fresheners
9. All other materials

The Bank will not sanction any hidden costs, therefore bidders shall

**African Development Bank  
SOUTH SUDAN COUNTRY OFFICE**



**Corporate Procurement**

**Date: 29th July 2013**

**List of Member Countries of the Bank:**

<b>REGIONAL COUNTRIES</b>			
1. Algeria	2. Angola	3. Benin	4. Botswana
5. Burkina Faso	6. Burundi	7. Cameroon	8. Cape Verde
9. Central African Rep.	10. Chad	11. Comoros	12. Congo
13. Côte d'Ivoire	14. Democratic Rep of Congo	15. Djibouti	16. Egypt
17. Equatorial Guinea	18. Eritrea	19. Ethiopia	20. Gabon
21. Gambia	22. Ghana	23. Guinea	24. GuineaBissau
25. Kenya	26. Lesotho	27. Liberia	28. Libya
29. Madagascar	30. Malawi	31. Mali	32. Mauritania
33. Mauritius	34. Morocco	35. Mozambique	36. Namibia
37. Niger	38. Nigeria	39. Rep. of South Africa	40. Rwanda
41. Sao Tome & Principe	42. Senegal	43. Seychelles	44. Sierra Leone
45. Somalia	46. Sudan	47. Swaziland	48. Tanzania
49. Togo	50. Tunisia	51. Uganda	52. Zambia
53. Zimbabwe			
<b>NON REGIONAL COUNTRIES</b>			
1. Argentina	2. Austria	3. Belgium	4. Brazil
5. Canada	6. China	7. Denmark	8. Finland
9. France	10. Germany	11. India	12. Italy
13. Japan	14. Korea	15. Kuwait	16. Netherlands
17. Norway	18. Portugal	19. Saudi Arabia	20. Spain
21. Sweden	22. Switzerland	23. United Kingdom	24. United Arab Emirates

25. United States of America			

*Annex 5*

**African Development Bank**  
**General Terms and Conditions for the Purchase of Goods, Works and Services**

**1.0 Constitution of Contract**

- 1.1 The submission of any bid shall constitute acceptance of the African Development Bank General Terms and Conditions for the Purchase of Works and Services, except to the extent they may be modified by special conditions attached to the Contract or Purchase Order (PO). These General Terms and Conditions are then an integral part of the Contract or PO to which they are attached.
- 1.2 No additional or inconsistent provisions and no variations in or modifications of that Contract or PO made by the Contractor shall be binding unless agreed to in writing by the African Development Bank (hereinafter called the "Bank" or AfDB).

**2.0 Performance of Contract**

2.1 The Contractor agrees to provide the works or services (hereinafter called the "Services"), as the case may be, required hereunder in accordance with the requirements set forth in the Contract or PO documents. The Contractor undertakes to perform the Services hereunder in accordance with the highest standards of professional competence and integrity in the Contractor's industry, having due regard for the nature and purposes of the Bank as an international organization and to ensure that the employees assigned to perform any Services under the Contract

or PO will conduct themselves in a manner consistent therewith. The Services will then be rendered in (1) an efficient, safe, courteous and businesslike manner; (2) in accordance with any specific instructions issued from time to time by the Bank's designated Project Manager; and (3) to the extent consistent with the above as economically as sound business judgment warrants. The Contractor shall provide the services of qualified personnel through all stages of this Contract/PO. The Contractor shall promptly replace any member of the Contractor's project team that the Bank considers unfit or otherwise unsatisfactory. The Contractor represents and warrants that it is in compliance with all the applicable laws of any jurisdiction in which the Services shall be performed.

2.2 The Contractor shall not assign or transfer any of its obligations under the Contract/PO. It shall be solely responsible for the performance of the Contract/PO in every respect. The Contractor shall indicate the Contract/PO number on all correspondence which shall be addressed to the Bank, unless otherwise stated. The Contractor shall immediately report to the Bank in writing any problems encountered which may jeopardize the performance of the Contract/PO.

2.3 The Contractor shall be responsible for obtaining and renewing at its own cost and in due time such approvals, consents, governmental and regulatory authorizations, licenses and permits as

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

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

#### **4.0 Financial Liability, Immunities and Applicable Law**

4.1 The financial liability of the Bank under this Contract/PO shall not exceed the total amount of the Contract/PO.

4.2 Nothing in the Contract/PO or relating thereto shall be construed as constituting a waiver of the privileges or immunities of the African Development Bank.

4.3 This Contract/PO is subject to the laws of England, unless otherwise specified in a specific provision of the Contract/PO.

#### **5.0 Insurance**

5.1 The Contractor shall procure and maintain during the entire period of performance of this Contract/PO, all adequate insurance required by law in the jurisdiction where the Services will be performed. Upon request of the Bank, the Contractor shall be able to furnish evidence of such insurance, or can be asked to take complementary coverage in order to meet the requirements of the present article.

#### **6.0 Documents**

6.1 The Contractor shall furnish all documents and technical information that the Bank may deem necessary for the performance of the Contract/PO. The Contractor shall, in the language requested, attach to each unit of the goods any information necessary for their maintenance and operation.

6.2 The Contract/PO Number must appear on all invoices, shipping documents, packing slips, packages and correspondence.

#### **7.0 Changes**

7.1 The Bank may, at any time by written order designated or indicated to be a change order, make changes to the Contract/PO or any part thereof.

7.2 If any such change increases or decreases the cost of and/or the time required for the performance of any part of the Contract/PO, an equitable adjustment shall be made in the Contract/PO price or time schedule or both, and the Contract/PO shall accordingly be amended. No change in, modification of, or revision to the Contract/PO shall be valid unless in writing and signed by an authorized representative of the Bank.

7.3 Prices indicated in the Contractor's bid shall, at all times, be deemed to be firm and not subject to revision. Works and services for the Bank are exempted from taxes and customs duties. If a Contractor is unable to invoice exclusive of taxes, he shall show these taxes and customs duties on a separate line in the invoice, and the payment will be made free and clear of these taxes and customs duties.

#### **8.0 Payment and Claims**

8.1 Payment will normally be made through check or bank transfer within 30 days

after receipt and acceptance of the Services or from receipt of a correct signed invoice whichever is later. Invoices must be sent in duplicate (one original and one copy) at the following address:

**Financial Control Department, (FFCO)  
African Development Bank  
15, Avenue de Ghana, angle des rues  
Pierre de Coubertin et Hedi Nouria  
BP 323, 1012 Tunis Belvedere  
Tunisia**

Appropriate documentation should accompany all invoices.

8.2 Irrespective of their nature, all claims of the contractual parties, other than warranty claims, arising from or in any way connected with the Contract/PO, shall be asserted within six (6) months after its termination.

## **9.0 Warranties**

9.1 The Contractor warrants that the Services provided under this Contract/PO will conform to the specifications, or other descriptions furnished or specified by the Bank.

9.2 If the Contractor fails to comply with the above requirements, the Bank may after notice to the Contractor, take action at the Contractor expense which in the opinion of the Bank is necessary.

## **10.0 Safety**

10.1 The Contractor shall ensure that itself and all Contractor personnel observe and comply with all applicable safety rules including those specified by the Contractor and the Bank and the Bank's fire, safety and security regulations. The Contractor shall ensure that any work areas assigned by the Bank to the

Contractor are cleaned daily and remain free of hazards.

## **11.0 Suspension**

11.1 The Bank may at any time suspend the performance of the Contract/PO or any part thereof, even for its convenience, by a written notice specifying the part to be suspended, the effective date and the anticipated period of suspension. The Bank shall not be responsible for the cost of the Contractor's further performance of the suspended part after the Contractor has been directed to suspend performance.

11.2 Suspension of the Contract/PO shall not prejudice or affect the accrued rights or claims and liabilities of either party to this Contract/PO.

## **12.0 Termination of Contract/PO**

12.1 The Bank may, by written notice, without the authorization of a court or any other authorization and without prejudice to any other remedy, terminate the Contract/PO in whole or in part:

12.1.1 If the Contractor fails to perform any of its contractual obligations and does not immediately rectify such failure after receipt of a written notice by the Bank;

12.1.2 If the Contractor becomes insolvent or bankrupt or ceases paying its debts generally as they mature.

12.1.3 For convenience, without assigning any reason.

12.2 Termination of the Contract/PO in whole or in part by the Bank is not limited to a fundamental breach of Contract/PO and shall not prejudice or affect the accrued rights or claims and liabilities of either party to this Contract/PO.

12.3 If the Bank terminates the Contract/PO pursuant to paragraph 12.1

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

12.4 If the Bank terminates the Contract/PO pursuant to paragraph 12.1 (iii) for convenience, the notice of such a termination shall state that termination is for the Bank's convenience, the extent to which the performance under the Contract/PO is terminated, and the effective termination date. The Bank will issue an equitable adjustment, not to exceed the total Contract/PO price, to compensate Contractor for: (i) the Contract/PO price for the Services accepted by Bank but not paid previously and adjusted for any savings, (ii) the costs incurred in the performance in the work terminated, including initial and preparatory expenses; (iii) the cost of settling and paying other Contractors, subcontractors or lessors under terminated agreements properly chargeable to the terminated portion of the Contract/PO and not included in items (i) and (ii) hereof; and (iv) a reasonable profit on item (ii) above.

12.5 If the Contractor is found to have engaged in any corrupt or fraudulent practices in connection with the Contract/PO, the Bank may in its sole discretion do any or a combination of the following: (i) declare void or terminate this Contract; (ii) declare the Contractor ineligible to contract with the Bank or to enter into contracts financed by the Bank;

and (iii) pursue legal proceedings against the Contractor. For purposes hereof,:

- "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the procurement process or in Contract/PO execution.
- "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract/PO to the detriment of the Bank, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Bank of the benefits of free and open competition.

### **13.0 Period of performance and Liquidated Damages**

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

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

### **14.0 Liability**

14.1 The Contractor shall be liable for all damages arising from its action or that of its agents, of which he or its agents could be held liable under the applicable laws.

14.2 The Contractor shall bear the full financial consequences of any material damage or personal injuries, including death which, through its action or that of its agents, may be suffered by himself, its agents, the Bank or its agents or any third party.

14.3 The Contractor undertakes to indemnify and hold the Bank and its agents and principals harmless against all claims, suits and losses that are due to personal injury (including death) or property damage to the extent caused, or alleged by a claimant to have been caused, connection with the performance of the Services under this Contract/PO, by (i) improper or defective work performed by the Contractor; (ii) improper or defective machinery, materials, supplies, implements, equipment or appliances provided, installed or used by the Contractor; and (iii) negligent or wrongful acts or omissions of the Contractor.

#### **15.0 Intellectual Property and Confidentiality**

15.1 The Contractor agrees to indemnify and hold harmless the Bank, its officers, employees and agents against all claims, suits and losses that arise from patent, trademark and/or copyright infringement by the Contractor. The Contractor further agrees and indemnifies the Bank in any action against the Bank by the Contractor's employees seeking further compensation for claims covered by the Contractor's worker's compensation insurance. The obligation set out in this Article shall survive the expiration or termination of the Contract/PO.

15.2 The Contractor shall not, while performing the Contract/PO or at any time thereafter, use, or disclose in any manner prejudicial to or incompatible with the interests of the Bank any information of a restricted or confidential nature that may come to its knowledge in connection with

the performance of this Contract/PO. The Contractor shall not use the Bank's name or emblem without prior written authorization.

#### **16.0 Dispute Settlement**

16.1 The parties shall make every effort to resolve any disagreement or dispute arising between them under or in connection with this purchase order amicably by direct informal negotiation. The party asserting the existence of a disagreement or dispute shall, promptly upon becoming aware of such disagreement or dispute, notify the other party in writing (such writing being referred to herein as the "Notice of Dispute") specifying the nature of the disagreement or dispute, and shall also provide such other information about the disagreement or dispute as the other party may reasonably require.

16.2 If, forty-five (45) days after the date the Notice of Dispute has been given, the parties have been unable to amicably resolve the dispute or difference, either party may require that such dispute be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

16.3 The arbitral tribunal shall comprise one arbitrator jointly chosen by the parties. However, where the parties are unable to reach an agreement within sixty (60) days of notification of the Conciliation Notice, the London Court of International Arbitration (LCIA) shall become the appointing authority.

16.4 The arbitration shall take place in, Juba, South Sudan and shall be in the English language.

16.5 The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

16.6 Nothing contained in this Contract shall be construed as or constitute a waiver, renunciation or other modification of any privileges, immunities and exemptions accorded to the Bank under the Agreement Establishing the African Development Bank, international conventions or any other applicable law.

16.7 The provision of this article shall remain in force after the termination of this contract.

### **17.0 Governing law**

17.1 This Agreement shall be governed by, enforced and construed in accordance with the laws of England.

### **18.0 Force Majeure**

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

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

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

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

### **19.0 Severability**

19.1 If any provision of the Contract/PO is held to be invalid or unenforceable, the remainder of the Contract/PO will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

### **20.0 Copyrights, database and design rights**

20.1 The deliverable report(s) and other creative work of the Contractor called for by this Contract/PO, including all written, graphic, audio, visual and other materials, contributions, applicable work product and production elements contained therein, whether on paper, disk, tape, digital file or any other media, (the "Deliverable Work") is being specially commissioned as work made for hire in accordance with the applicable copyright, data protection and design laws of the country governing the Contract/PO originated. The Bank is the proprietor of the Deliverable Work from the time of its creation and owns all right, title and interest therein throughout the world including, without limitation, copyrights and all related rights. To the extent that it is determined that the Deliverable Work does not qualify as a work made for hire within the meaning of the applicable copyright, data protection and design laws of the country governing the Contract/PO, then the Contractor hereby irrevocably transfers and assigns to the Bank all of its right, title and interest, throughout the world and in perpetuity, in and to the Deliverable Work, including without limitation all of its right, title and interest in copyright and related rights free of any claim by the Contractor or any other person or entity.

**SAMPLE CONTRACT**

**Annex 6**

**CONTRACT N°: ADB XXXXX**

**SERVICE CONTRACT**

**BETWEEN**

**THE AFRICAN DEVELOPMENT BANK**

**AND**

**XXXXXXXXXXXXXXXXXXXX**

**THIS SERVICE CONTRACT** (hereinafter called the "Contract") is entered into by and between the **AFRICAN DEVELOPMENT BANK GROUP** (hereinafter called the "Bank"), an international financial institution having its headquarters in Abidjan, Avenue Joseph Anoma, 01 B.P. 1387, Abidjan, CÔTE d'IVOIRE and currently operating from its Temporary Relocation Agency in Juba, 15 Avenue de Ghana, BP 323 - 1002 Tunis Belvédère, Tunis of the one part, and (insert contractor's name)xxxxxr (hereinafter called the "Contractor"), whose address is ( insert full address – physical and postal).

**WHEREAS** the Bank has determined the need to procure the services of the Contractor, as such services are described or referred to in this Contract, subject to the terms and conditions hereinafter set forth.

**NOW THEREFORE** the parties hereto agree as follows:

### **ARTICLE I: SCOPE OF SERVICES**

1.1. The services to be performed by the Contractor under this Contract (hereinafter called the "Services") are described in the terms of reference attached hereto as Annex I (hereinafter called the "Terms of Reference") and forming an integral part hereof.

1.2. Notwithstanding Article XV hereof, the Bank shall be entitled to modify the Terms of Reference, provided however, that no such modification shall change the essential nature or purpose of the Services. If, as a consequence of such modification, the scope of the Services is significantly changed, the Contract Amount (as defined in Section 8.1 hereof) and/or the Contract period may be adjusted by the Bank.

1.3. This contract has the following Annexes, which are attached to this contract and incorporated as part of this contract are herewith;

1.4. General Terms and Conditions of Purchase of Goods, Services and works

1.5. Contractor's financial proposal or pricing schedule;

1.6. Minutes of the negotiated terms and subsequent BAFO dated xxxxxx

### **ARTICLE II: COMMENCEMENT AND DURATION**

The Contractor shall commence the Services on {insert date} and shall carry out the Services for a period of Three (3) months in accordance with the schedules and time limits established under the Terms of Reference, or as otherwise indicated to the Contractor in writing by the Bank. If deemed necessary, this contract may be extended for additional periods to be determined up to the applicable limits prescribed in the Bank's rules.

### **ARTICLE III: DUTIES OF THE CONTRACTOR**

3.1. The Contractor shall perform the Services with all due care, diligence and efficiency, in accordance with the highest standards of professional competence and skill and shall, in performing the Services, accept, promptly act upon, and comply with, such instructions and directions as may be issued by the Bank from time to time.

3.2. The Contractor shall report regularly to the Bank and seek guidance and direction there from on all matters relating to this Contract and the performance of the Services hereunder.

3.3. The Contractor shall perform the Services to the satisfaction of the Bank in accordance with the Terms of Reference and shall submit to the Bank satisfactory and complete report(s) as required under the Terms of Reference.

3.4. During the term of this Contract, the Contractor shall devote all her working time to the performance of the Services, and shall not, unless otherwise agreed in writing by the Bank, engage, directly or indirectly, in any work, business or professional activities other than the performance of the Services and her other duties and responsibilities under this Contract.

3.5. The Contractor shall keep and maintain accurate and complete accounts in respect of expenditures incurred by the Contractor under this Contract, in such form and detail as shall be satisfactory to the Bank, for the purposes of the Bank making payment under this Contract.

3.6. The Contractor shall seek and obtain all necessary visas and/or residence permits as shall be required for carrying out the Services and for performing his/her obligations under this Contract. The Bank may use reasonable efforts to assist the Contractor in obtaining such visas and/or residence permits.

3.7. The Contractor shall be fully liable for the consequences of any error or omission on her part and for any damage caused by negligence on her part in carrying out the Services or performing her other obligations under this Contract.

3.8. Except as otherwise agreed by the Bank in writing during the term of this Contract, the Contractor and any entity in which the Contractor has a professional participation or interest shall be disqualified from supplying any goods, performing any work or service related to or resulting from the Services.

#### **ARTICLE IV: REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1. The Contractor represents and warrants that she possesses the requisite experience, qualifications, competence and skills to perform the Services hereunder and to carry out all of her duties and responsibilities set out in this Contract and that all information given concerning such experience, qualifications, competence and skills is accurate.

4.2. The Contractor covenants that during the term of this Contract she shall abide by, and take all measures necessary to enable her to be in compliance with, all laws and regulations in force in any place where the Services are to be wholly or partially performed.

4.3. The Contractor represents and warrants to the Bank that: (i) the execution by the Contractor of this Contract, the consummation of the transactions contemplated hereby and the performance by the Contractor of this Contract will not violate, conflict with or result in the breach of any of the terms and conditions of, or otherwise give any other contracting party the right to terminate, any contract, agreement, license, franchise, commitment or binding arrangement to which the Contractor is a party and which would otherwise be material to the performance by the Contractor of her obligations hereunder; and (ii) the Contractor possesses and will maintain all required licenses and permits in respect of, or otherwise possesses and will maintain good and valid title to, all the intellectual and other property necessary for the performance of her obligations hereunder. The foregoing representations and warranties of the Contractor shall survive the termination of this Contract.

**ARTICLE V:  
INSURANCE**

The Contractor shall be personally responsible for all medical expenses he/she may incur and shall procure, at her own expense, personal insurance for that purpose. However, without prejudice to the foregoing, during the term of this Contract, the Contractor shall have limited insurance coverage procured by the Bank against accidental injury, or accidental death, occurring in the course of the performance of the Services, on such terms and conditions as the Bank may agree with its underwriters from time to time.

**ARTICLE VI:  
RELATIONSHIP OF THE PARTIES,  
INDEMNIFICATION OF THE BANK**

- 6.1. Nothing contained in this Contract shall be construed as establishing or creating any relationship between the Bank and the Contractor other than that of independent contractor. Accordingly, the Contractor hereby agrees that the Bank shall accept no liability in contract or in tort or any responsibility for the acts, omissions, errors or negligence of the Contractor.
- 6.2. The Contractor hereby undertakes that she will indemnify and hold harmless the Bank from and against any action and all losses, liabilities, costs, claims, damages and expenses ("Losses") (including, without limitation, reasonable legal fees) which the Bank may incur in relation to, arising out of, or otherwise in respect of any act, omission, error or negligence of the Contractor including without limitation all third party claims, and the Contractor will reimburse the Bank for all costs, charges and expenses which the Bank may pay or incur in connection with investigating, disputing or defending against any such action or Losses. The Contractor shall indemnify the Bank against all third-party claims of infringement of patent, trademark, intellectual property or industrial design rights arising from the performance of the Services by the Contractor.
- 6.3. The provisions set out in this Article shall survive the expiration or termination of this Contract.

**ARTICLE VII:  
DISABILITY OF THE CONTRACTOR**

If, at any time and for whatever reason, in the opinion of the Bank, the Contractor is unable to perform or to complete the performance of the Services in a manner satisfactory to the Bank, the Bank may, at its option, either terminate this Contract, extend the time within which the Services are to be performed or postpone the performance of the Services.

**ARTICLE VIII:  
PAYMENT FOR THE SERVICES**

- 8.1. The Bank shall subject to the satisfactory performance of the Services, pay to the Contractor the amounts specified in Section 1 of Annex II to this Contract (hereinafter collectively referred to as the "Contract Amount"), which Annex II forms an integral part hereof.
- 8.2. Payment of the Contract Amount shall be in accordance with the modalities specified in Section 2 of Annex II to this Contract.

**ARTICLE IX:  
COPYRIGHT, CONFIDENTIALITY  
AND OWNERSHIP**

9.1. The Contractor shall not at any time without prior written authorization from the Bank, communicate to any person or entity any Confidential Information disclosed to her for the purpose of performing the Services or obtained by her in the course of performing the Services, or make any public statements concerning this Contract. All Confidential Information shall be treated as confidential by the Contractor and shall remain the property of the Bank. The Contractor shall not be entitled to use or copy such Confidential Information for any purpose not related to this Contract. For purposes hereof, "Confidential Information" refers to all documents, statistics, reports, data or other information whether in written, oral or other tangible form provided, or made available to, or created, obtained, compiled or prepared by the Contractor in respect of, in connection with or by virtue of this Contract.

9.2. The Contractor shall exercise sufficient control over any Confidential Information in order to preserve the confidential nature thereof and to safeguard the Confidential Information from theft and/or access by unauthorised persons and to ensure that Confidential Information is not used in an unauthorised manner.

9.3. The obligations of the Contractor under Section 9.1 of this Contract shall not be deemed to have been breached to the extent that Confidential Information is in the public domain other than due to a breach of Section 9.1.

9.4. The Contractor shall not publish or cause or permit to be published, without the prior written consent of the Bank, the existence of this Contract, nor any conclusions or recommendations or any part thereof formulated in the course of or as a result of the performance of the Services.

9.5. All proprietary and intellectual property rights in all documents, reports, statistics, data and other information provided, made available to, or created, obtained, compiled or prepared by, the Contractor in the course of carrying out the Services shall be vested in and become the property of the Bank. All such documents, reports, statistics, data and any other information shall, upon completion of the Services or termination of this Contract, be promptly returned to the Bank. Such materials shall be sorted and indexed by the Contractor in a manner acceptable to the Bank prior to delivery to the Bank.

9.6. The provisions of this Article shall survive the expiration or the termination of this Contract.

**ARTICLE X:  
ASSIGNMENT AND SUBCONTRACTING**

10.1. The Contractor shall not assign, transfer or make any other disposition of any of her rights or obligations under this Contract, in whole or in part, except with the prior written consent of the Bank.

10.2. The Contractor shall not subcontract or otherwise transfer responsibility for the whole or any part of the Services to any person or entity except with the prior written consent of the Bank.

**ARTICLE XI:  
FORCE MAJEURE**

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

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

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

11.4 In the event of Force Majeure which delays performance of this Contract or any part thereof by more than fifteen (15) days, either party shall have the right, by notice to the other party, to terminate this Contract.

## **ARTICLE XII: FRAUD AND CORRUPTION**

12.1 The Contractor represents and warrants that no employee of the Bank involved in the award of this Contract has received or will receive, directly or indirectly, any benefit or advantage from the Contractor, or any person associated with the Contractor, resulting from the award of this Contract or its performance.

12.2 If the Contractor is found to have engaged in any corrupt or fraudulent practice in connection with this Contract, the Bank may, in its sole discretion, do any or a combination of the following: (i) declare void or terminate this Contract without liability for payment of the Contract Amount or any part thereof; (ii) declare the Contractor ineligible to contract with the Bank or to enter into contracts financed by the Bank; and (iii) pursue legal proceedings against the Contractor. For purposes hereof, "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of an individual in the procurement process or in contract execution, and "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, or collusive practice among bidders prior to or after bid submission.

12.3 The contractor agrees that if an actual or potential conflict of interest arises after the contract commences, the contractor shall immediately make a full disclosure in writing to the Bank's project officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the contractor has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contractor has been awarded and performance of the contract has begun, the contractor shall continue performance until the Bank notifies him of any contrary action taken. The existence of a conflict of interest is a cause of termination of the contract as well as disciplinary action against an employee for whom a conflict exists.

## **ARTICLE XIII: TERMINATION**

13.1 The Bank may terminate this Contract at any time without advance notice in the event the Contractor engages in misconduct. For purposes hereof, "misconduct" means conduct that is unlawful or improper, and that the Bank determines in its discretion, reflects seriously and adversely on the Bank.

13.2 The Bank may, upon giving one month notice in writing to the Contractor, terminate this Contract if the Bank determines that the Contractor has failed to perform satisfactorily the Services or to otherwise comply with any of her obligations under this Contract.

13.3 The Bank may, at its option and in its sole discretion, terminate this Contract when it is in the interest of or the convenience of the Bank to do so, provided that the Contractor shall in such event be given prior notice of not less than one month of such termination.

13.4 The Contractor may terminate this Contract if the Bank has, within a period of forty-five (45) days after the due date, failed to pay any amount due to her in respect of which no dispute has arisen.

13.5 The Bank and the Contractor may terminate this Contract by mutual agreement in writing.

13.6 If this Contract is terminated under this Article or under Article VII or XI, the Bank shall be liable only for payment, in accordance with the payment provisions of this Contract, for the part of the Services actually performed and expenses reasonably incurred prior to the effective date of termination.

#### **ARTICLE XIV: DISPUTE SETTLEMENT**

14.1 The parties shall make every effort to resolve any disagreement or dispute arising between them under or in connection with this Contract amicably by direct informal negotiation. The party asserting the existence of a disagreement or dispute shall, promptly upon becoming aware of such disagreement or dispute, notify the other party in writing (such writing being referred to herein as the "Notice of Dispute") specifying the nature of the disagreement or dispute, and shall also provide such other information about the disagreement or dispute as the other party may reasonably require.

14.2 If, forty-five (45) days after the date the Notice of Dispute has been given, the parties have been unable to amicably resolve the dispute or disagreement, either party may initiate arbitration proceedings in accordance with the UNCITRAL Arbitration Rules as at present in force.

14.3 The arbitral tribunal shall consist of one (1) arbitrator who shall be selected by agreement of the parties. If, sixty (60) days after the date of the Notice of Dispute, the parties are unable to agree on the sole arbitrator, the London Court of International Arbitration (LCIA) shall act as the appointing authority.

14.4 The seat of arbitration shall be London, England.

14.5 The language to be used in the arbitral proceedings shall be English.

14.6 The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

14.7 Nothing contained in this Contract shall be construed as or constitute a waiver, renunciation or other modification of any privileges, immunities and exemptions accorded to the Bank under the Agreement Establishing the African Development Bank, international conventions or any other applicable law.

14.8 The provisions of this Article shall survive the termination of this Contract.

#### **ARTICLE XV: MODIFICATION OR AMENDMENT**

Subject to Section 1.2 hereof, no changes, modifications or amendments shall be made to this Contract except as may be mutually agreed upon in writing by both parties hereto.

#### **ARTICLE XVI: EFFECTIVE DATE AND EXPIRY**

16.1 This Contract shall enter into force on the Effective Date which shall be the last date of its signature by the parties.

16.2 Unless terminated under Article VII, XI, XII or XIII hereof or unless otherwise indicated in writing by the Bank, this Contract shall expire no later than the earlier of 31 January 2012 or date

Date of Signature: \_\_\_\_\_

**ANNEX II**  
**PAYMENT SCHEDULE**

**1. Contract Amount**

Pursuant to Article (to insert the Article no) of this Contract, the Bank shall pay the Contractor the amounts specified below in respect of the Services and for all costs, fees and expenses whatsoever reasonably incurred by the Contractor in performing her/his obligations under this Contract.

**2. Schedule and method of payment**

The schedule for payment of honorarium and travel expenses constituting part of the Contract Amount, as described in Section 1 of this Annex II, shall be as follows:

[Bidder should indicate the preferred payment plan]

*Annex 5*

**African Development Bank**  
**General Terms and Conditions for the Purchase of Goods, Works and Services**

**1.0 Constitution of Contract**

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

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

**2.0 Performance of Contract**

2.2 The Contractor agrees to provide the works or services (hereinafter called the "Services"), as the case may be, required hereunder in accordance with the requirements set forth in the Contract or PO documents. The Contractor undertakes to perform the Services hereunder in accordance

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

2.2 The Contractor shall not assign or transfer any of its obligations under the Contract/PO. It shall be solely responsible for the performance of the Contract/PO in every respect. The Contractor shall indicate the Contract/PO number on all correspondence which shall be addressed to the Bank, unless otherwise stated. The Contractor shall immediately report to the Bank in writing any problems encountered which may jeopardize the performance of the Contract/PO.

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

### **3.0 Conflict of interest**

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

3.3 Contractor or the contractor's employees, subcontractors and subcontractor's employees shall, during the term of the Contract/PO strictly avoid carrying out any other assignments that may be in conflict with this assignment for the Bank.

### **4.0 Financial Liability, Immunities and Applicable Law**

4.4 The financial liability of the Bank under this Contract/PO shall not exceed the total amount of the Contract/PO.

4.5 Nothing in the Contract/PO or relating thereto shall be construed as constituting a waiver of the privileges or immunities of the African Development Bank.

4.6 This Contract/PO is subject to the laws of England, unless otherwise specified in a specific provision of the Contract/PO.

### **5.0 Insurance**

5.1 The Contractor shall procure and maintain during the entire period of performance of this Contract/PO, all adequate insurance required by law in the jurisdiction where the Services will be performed. Upon request of the Bank, the Contractor shall be able to furnish evidence of such insurance, or can be asked to take complementary coverage in order to meet the requirements of the present article.

## **6.0 Documents**

6.1 The Contractor shall furnish all documents and technical information that the Bank may deem necessary for the performance of the Contract/PO. The Contractor shall, in the language requested, attach to each unit of the goods any information necessary for their maintenance and operation.

6.3 The Contract/PO Number must appear on all invoices, shipping documents, packing slips, packages and correspondence.

## **7.0 Changes**

7.4 The Bank may, at any time by written order designated or indicated to be a change order, make changes to the Contract/PO or any part thereof.

7.5 If any such change increases or decreases the cost of and/or the time required for the performance of any part of the Contract/PO, an equitable adjustment shall be made in the Contract/PO price or time schedule or both, and the Contract/PO shall accordingly be amended. No change in, modification of, or revision to the Contract/PO shall be valid unless in writing and signed by an authorized representative of the Bank.

7.6 Prices indicated in the Contractor's bid shall, at all times, be deemed to be firm and not subject to revision. Works and services for the Bank are exempted from taxes and customs duties. If a Contractor is unable to invoice exclusive of taxes, he shall show these taxes and customs duties on a separate line in the invoice, and the payment will be made free and clear of these taxes and customs duties.

## **9.0 Payment and Claims**

9.1 Payment will normally be made through check or bank transfer within 30 days after receipt and acceptance of the Services or from receipt of a correct signed invoice whichever is later. Invoices must be sent in duplicate (one original and one copy) at the following address:

**Financial Control Department, (FFCO)  
African Development Bank  
15, Avenue de Ghana, angle des rues Pierre  
de Coubertin et Hedi Nourra  
BP 323, 1012 Tunis Belvedere  
Tunisia**

Appropriate documentation should accompany all invoices.

9.2 Irrespective of their nature, all claims of the contractual parties, other than warranty claims, arising from or in any way connected with the Contract/PO, shall be asserted within six (6) months after its termination.

## **9.0 Warranties**

- 9.1 The Contractor warrants that the Services provided under this Contract/PO will conform to the specifications, or other descriptions furnished or specified by the Bank.
- 9.3 If the Contractor fails to comply with the above requirements, the Bank may after notice to the Contractor, take action at the Contractor expense which in the opinion of the Bank is necessary.

## **10.0 Safety**

- 10.1 The Contractor shall ensure that itself and all Contractor personnel observe and comply with all applicable safety rules including those specified by the Contractor and the Bank and the Bank's fire, safety and security regulations. The Contractor shall ensure that any work areas assigned by the Bank to the Contractor are cleaned daily and remain free of hazards.

## **11.0 Suspension**

- 11.3 The Bank may at any time suspend the performance of the Contract/PO or any part thereof, even for its convenience, by a written notice specifying the part to be suspended, the effective date and the anticipated period of suspension. The Bank shall not be responsible for the cost of the Contractor's further performance of the suspended part after the Contractor has been directed to suspend performance.
- 11.4 Suspension of the Contract/PO shall not prejudice or affect the accrued rights or claims and liabilities of either party to this Contract/PO.

## **12.0 Termination of Contract/PO**

- 12.6 The Bank may, by written notice, without the authorization of a court or any other authorization and without prejudice to any other remedy, terminate the Contract/PO in whole or in part:
- 12.6.1 If the Contractor fails to perform any of its contractual obligations and does not immediately rectify such failure after receipt of a written notice by the Bank;
- 12.6.2 If the Contractor becomes insolvent or bankrupt or ceases paying its debts generally as they mature.
- 12.6.3 For convenience, without assigning any reason.
- 12.7 Termination of the Contract/PO in whole or in part by the Bank is not limited to a fundamental breach of Contract/PO and shall not prejudice or affect the accrued rights or claims and liabilities of either party to this Contract/PO.
- 12.8 If the Bank terminates the Contract/PO pursuant to paragraph 12.1 (i), the Bank may procure, upon such terms and in such manner as it may deem appropriate, services and works similar to those not delivered and the Contractor shall be liable for any excess costs or damage caused to the Bank by the Contractor's default. The Bank reserves the right to offset costs, incurred by it in relation to the termination of the Contract/PO, from any monies due. In case of

partial termination of the Contract/PO, the Contractor shall continue performance of the Contract/PO to the extent not terminated.

12.9 If the Bank terminates the Contract/PO pursuant to paragraph 12.1 (iii) for convenience, the notice of such a termination shall state that termination is for the Bank's convenience, the extent to which the performance under the Contract/PO is terminated, and the effective termination date. The Bank will issue an equitable adjustment, not to exceed the total Contract/PO price, to compensate Contractor for: (i) the Contract/PO price for the Services accepted by Bank but not paid previously and adjusted for any savings, (ii) the costs incurred in the performance in the work terminated, including initial and preparatory expenses; (iii) the cost of settling and paying other Contractors, subcontractors or lessors under terminated agreements properly chargeable to the terminated portion of the Contract/PO and not included in items (i) and (ii) hereof; and (iv) a reasonable profit on item (ii) above.

12.10 If the Contractor is found to have engaged in any corrupt or fraudulent practices in connection with the Contract/PO, the Bank may in its sole discretion do any or a combination of the following: (i) declare void or terminate this Contract; (ii) declare the Contractor ineligible to contract with the Bank or to enter into contracts financed by the Bank; and (iii) pursue legal proceedings against the Contractor. For purposes hereof,:

- "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the procurement process or in Contract/PO execution.
- "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract/PO to the detriment of the Bank, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Bank of the benefits of free and open competition.

### **13.0 Period of performance and Liquidated Damages**

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

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

### **21.0 Liability**

21.1 The Contractor shall be liable for all damages arising from its action or that of its agents, of which he or its agents could be held liable under the applicable laws.

21.2 The Contractor shall bear the full financial consequences of any material damage or personal injuries, including death which, through its action or that of its agents, may be suffered by himself, its agents, the Bank or its agents or any third party.

**21.3** The Contractor undertakes to indemnify and hold the Bank and its agents and principals harmless against all claims, suits and losses that are due to personal injury (including death) or property damage to the extent caused, or alleged by a claimant to have been caused, connection with the performance of the Services under this Contract/PO, by (i) improper or defective work performed by the Contractor; (ii) improper or defective machinery, materials, supplies, implements, equipment or appliances provided, installed or used by the Contractor; and (iii) negligent or wrongful acts or omissions of the Contractor.

## **22.0 Intellectual Property and Confidentiality**

**22.1** The Contractor agrees to indemnify and hold harmless the Bank, its officers, employees and agents against all claims, suits and losses that arise from patent, trademark and/or copyright infringement by the Contractor. The Contractor further agrees and indemnifies the Bank in any action against the Bank by the Contractor's employees seeking further compensation for claims covered by the Contractor's worker's compensation insurance. The obligation set out in this Article shall survive the expiration or termination of the Contract/PO.

**22.2** The Contractor shall not, while performing the Contract/PO or at any time thereafter, use, or disclose in any manner prejudicial to or incompatible with the interests of the Bank any information of a restricted or confidential nature that may come to its knowledge in connection with the performance of this Contract/PO. The Contractor shall not use the Bank's name or emblem without prior written authorization.

## **23.0 Dispute Settlement**

**23.1** The parties shall make every effort to resolve any disagreement or dispute arising between them under or in connection with this purchase order amicably by direct informal negotiation. The party asserting the existence of a disagreement or dispute shall, promptly upon becoming aware of such disagreement or dispute, notify the other party in writing (such writing being referred to herein as the "Notice of Dispute") specifying the nature of the disagreement or dispute, and shall also provide such other information about the disagreement or dispute as the other party may reasonably require.

**23.2** If, forty-five (45) days after the date the Notice of Dispute has been given, the parties have been unable to amicably resolve the dispute or difference, either party may require that such dispute be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

**23.3** The arbitral tribunal shall comprise one arbitrator jointly chosen by the parties. However, where the parties are unable to reach an agreement within sixty (60) days of notification of the Conciliation Notice, the London Court of International Arbitration (LCIA) shall become the appointing authority.

**23.4** The arbitration shall take place in, Juba, South Sudan and shall be in the English language.

**23.5** The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

**23.6** Nothing contained in this Contract shall be construed as or constitute a waiver, renunciation or other modification of any privileges, immunities and exemptions accorded to the Bank under

the Agreement Establishing the African Development Bank, international conventions or any other applicable law.

23.7 The provision of this article shall remain in force after the termination of this contract.

#### **24.0 Governing law**

24.1 This Agreement shall be governed by, enforced and construed in accordance with the laws of England.

#### **25.0 Force Majeure**

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

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

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

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

#### **26.0 Severability**

26.1 If any provision of the Contract/PO is held to be invalid or unenforceable, the remainder of the Contract/PO will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

#### **27.0 Copyrights, database and design rights**

27.1 The deliverable report(s) and other creative work of the Contractor called for by this Contract/PO, including all written, graphic, audio, visual and other materials, contributions, applicable work product and production elements contained therein, whether on paper, disk, tape, digital file or any other media, (the "Deliverable Work") is being specially commissioned as work made for hire in accordance with the applicable copyright, data protection and design laws of the country governing the Contract/PO originated. The Bank is the proprietor of the Deliverable Work from the time of its creation and owns all right, title and interest therein throughout the world including, without limitation, copyrights and all related rights. To the extent that it is determined that the Deliverable Work does not qualify as a work made for hire within the meaning of the applicable copyright, data protection and design laws of the country governing the Contract/PO, then the Contractor hereby irrevocably transfers and assigns to the Bank all of its right, title and interest, throughout the world and in perpetuity, in and to the Deliverable Work, including without limitation all of its right, title and interest in copyright and related rights free of any claim by the Contractor or any other person or entity.



on which all obligations arising out of or under this Contract have been discharged, except for those expressly stated to survive the termination of this Contract.

**ARTICLE XVII:  
NOTICES**

17.1 All notices or requests required or permitted to be given or made shall in the case of the Bank be addressed or made to the Division Manager, Corporate Procurement, CGSP. 2, African Development Bank, or such officer duly authorised by the Bank in writing to receive or act upon the same.

17.2 Any notice or request to be given or made under this Contract shall be in writing and shall have been duly made or given when delivered by hand, or by certified mail or by facsimile to the party to the following address, or such other address as any of the parties may have notified to the other party in writing.

**FOR THE BANK**

Mailing Address

**The African Development Bank**  
15, Avenue du Ghana  
BP. 323, 1002 Tunis Belvédère, Tunis  
TUNISIA

Attention

**(Division Manager, Corporate Procurement, CGSP.2)**  
Department: CGSP\_DEPT  
Fax: --\_

**FOR THE CONTRACTOR**

Mailing Address

(insert contact address)

**ARTICLE XVIII:  
GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of England.

**ARTICLE XIX:  
SEVERABILITY**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Contract shall in no way affect the validity, enforceability or legality of the other provisions.

**ARTICLE XX  
COUNTERPARTS**

This Contract may be executed in any number of counterparts by the parties hereto, each of which when so executed and delivered shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed on the respective dates specified below.

**FOR THE AFRICAN DEVELOPMENT BANK**

\_\_\_\_\_  
JEREMIAH MUTONGA

Resident Representative, SSFO

Date:

**FOR THE CONTRACTOR**

\_\_\_\_\_  
Name of the Signatory Officer