



The Federal Democratic Republic of Ethiopia



**Standard Bidding Document (SBD)**  
**For National Competitive Biddings (NCB)**  
**Adigrat University (AdU)**  
**Request for Proposal**  
**For**  
**Supply, Installation, Configuration, Testing and Commissioning of VDI**  
**Infrastructure Project on Turnkey Basis for AdU**

<b>Subject of Procurement</b>	Supply, Installation, Configuration, Testing & Commissioning of VDI Infrastructure Project on Turnkey Basis for AdU
<b>Procurement Reference Number</b>	11/2010
<b>Project Name</b>	Supply, Installation, Configuration, Testing & Commissioning of VDI Infrastructure Project on Turnkey Basis for AdU
<b>Date of Issue of Bidding Document</b>	07/09/2010
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Adigrat, Tigray

Ethiopia



The Federal Democratic Republic of Ethiopia

# Bidding Document

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# Part 1 Bidding Procedures

## Section 1. Instructions to Bidders

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## **Section I. Instructions to Bidders**

### **A. General**

#### **1. Introduction**

- 1.1 The Public Body indicated in the Bid Data Sheet (BDS) is the Contracting Authority for this procurement process and it is bound by the rules governing public procurement in the Federal Democratic Republic of Ethiopia. It has the powers and duties to conclude a Contract for the supply and installation of the Information Systems (IS). Accordingly, this procurement process is being conducted in accordance with the recent editions of the Ethiopian Federal Government Procurement and Property Administration Proclamation and Public Procurement Directive under the procurement method indicated in the BDS.
- 1.2 By the issue of this Bidding Document the Public Body invites interested Candidates to submit their bids with a view to entering into Contract with the Public Body for the supply and installation of the Information Systems (IS) which general description is provided in the BDS. Information Systems (IS) that are subject of this procurement process are more particularly specified in Section 6, Statement of Requirement upon the basis of the information supplied in and in accordance with this Bidding Document.
- 1.3 The procurement reference number and number of lots of this Bidding Document are provided in the BDS. If Bids are being invited for individual contracts (lots) the Bidder may submit a Bid for one lot only, several or all of the lots. Each lot will form a separate contract and the quantities indicated for different lots will be indivisible. The Bidder must offer the whole of the quantity or quantities indicated for each lot.
- 1.4 Each Bidder may only submit one Bid, either individually or as a partner in joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Bids with the Bidder's participation to be disqualified.
- 1.5 This Section 1, Instructions to Bidders shall not form a part of the Contract. These instructions are intended to assist prospective Bidders in the preparation of their Bids.
- 1.6 Issuance of this Bidding Document does not in any way obligate the Public Body to award a Contract.
- 1.7 The Public Body retains ownership of all bids submitted in response to this Bidding Document. Consequently, Bidders have no right to have their bids returned to them except late bids.
- 1.8 In submitting a bid, the Bidder accepts in full and without restriction this Bidding Document as the sole basis of this procurement procedure, whatever his own conditions of sale may be, which he hereby waives. Bidders are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this Bidding Document. Failure to submit a bid containing all the required information and documentation within the deadline specified may lead to the rejection of the bid. No account can be taken of any reservation in the bid as regards the Bidding Document; any reservation will result in the immediate rejection of the bid without further evaluation.
- 1.9 The permitted method of communication shall be in writing. Throughout these Bidding Documents the term "in writing" means communicated in written form and delivered against receipt.

#### **2. Source of Funds**

- 2.1 The Public Body has an approved budget toward the cost of the procurement described in the

Section 6, Statement of Requirement. The Public Body intends to use these funds to place a Contract for which these Bidding Documents are issued.

- 2.2 Payments will be made directly by the Public Body and will be subject in all respects to the terms and conditions of the resulting Contract placed by the Public Body.

### **3. Fraud, Corruption and Complaints Provisions**

- 3.1 The Government of the Federal Democratic Republic of Ethiopia (herein after called the Government) represented by the Public Procurement and Property Administration Agency (herein after called the Agency) requires Contracting Authorities, as well as bidders to observe the highest standards of ethics during the procurement and the execution of contracts. In pursuance of this policy, the Government:

- (a). Defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence improperly the action of a public official in the procurement process or in contract execution;
  - (ii) “Fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - (iii) “Collusive practices” is a scheme or arrangement between two or more Bidders, with or without the knowledge of the Public Body, designed to establish prices at artificial, non-competitive levels; and
  - (iv) “Coercive practices” is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
  - (v) Obstructive practice is
    - deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Federal Ethics and Anticorruption Commission, the Federal Auditor General, and the Public Procurement and Property Administration Agency or their auditors' investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent their from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - acts intended to materially impede the exercise of inspection and audit rights provided for under ITB Clause 3.5 below.
- (b). Will reject a recommendation for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c). Will debar a Bidder from participation in public procurement for a specified period of time if it at any time determines the Bidder has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract. The List of Debarred Bidders is available on the Agency's Website <http://www.ppa.gov.et>.
- 3.2 In pursuit of the policy defined in Sub-Clause 3.1, the Public Body may terminate a contract for the supply and installation of the Information Systems (IS) if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Public Body or of a Bidder during the procurement or the execution of that contract.

- 3.3 Where it is proved that the bidder has given or has offered to give inducement or bribe to an official or procurement staff of the Public Body to influence the result of the bid in his favor shall be disqualified from the bid, prohibited from participating in any future public procurement and the bid security deposited by them shall be forfeited.
- 3.4 Bidders are required to indicate their acceptance of the provisions on fraud and corruption, as defined in this clause through the statement in the Bid Submission Sheet.
- 3.5 The Agency will have the right to require to inspect the Supplier accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Agency.
- 3.6 By signing the Bid Submission Sheet Form, the Bidder represents that it either is the owner of the Intellectual Property Rights in the hardware, software or materials offered, or that it has proper authorization and/or license to offer them from the owner of such rights. For the purpose of this Clause, Intellectual Property Rights shall be as defined in GCC Clause 1.1. Willful misrepresentation of these facts shall be considered a fraudulent practice subject to the provisions of Clauses 3.1 through 3.5 above, without prejudice of other remedies that the Public Body may take.
- 3.7 Subject to the recent editions of the Public Procurement Proclamation and Procurement Directive, a candidate or a bidder aggrieved or is likely to be aggrieved on account of the Public Body inviting a bid not complying with the provisions of the Proclamation or Procurement Directive in conducting a bid proceeding may present complaint to the head of the Public Body to have the bid proceeding reviewed or investigated. Any complaint must be submitted in writing to the head of the Public Body, within five working days from the date the Bidder knew, or should have known, of the circumstances giving rise to the complaint. If the head of the Public Body does not issue a decision within ten working days after submission of complaint, or the candidate or the Bidder is not satisfied with the decision, it may submit a complaint to the Board within five working days from the date on which the decision has been or should have been communicated to the candidate or the Bidder by the Public Body. The Board's decision is binding for both parties.

#### **4. Eligible Bidders**

- 4.1 A Bidder may be a natural person, private, public or government-owned legal entity, subject to ITB Sub-Clause 4.5, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV), consortium, or association. In the case of a Joint Venture, consortium, or association:
- (a). All parties to the Joint Venture, consortium or association shall be jointly and severally liable, unless otherwise specified in the BDS; and
  - (b). A Joint Venture, consortium or association shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the Joint Venture, consortium or association during the bidding process and, in the event the Joint Venture, consortium or association is awarded the Contract, during contract execution.
- 4.2 This Invitation for Bids is open to all Bidders (including all members of a joint venture, sub-contractors and personnel) from eligible source countries as defined in Section 5, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the

provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.

- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
- (a). Are or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Public Body to provide consulting services for the preparation of the Specification, and any other documents to be used for the supply and installation of the Information Systems (IS) to be purchased under this Bidding Document;
  - (b). Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Public Body regarding this bidding process; or
  - (c). Submit more than one bid in this bidding process.
- 4.4 A Bidder that has been debarred from participating in public procurement in accordance with ITB Clause 3.1 (c), at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned enterprises shall be eligible if they can establish that they are legally and financially autonomous and operate under commercial law and that they are not a dependent agency of the Public Body.
- 4.6 Unless otherwise specified in the BDS, Bidders shall provide such evidence of their eligibility satisfactory to the Public Body, to verify that the Bidder:
- (a). Is not insolvent, in receivership, bankrupt or being wound up, not have had their business activities suspended and not be the subject of legal proceedings for any of the foregoing
  - (b). Appropriate documentary evidence demonstrating its compliance, which shall include:
    - (i) Valid business license indicating the stream of business in which the Bidder is engaged,
    - (ii) VAT registration certificate issued by the tax authority (only domestic Bidders in case of contract value as specified in BDS),
    - (iii) Valid Tax clearance certificate issued by the tax authority (domestic Bidders only);
    - (iv) Relevant professional practice certificates, if required in BDS.
  - (c). Foreign bidders must as appropriate submit business organization registration certificate or trade license issued by the country of establishment.
- 4.7 To participate in this public procurement process, being registered in the suppliers list is a prerequisite (mandatory for domestic Bidders only).
- (a). Candidates desiring to participate in public procurement shall have to register themselves using the form made available for this purpose in the website of the Public Procurement and Property Administration Agency.
- 4.8 Bidders shall provide such evidence of their continued eligibility satisfactory to the Public Body, as the Public Body shall reasonably request in BDS.
- 4.9 If a Bidder intends to subcontract major items of supply or services, it shall include in the bid details of the name and nationality of the proposed Subcontractor for each of those items and



shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB Clause 4, and that any Goods or Services components of the Information System to be provided by the Subcontractor comply with the requirements of ITB Clause 5. Bidders are free to list more than one Subcontractor against each item. Quoted rates and prices will be deemed to apply, whichever Subcontractor is appointed, and no adjustment of the rates or prices will be permitted. The Public Body reserves the right to delete any proposed Subcontractor from the list. This shall be done prior to Contract signature, by deleting such unacceptable Subcontractors from Appendix 1 to the Contract Agreement, which shall list the approved Subcontractors for each item prior to Contract signature. Subsequent additions and deletions from the list of approved Subcontractors shall be performed in accordance with GCC Clause 13 (as revised in the SCC, if applicable) and Appendix 1 to the Contract Agreement.

- 4.10 A firm which is a Bidder, whether as a single Bidder or as a partner in a Joint Venture, cannot be a Subcontractor in other bids, except for the supply of commercially available hardware or software by the firm, as well as purely incidental services such as installation/configuration, routine training, and ongoing maintenance/support. If the BDS for ITB 1.3 permits the submission of bids for Subsystems or lots, then the provisions of this ITB Sub-Clause 4.10 apply only to bids for the same Subsystem(s), lot(s), or slice(s);

## **5. Eligible Goods and Services**

- 5.1 All Information Systems (IS) to be supplied under the Contract shall have as their country of origin an eligible country as defined in Section 5, Eligible Countries.
- 5.2 For the purposes of these Bidding Documents, the term "Information System" means all:
- (a). the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the selected Bidder is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational (collectively called "the Goods" in some clauses of the ITB); and
  - (b). the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Bidder and as specified in the Contract.
- 5.3 An Information System is deemed to be produced in a certain country when, in the territory of that country, through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 5.4 For purposes of this clause, the nationality of the Bidder is distinct from the country in which the Information System and its goods components are produced or from which the related services are supplied.
- 5.5 To establish the eligibility of the Information System, in accordance with this ITB Clause, Bidders shall complete the country of origin declarations in the Price Schedule Form, included in Section 4, Bidding Forms.
- 5.6 If so required in the BDS, the Bidder shall demonstrate that it has been duly authorized by the Manufacturer of the Goods to supply key goods components of the Information System indicated in its bid in the Federal Democratic Republic of Ethiopia by obtaining Manufacturer Authorization Letter using the form furnished in Section 4, Bidding Forms.

- 5.7 In the case of a Bidder not doing business within the Federal Democratic Republic of Ethiopia, the Bidder will submit documentary evidence that it is or will be (if awarded the Contract) represented by an Agent in the Federal Democratic Republic of Ethiopia who is equipped and able to carry out the Bidder's maintenance, technical support, training, and repair obligations prescribed in the General and Special Conditions of Contract, and/or Technical Requirements

## **B. Contents of Bidding Document**

### **6. Bidding Document**

- 6.1 The Bidding Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB Clause 8.

#### **Part 1 Bidding Procedures**

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

#### **Part 2 Statement of Requirements**

- Section 6 Statement of Requirements

#### **Part 3 Contract**

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

- 6.2 The Invitation to Bid is not part of the Bidding Document. In case of discrepancies between the Invitation to Bid and the Bidding Documents listed in ITB Clause 6.1 above, said Bidding Documents will take precedence.
- 6.3 The Public Body is not responsible for the incompleteness of the Bidding Documents and their addenda, if they were not obtained directly from the Public Body. Bidders who did not obtain the Bidding Document directly from the Public Body will be rejected during evaluation. Where a Bidding Document is obtained from the Public Body on a Bidder's behalf, the Bidder's name must be registered with the Public Body at the time of sale and issue.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

### **7. Written Questions / Clarification of Bidding Documents**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Public Body in writing at the Public Body's address indicated in the BDS. The Public Body will respond in writing to any request for clarification, provided that such request is received no later than ten (10) days prior to the deadline for submission of bids. The Public Body shall forward copies of its response to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without reference to the identity of the prospective Bidder initiating the request. Should the Public Body deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause

8 and Sub-Clause 26.2.

- 7.2 Only the written responses will be considered official and carry weight in this procurement process and subsequent evaluation. Any answers received outside the official channels, whether received verbally or in writing, from employees or representatives of the Public Body, or any other party, shall not be considered official responses to questions regarding this Bidding Document.

## **8. Modification to Bidding Documents**

- 8.1 Where Public Body finds it necessary to introduce modification to the Bidding Document on its initiative or on the basis of request for clarification by prospective Bidder, the Public Body may modify the Bidding Document at any time prior to the deadline for submission of bids.
- 8.2 Any alteration to the content of the Bidding Document shall at the same time be communicated in the form of an amendment to all prospective Bidders who purchased the bidding document and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained in the amendment will have been taken into account by the Bidder in its Bid.
- 8.3 The Public Body may, at its discretion, extend the closing date for submission of bids where it modifies a bidding document as per Clause 8.1 above, if it is assumed that the time remaining before the closing date is not sufficient for bidders to prepare adjusted Bid Documents on the basis of such modification.

## **9. Pre-Bid Conference and Site Visit**

- 9.1 If the Public Body deems it to be appropriate, it may hold a Pre-Bid Conference for prospective bidders who purchased a Bidding Document for clarification and discussion on the Bidding Document or modification thereto. The Public Body may also organize a site visit or visits concurrently with the Pre-Bid Conference to allow Bidders to visit and examine the site or sites of the Information System and obtain for itself, at its own responsibility and risk, all information that may be necessary for preparing the bid and entering into the Contract. The costs of visiting the site or sites shall be at the Bidder's own expense.
- 9.2 The Public Body shall give written notice to all bidders who purchased a bidding document to attend the Pre-Bid Conference and to gain access to the relevant site or sites. Notice will include time, date, and address where Pre-Bid Conference and site visits will be organized.
- 9.3 The Public Body shall welcome all prospective bidders to attend Pre-Bid Conference and site visits. To give all prospective bidders the opportunity to participate, prospective bidders are limited to sending two representatives to Pre-Bid Conference and site visits. All the costs of attending this conference and site visits will be borne by the prospective bidders.
- 9.4 The Public Body invites all prospective bidders to submit their questions / request for clarification by time and date and to the address indicated in BDS.
- 9.5 The Pre-Bid Conference shall be minuted. Copies of the minute shall be delivered to all prospective bidders who purchased the Bidding Document to enable them prepare their bid documents by incorporating the content of clarification or modification.

## **C. Preparation of Bids**

### **10. Cost of Bidding**

- 10.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Public Body shall not be responsible or liable for those costs, regardless of the conduct or

outcome of the bidding process.

**11. Language of Bid**

- 11.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Public Body, shall be written in the language specified in the BDS.
- 11.2 Bids and supporting documents of Bidders prepared in a language other than language of bid shall have to be translated by a legally competent interpreter into language of bid and a copy of the translation has to be submitted together with the original documents, especially where such documents pertain to the fundamental elements of the bid.
- 11.3 If the Public Body detects discrepancy between language of the original document and the translated version, it shall reject the documents unless such discrepancy constitutes minor deviation from the requirement stated in the Bidding Document.

**12. Bid Prices and Discounts**

- 12.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedule (forms furnished in Section 4, Bidding Forms) shall conform to the requirements specified below.
- 12.2 All items in the Section 6, Statement of Requirements must be listed and priced separately in the Price Schedule. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed to be not included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB Sub-Clause 33.3.
- 12.3 The price to be quoted in the Bid Submission Sheet shall be the total price of the Bid including taxes, excluding any conditional discounts offered.
- 12.4 The Bidder offering conditional discounts shall indicate the methodology for their application in the Bid Submission Sheet.
- 12.5 The terms DDP, EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the BDS.
- 12.6 Prices proposed on the Price Schedule Forms for Information System and other Goods, shall be disaggregated, when appropriate as indicated in this sub-clause. This disaggregating shall be solely for the purpose of facilitating the comparison of bids by the Public Body. This shall not in any way limit the Public Body's right to contract on any of the terms offered:
  - (a). For Information System and other Goods:
    - (i) The price of the Information System and other Goods quoted EXW, FOB, excluding any customs duties and sales and other taxes already paid or payable;
    - (ii) The price for carriage and insurance of Information System and other Goods supplied from outside the Federal Democratic Republic of Ethiopia, in accordance with the Incoterms specified in the Special Conditions of Contract;
    - (iii) The price for inland transportation, insurance, and other local services required to convey the Information System and other Goods to their final destination if specified in the BDS, and
    - (iv) All Ethiopian customs duties, VAT, and other taxes already paid or payable on the Information System and other Goods or on the components and raw material used in

the manufacture or assembly if the contract is awarded to the Bidder.

(b). For related services:

- (i) The price of the related services; and
- (ii) All Ethiopian customs duties and sales and other taxes already paid or payable on the related services if the contract is awarded to the Bidder.

12.7 Prices quoted by the Bidder shall be fixed during the validity period of the Bid and throughout the Bidder's performance of the Contract and not subject to variation on any account. Bids submitted that are subject to price adjustment will be rejected.

12.8 If so indicated in BDS Sub-Clause 1.3, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package or, alternatively, to individual Contracts within the package. Price reductions shall be submitted in accordance with ITB Sub-Clause 12.4 and clearly indicated for each lot in such a way that it can be announced during the public Bid opening session.

12.9 Where a foreign Bidder uses local inputs to satisfy the required object of procurement under the contract, the portion of the total contract price representing such local expenditure shall be expressed in ETB in the Price Schedule of the Bidder.

### **13. Currencies of Bid and Payment**

13.1 For Information Technologies, associated Goods, and Services to be supplied from inside Ethiopia the prices shall be quoted in the Ethiopian Birr, unless otherwise specified in the BDS.

13.2 For all Information Technologies, associated Goods, and Services to be supplied from outside Ethiopia prices shall be expressed in the freely convertible currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but use no more than three currencies different from Ethiopian Birr.

### **14. Professional Qualifications and Capability of the Bidder**

14.1 If required, in order to proof their professional qualifications and capability Bidders must provide relevant information for the period specified in the BDS by completing relevant tables in the form entitled Bidders Certification of Compliance furnished in Section 4, Bidding Forms.

14.2 For key individuals who actually will be performing the activities described in the Section 6, Bidder must provide resumes that identify years of experience, relevant Information Systems' implementation experience, and relevant education and training.

14.3 Bidders must provide references for the proposed personnel, ensuring that references provided will be available to be contacted during the evaluation timeframe for this Bidding Document.

### **15. Financial Standing of the Bidder**

15.1 If required in BDS, in order to proof that it has adequate financial resources to manage this Contract the bidder must present its financial data by completing relevant table in the form entitled Bidders Certification of Compliance that is furnished in Section 4, Bidding Forms.

15.2 Along with the proof referred to in Clause 15.1 the documents that are required as proof of the bidder's financial standing are the following:

- (a). Financial statements certified by an independent auditor;

(b). Other documents as stated in the BDS.

**16. Technical Qualifications, Competence, and Experience of the Bidder**

- 16.1 The Bidder must present a description of its company and organization, with appropriate reference to any parent company and subsidiaries. The Bidder shall also include details demonstrating the Bidder's experience and ability in selling and servicing the Information System and other Goods listed in Section 6, Statement of Requirements. Also, each Bidder shall include a description of how it plans to manage the work included in this Bidding Document in addition to its other ongoing projects.
- 16.2 This information shall be included in a separate form entitled Bidders Certification of Compliance that is furnished in Section 4, Bidding Forms.
- 16.3 As a proof of satisfactory execution of contracts the Bidder must provide Certificates of satisfactory execution of contracts, provided by the other contracting party to the contracts concerned in number and within the period specified in the BDS for similar sized/type contracts with a budget of at least that of this contract, unless otherwise specified in the BDS including contact information for verification and inspection so as to provide due diligence. Contact information should include, at a minimum: name, function, address, e-mail, and phone number. Each reference provided should be the client's responsible project administrator or a senior official of the client who is familiar with the Bidder's performance and with the Bidder's system capabilities, and who may be contacted by the Public Body during the evaluation process.
- 16.4 The Certificate of satisfactory execution of contracts shall include the following data:
- (a). The name and place of establishment of the contracting parties,
  - (b). The subject-matter of the contract,
  - (c). The value of the contract
  - (d). The time and place of performance of the contract,
  - (e). A statement concerning the satisfactory execution of contracts.
- 16.5 If, for objective reasons, such a certificate cannot be obtained from a contracting party, a statement issued by the bidder concerning satisfactory execution of contracts may also be valid, on presentation of proof that the certificate was requested.
- 16.6 If the Bidder(s) propose a joint venture all of the information listed above must be provided for all of the joint venture members. This information shall be in separate sections, one section per joint venture member. In addition, the Bid shall provide the agreements that support the relationships between joint venture members.
- 16.7 Unless otherwise specified in the BDS, the Public Body reserves the right to undertake physical checking of current Bidder's technical qualifications and competence in order to make sure that the Bidder has adequate qualifications to manage this Contract.

**17. Documentary Technical Evidence**

- 17.1 The Bidder shall furnish, as part of its bid, documentary technical evidence establishing the conformity to the Bidding Documents of the of the Information System that the Bidder proposes to supply and install under the Contract and to support details provided in the Section 6, Technical Specification and Compliance Sheet, unless otherwise specified in the BDS.
- 17.2 The documentary evidence of conformity of the Information System to the Bidding Documents shall be in the form of literature, diagrams, certifications, drawings brochures, or data, including:

- (a). A detailed description of the Bidder's proposed technical solution conforming in all material aspects with the Technical Requirements (Section VI) and other parts of these Bidding Documents, overall as well as in regard to the essential technical and performance characteristics of each component making up the proposed Information System
  - (b). An item-by-item commentary on the Public Body's Technical Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the commentary shall include explicit cross references to the relevant pages in the supporting materials included in the bid. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the bid, the item-by-item commentary shall prevail.
  - (c). A Preliminary Project Plan describing, among other things, the methods by which the Bidder will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Bidder proposes to use. The Plan should include a detailed Contract Implementation Schedule in bar chart form, showing the estimated duration, sequence, and interrelationship of all key activities needed to complete the Contract. The Preliminary Project Plan must also address any other topics specified in the BDS. In addition, the Preliminary Project Plan should state the Bidder's assessment of what it expects the Public Body and any other party involved in the implementation of the Information System to provide during implementation and how the Bidder proposes to coordinate the activities of all involved parties;
  - (d). A written confirmation that the Bidder accepts responsibility for the successful integration and inter-operability of all components of the Information System as required by the Bidding Documents.
- 17.3 For purposes of the commentary to be furnished pursuant to ITB Clause 17.2(b), the Bidder shall note that references to brand names or model numbers or national or proprietary standards designated by the Public Body in its Statement of Requirements are intended to be descriptive and not restrictive. Except where explicitly prohibited in the BDS for specific items or standards, the Bidder may substitute alternative brand/model names or standards in its bid, provided that it demonstrates to the Public Body's satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the in the Section 6, Statement of Requirement.

## **18. Presentation of Samples**

- 18.1 The Public Body reserves the right to request production and presentation of samples representing any or all Information Systems and other Goods proposed in response to this Bidding Document. If Bidder fails to provide such Information Systems and other Goods for presentation, the Bidder's Proposal may be rejected by the Public Body in its sole discretion. The Bidder warrants that if awarded a Contract the Information Systems and other Goods delivered under such Contract shall meet or exceed the quality of the Information Systems and other Goods presented. Samples of the quoted products, when requested in BDS, must be furnished free of charge and in a timely manner. Bidders should not submit unsolicited samples.
- 18.2 If the Public Body decide to request production and presentation of samples representing any or all Information Systems and other Goods all Bidders will be informed in writing on the place where the samples are to be delivered and the time when and the place where the samples will be openly shown.
- 18.3 The Public Body shall handle and examine carefully, samples supplied by Bidders; however Bidders shall not be paid compensation for samples lost or destroyed in the examination process because of their nature. Samples that are not lost or destroyed shall be returned to unsuccessful

bidders. If samples are not claimed by unsuccessful bidders within 6 months, they shall be forfeited to the Government.

- 18.4 Unless the Public Body decides otherwise, a sample supplied by the successful bidder shall stay with the Public Body until the completion of the procurement process to be used for checking conformity during delivery.

## **19. Joint Venture or Consortium**

- 19.1 If bidder is a joint venture or consortium of two or more entities, the bid must be single with the object of securing a single contract; authorized person must sign the bid and will be jointly and severally liable for the bid and any contract. Those entities must designate one of their members to act as leader with authority to bind the joint venture or consortium. The composition of the joint venture or consortium must not be altered without the prior consent in writing of the Public Body.
- 19.2 The bid may be signed by the representative of the joint venture or consortium only if he has been expressly so authorized in writing by the members of the joint venture or consortium, and the authorizing contract, notarial act or deed must be submitted to the Public Body. All signatures to the authorizing instrument must be certified in accordance with the national laws and regulations of each party comprising the joint venture or consortium together with the powers of attorney establishing, in writing, that the signatories to the bid are empowered to enter into commitments on behalf of the members of the joint venture or consortium. Each member of such joint venture or consortium must prove to the satisfaction of the Public Body that they comply with the necessary legal, technical and financial requirements and have the wherewithal to carry out the contract effectively.

## **20. Alternative Bids**

- 20.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.
- 20.2 If permitted in BDS, the Public Body may consider alternative systems or products prior to the notification of the successful Bidder provided that the Bidder:
- (a). Has submitted Bid in accordance with the Bidding Document as issued; and
  - (b). Has submitted Bid based on alternative(s) to the Bidding Document as issued;
  - (c). Has included with the Bid a demonstration of the advantages of the alternative solution over the initial solution, including a quantifiable justification of any economic and/or technical advantages; and
  - (d). Has included with the Bid sufficient descriptive information for a complete evaluation of the proposed alternative(s) by the Public Body, including calculations, technical specifications, breakdown of prices, proposed work methods and other relevant details.
- 20.3 Only the technical alternative(s), if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Public Body.
- 20.4 In evaluating a Bid containing an alternative process or product the Public Body may use any evaluation/award criteria as indicated in the BDS and Section 3, Evaluation Methodology and Criteria.
- 20.5 Alternative Bids not requested by the Public Body shall be rejected.

## **21. Period of Validity of Bids**

- 21.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline prescribed by the Public Body. A bid valid for a shorter period may be rejected by the Public



Body as non-responsive.

- 21.2 In exceptional circumstances, prior to expiry of the bid validity period, the Public Body may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing.
- 21.3 Bidders who are not willing to extend their bid validity period for what ever reason shall be disqualified from the bid without having forfeited their bid security.
- 21.4 Bidders agreeing to the Public Body's request for extension of their bid validity period have to express in writing their agreement to such request. Similarly, they have to amend the validity period of their bid security on the basis of the extension of the bid validity period they have agreed to, or alternatively, furnish new bid security to cover the extended period.
- 21.5 A bidder not agreeing to extend the validity period of his/its bid security shall be treated as a bidder refusing the Public Body's request for extension of bid validity period, and as such, shall be disqualified from further bid proceeding.

## **22. Bid Security**

- 22.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, a bid security in original form and in the amount and currency specified in the BDS. A copy of bid security, if submitted without original form, shall not be accepted.
- 22.2 The bid security shall be, at the Bidder's option, in any of the following forms:
  - (a). An unconditional Bank Guarantee;
  - (b). An irrevocable Letter of Credit;
  - (c). Cash, check certified by a reputable bank or financial institution;  
all from a reputable source from any eligible country. Securities issued by foreign banks or financial institutions shall be counter-guaranteed by an Ethiopian bank. The bid security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format approved by the Public Body. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.
- 22.3 The Bid Security of a Joint Venture shall be issued in the name of the Joint Venture submitting the bid provided the Joint Venture has legally been constituted, or else it shall be issued in the name of all partners proposed for the Joint Venture in the bid. Sanctions due to a breach of the terms of a Bid Security pursuant to ITB Clause 22.7 will apply to all partners to the Joint Venture.
- 22.4 Any bid not accompanied by a substantially responsive bid security, if one is required in accordance with ITB Sub-Clause 22.1, shall be rejected by the Public Body as non responsive.
- 22.5 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 47.
- 22.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 22.7 The bid security may be forfeited:
  - (a). If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on

- the Bid Submission Sheet, except as provided in ITB Sub-Clause 21.2; or
- (b). If the successful Bidder fails to:
- (i) Sign the Contract in accordance with ITB 45;
  - (ii) Furnish a performance security in accordance with ITB Clause 47; or
- 22.8 The bid security furnished by foreign bidders from a bank outside of Ethiopia has to be unconditional and counter guaranteed by local banks.

### **23. Documents Comprising the Bid**

- 23.1 All bids submitted must comply with the requirements in the Bidding Document and comprise the following:
- 23.2 Mandatory documentary evidence establishing the Bidder's qualification is the following:
- (a). Bid Submission Sheet (form furnished in Section 4, Bidding Forms) including the following mandatory attachments:
    - (i) VAT registration certificate issued by the tax authority (only domestic Bidders in case of contract value as specified in BDS Clause 4.6(b)(ii));
    - (ii) A valid tax clearance certificate issued by the tax authority (domestic Bidders only);
    - (iii) Business organization registration certificate or trade license issued by the country of establishment (foreign Bidders only);
    - (iv) Relevant professional practice certificates, as appropriate.
  - (b). Bidder Certification of Compliance (form furnished in Section 4, Bidding Forms) including the following mandatory attachments:
    - (i) Written statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so, as stipulated in ITB Clause 24.2;
    - (ii) Documents required in the BDS Clause 15.2 as proof of the bidder's financial standing;
    - (iii) Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the course of the period as specified in the BDS with a budget of at least that of this contract; unless otherwise specified in the BDS Clause 16.3.
  - (c). Technical Offer + Compliance Sheet (it should be presented as per template furnished in Section 6, Statement of Requirements) with detailed description of the proposed Information System and other Goods in compliance with the minimum technical requirements, including, if necessary, separate sheets or documentation for details. Technical Offer + Compliance Sheet Form must include the following mandatory attachments:
    - (i) Documentary technical evidence in accordance with ITB Clause 17 (if required in BDS);
    - (ii) Preliminary project Plan in accordance with ITB Clause 17.2(c);
    - (iii) Written Confirmation of Responsibility for Integration and Interoperability of Information Technologies in accordance with ITB Clause 17.2(d);
    - (iv) Manufacturer Authorization Letter in accordance with ITB Clause 5.6;
    - (v) List of Proposed Subcontractors;
    - (vi) List of Proposed Software;

- (vii) List of Custom Materials.
- (d). Delivery, Implementation, and Completion Schedule;
- (e). Bid Security, in accordance with ITB Clause 22;
- (f). Alternative bids, if permissible, in accordance with ITB Clause 20.
- (g). Domestic Bidders, individually or in joint ventures, applying for eligibility for a 15-percent margin of domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 35.
- (h). In the case of a bid submitted by a joint venture (JV), the Form Data on Joint Ventures, the Agreement governing the formation of joint venture, or letter of intent to form JV, including a draft agreement, in accordance with ITB Clause 4.1
- (i). Price Schedule for the Information System and other Goods offered (it should be presented as per template furnished in Section 4, Bidding Forms) and if necessary completed by separate sheets for the details.
- (j). Any other document or information required to be completed and submitted by Bidders, as specified in the BDS.

#### **24. Format and Signing of Bid**

- 24.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 23 and clearly mark it “ORIGINAL.” Alternative bids, if permitted in accordance with ITB 20, shall be clearly marked —ALTERNATIVE. In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark each of them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail. If required in BDS, Bidders shall be required to submit bid documents in two envelopes containing the technical and financial proposals separately.
- 24.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium is duly authorized to do so and it shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid, except for non-amended printed literature, shall be signed or initialled by the person signing the bid.
- 24.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

### **D. Submission and Opening of Bids**

#### **25. Sealing and Marking of Bids**

- 25.1 The Bidder shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB Clause 20, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 25.2 The inner and outer envelopes shall:
  - (a). Be addressed to the Public Body in accordance with ITB Sub-Clause 26.1;
  - (b). Bear the subject of the procurement or the Project name, and procurement reference number indicated in the BDS;

(c). Bear the words **“Not to be opened before the time and date for bid opening”**.

25.3 The outer envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to ITB Clause 27.1.

25.4 If all envelopes are not sealed and marked as required, the Public Body shall assume no responsibility for the misplacement or premature opening of the bid.

## **26. Deadline for Submission of Bids**

26.1 Bidders may always submit their bids by registered post or by hand. Bids must be received by the Public Body at the address and no later than the date and time indicated in the BDS.

26.2 The Public Body may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Public Body and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **27. Late Bids**

27.1 The Public Body shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 26. Any bid received by the Public Body after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

## **28. Withdrawal, Substitution, and Modification of Bids**

28.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 24.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a). Submitted in accordance with ITB Clauses 24 and 25 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and

(b). Received by the Public Body prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 26.

28.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 28.1 shall be returned unopened to the Bidders. Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid.

28.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and expiry of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

## **29. Bid Opening**

29.1 The Public Body shall conduct the bid opening in the presence of Bidders` designated representatives who choose to attend, and at the address, date and time specified in the BDS. The opening of the bid shall not be affected by the absence of the bidders on their own will.

29.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked

“SUBSTITUTION” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

- 29.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a bid security, if required; and any other details as the Public Body may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB Sub-Clause 27.1.
- 29.4 The Public Body shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative offers; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.
- 29.5 Any bid document not opened and read out during the bid opening proceeding shall not be considered for further evaluation.

## **E. Evaluation and Comparison of Bids**

### **30. Confidentiality**

- 30.1 Information relating to the examination, evaluation, clarification, and comparison of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all bidders.
- 30.2 Any effort by a Bidder to influence the Public Body in the examination, evaluation, and comparison of the bids or Contract award decisions may result in the rejection of its bid.
- 30.3 Notwithstanding ITB Sub-Clause 30.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Public Body on any matter related to the bidding process, it should do so in writing.

### **31. Clarification of Bids**

- 31.1 To assist in the examination, evaluation, and comparison of the bids, the Public Body may, at its sole discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Public Body shall not be considered. The Public Body’s request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Public Body in the evaluation of the bids, in accordance with ITB Clause 34.
- 31.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Public

Body's request for clarification, its bid may be rejected.

**32. Responsiveness of Bids**

- 32.1 The Public Body's determination of a bid's responsiveness is to be based on the contents of the bid itself.
- 32.2 A substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a). If accepted, would,
    - (i) Affect in any substantial way the scope or quality of the Information System and other Goods specified in the Contract; or
    - (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Public Body's rights or the Bidder's obligations under the Contract; or
  - (b). If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 32.3 If a bid is not substantially responsive to the salient requirements of the Bidding Document it shall be rejected by the Public Body and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.
- 32.4 Decisions to the effect that a bid is not substantially responsive must be duly justified in the evaluation minutes.
- 32.5 If only one Bid meets all salient requirements of the Bidding Document and is not otherwise disqualified, the Public Body may still complete the full evaluation of that Bid and sign contract with that Bidder if the Bid submitted by such bidder is satisfactory to the Public Body and the price offered by the bidder is comparable to or less than the market price of the required object of procurement.

**33. Nonconformities and Omissions**

- 33.1 Provided that a bid is substantially responsive, the Public Body may waive any non-conformity or omissions in the bid that does not constitute a material deviation.
- 33.2 Provided that a bid is substantially responsive, the Public Body may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.
- 33.3 Provided that a bid is substantially responsive, the Public Body shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, by the highest price quoted in this bidding process to reflect the price of the missing or non-conforming item or component.

**34. Dubious price quotations and errors in calculation**

- 34.1 Provided that the bid is substantially responsive, the Public Body shall correct arithmetical errors on the following basis:
- (a). If there is a discrepancy between the unit price and the total price that is obtained by

multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Public Body there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

- (b). If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c). If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

34.2 The Public Body shall correct the detected errors in calculation and notify the bidder in writing of the corrections made without any delay, requesting the bidder to confirm that he accepts the correction of the calculation error within the period specified in BDS from the date on which the notice was received. The corrections shall be clearly indicated in the bid.

34.3 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified.

### **35. Margin of Preference**

35.1 Preference shall be granted to locally produced Goods, to small and micro enterprises established under the relevant Proclamation.

35.2 The margin of preference to be so granted for locally produced Goods and applied when comparing prices during evaluation of bids shall be 15 %

35.3 The preference to be granted as per Sub-Clause 35.2 shall be effective where it is certified by a competent auditor that no less than 35% of the total value of such products is added in Ethiopia.

35.4 For the purpose of Sub-Clause 35.3, value added in Ethiopia shall be calculated by deducting from the total value of the product in question, the cost, exclusive of indirect taxes, of imported raw materials and other supplies used in the production of such product as well as services rendered abroad in connection with the production of that product.

35.5 Preference shall be given to small and micro enterprises established under the relevant law by a margin of 3% when such enterprises compete with local bidders.

### **36. Preliminary Examination of Bids**

36.1 The Public Body shall examine the bids to confirm that all documentary evidence establishing the Bidder's qualification requested in ITB Clause 23 have been provided, and to determine whether bid comply with administrative requirements of the Bidding Document.

36.2 From the time the Bids are opened to the time the Contract is awarded, the Bidders should not contact the Public Body on any matter related to its Bid. Any effort by Bidders to influence the Public Body in the examination, evaluation, ranking of Bids, and recommendation for award of Contract may result in the rejection of the Bidders' Bid.

36.3 The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to submit Written statement by a power of attorney (or notary statement, etc.) proving that the person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so (ITB Sub-clause 24.2);
- (b). Original and all copies of the bid are not typed or written in indelible ink and signed by a person duly authorized to sign on behalf of the Bidder (ITB Sub-clause 24.2);

- (c). All pages of the bid, except for non-amended printed descriptive literature, are not signed or initialled by the person signing the bid (ITB Sub-clause 24.2);
- (d). Bid is not written in language specified in the GCC Clause 11.1;
- (e). Bidder has failed to submit signed and dated Bid Submission Sheet Form;
- (f). Bidder has failed to submit signed and dated Price Schedule Form;
- (g). Bidder has failed to submit signed and dated Bidder Certification of Compliance Form;
- (h). Bidder has failed to submit signed and dated Technical Offer+ Compliance Sheet Form;
- (i). Bidder has failed to submit signed and dated Delivery, Implementation, and Completion Schedule;
- (j). Bidder has failed to submit signed and dated Bid Security;
- (k). The Bid Security is not in accordance with ITB Clause 22.

### **37. Legal, Professional, Technical, and Financial Admissibility of Bids**

37.1 After confirming the bids comprise all mandatory documentary evidence establishing the Bidder's qualification, the Public Body will rule on the legal, technical, professional, and financial admissibility of each bid, classifying it as compliant or non-compliant with qualification requirements set forth in the Bidding Document.

#### **37.2 Legal admissibility**

The Public Body may determine bid as not responsive when:

- (a). Bidder does not have nationality in accordance with ITB Sub-Clause 4.2;
- (b). Bidder is found to have a conflict of interest as described in ITB Sub-Clause 4.3;
- (c). Bidder has failed to submit valid business license indicating the stream of business in which the bidder is engaged, in accordance with ITB Clause 4.6(b)(i);
- (d). Bidder has failed to register itself in the Public Procurement and Property Administration Agency's suppliers list (mandatory for domestic Bidders only), in accordance with ITB Clause 4.7;
- (e). Domestic Bidder has failed to submit VAT registration certificate issued by the tax authority (in case of contract value specified in BDS Clause 4.6(b)(ii), in accordance with ITB Clause 4.6(b)(ii);
- (f). Domestic Bidder has failed to submit a valid tax clearance certificate issued by the tax authority, in accordance with ITB Clause 4.6(b)(iii);
- (g). Foreign Bidder has failed to submit business organization registration certificate or valid trade license issued by the country of establishment, in accordance with ITB Clause 4.6(c);
- (h). Bidder has been debarred by a decision of the Public Procurement and Property Administration Agency from participating in public procurements for breach of its obligation under previous contracts, in accordance with ITB Clause 4.4.
- (i). In the case of a bid submitted by a joint venture (JV), the Bidder has failed to submit the Form Data on Joint Ventures, the Agreement governing the formation of joint venture, or letter of intent to form JV, including a draft agreement, in accordance with ITB Clause 4.1

#### **37.3 Professional admissibility**

The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to submit relevant professional practice certificates, if required in BDS Clause 4.6(b)(iv);
- (b). Bidder has failed to provide in the Bidder Certification of Compliance Form information



related to its professional qualification and capability for the period specified in the BDS Clause 14.1;

#### **37.4 Technical admissibility**

The Public Body may determine bid as not responsive when:

- (a). Bidder has failed to provide in the Bid Submission Sheet Form the Statement attesting the origin of the Information System and other Goods offered;
- (b). Bidder has failed to provide in the Bidder Certification of Compliance Form information about major relevant contracts successfully completed in the number and period specified in the BDS;
- (c). Bidder has failed to submit Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the period and budget as specified in the BDS Clause 16.3;
- (d). Bidder has failed to complete its Technical Offer+ Compliance Sheet Form in accordance with technical specification presented as per template in Section 6, Statement of Requirements and submit the following mandatory attachments:
  - (i) Bidder has failed to submit Documentary technical evidence in accordance with ITB Clause 17 (if required in BDS);
  - (ii) Bidder has failed to submit Preliminary project Plan in accordance with ITB Clause 17.2(c);
  - (iii) Bidder has failed to submit Written Confirmation of Responsibility for Integration and Interoperability of Information Technologies in accordance with ITB Clause 17.2(d)
  - (iv) Bidder has failed to submit Manufacturer Authorization Letter in accordance with ITB Clause 5.6
  - (v) Bidder has failed to submit the List of Proposed Subcontractors;
  - (vi) Bidder has failed to submit the List of Proposed Software;
  - (vii) Bidder has failed to submit the List of Custom Materials.
- (a). Bidder has failed to submit signed and dated Delivery, Implementation, and Completion Schedule presented as per template in Section 6, Statement of Requirements;

#### **37.5 Financial admissibility**

The Public Body may reject any bid when:

- (a). Bidder has failed to proof that it has adequate financial resources to manage this Contract by completing relevant table in the Bidders Certification of Compliance form that is furnished in Section 4, Bidding Forms.
- (b). Bidder has failed to submit financial statements certified by an independent auditor as required in ITB Clause 15.2(a) for the period specified in Section 3, Evaluation Methodology and Criteria;
- (c). Bidder has failed to submit other documents proofing its financial standing, as required in the BDS Clause 15.2(b);
- (d). The average annual turnover for the period specified in Section 3, Evaluation Methodology and Criteria does not exceed the amount of the financial proposal of the Bid in value specified in the BDS.
- (e). Bidder has failed to calculate Bid Prices for the Information System and other Goods offered as prescribed in ITB Clause 12; and
- (f). Bidder has failed to quote prices in currency specified in the BDS in accordance with ITB

Clause 13.

**38. Evaluation of Bids**

- 38.1 The Public Body shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 38.2 For evaluation and comparison purposes, the Public Body shall convert all bid prices expressed in the amounts in various currencies into a single currency indicated in BDS, using the selling exchange rate established by the National Bank of Ethiopia and on the date of the Bid opening.
- 38.3 To evaluate a bid, the Public Body shall only use all the criteria and methodologies defined in this Clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted.
- 38.4 To evaluate a bid, the Public Body shall consider the following:
- (a). The bid price;
  - (b). Price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 34;
  - (c). Price adjustment due to discounts offered in accordance with ITB Sub-Clause 12.4;
  - (d). Converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB Sub-Clause 38.2;
  - (e). Adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 33;
  - (f). Application of all the evaluation factors, if indicated in Section 3, Evaluation Methodology and Criteria.
  - (g). Adjustments due to the application of a margin of preference, in accordance with ITB Clause 35.
- 38.5 The Public Body's cost evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 12. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Information System and other Goods. The factors to be used, if any, and the methodology of application shall be indicated in Section 3, Evaluation Methodology and Criteria.
- 38.6 If these Bidding Documents allow Bidders to submit a Bid for different lots, and the award to a single Bidder of multiple lots, the methodology of evaluation to determine the lowest evaluated lot combinations, including any discounts offered in the Bid Submission Sheet, is specified in the BDS and detailed in Section 3 Evaluation Methodology and Criteria.

**39. Comparison of Bids**

- 39.1 The Public Body shall compare all substantially responsive bids to determine the lowest evaluated bid as specified in Section 3: Evaluation Methodology and Criteria.

**40. Post-qualification Evaluation**

- 40.1 After identifying the successful bidder by evaluating the bid documents against the criteria set forth in this Bidding Document the Public Body shall conduct post qualification evaluation to establish the current qualification of the successful Bidder (including Joint Venture Partners, and any Subcontractors) where it feels that it has to be ascertained.
- 40.2 Such post qualification evaluation of the successful bidder may relate to submission of the documentary evidence specified in ITB Clause 37, unless satisfactory documents are already included in the Bid, concerning its current legal, professional, financial, technical, design,

integration, customization, production, management, and support capabilities, and conformity to the requirements stated in this Bidding Document. This determination may include visits or interviews with the Bidder's clients referenced in its bid, site inspections, and any other measures. If so specified in the BDS, at the time of post-qualification the Public Body may also carry out tests to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements.

- 40.3 If the successful bidder fails to provide this documentary proof within 15 calendar days following the Public Body's request or if the successful bidder is found to have provided false information its Bid shall be disqualified, in which event the Public Body shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

#### **41. Acceptance or Rejection of Bids**

- 41.1 The Public Body reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

#### **42. Re-advertising bids**

- 42.1 The Public Body may issue invitation to bid for a second time under the following circumstances:
- (a). Where the Invitation to Bid has been unsuccessful, namely where no qualitatively or financially worthwhile Bids have been received.
  - (b). Where the best price offered by a bidder is significantly higher than the market price estimate of the object of procurement made by the Public Body prior to the issuance of the invitation to bid.
  - (c). Where it is concluded that non compliance with the rules and procedures governing bids prescribed by the Proclamation and Procurement Directive led to the failure of the invitation to bid to attract more than one bidder, or where it is believed that modifying the bidding document could attract adequate number of bidders.
  - (d). Circumstances of Force Majeure render normal implementation of the Contract impossible.

### **F. Award of Contract**

#### **43. Award Criteria**

- 43.1 The Public Body shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 43.2 If Bids are being invited for individual contracts (lots) Contracts will be awarded lot by lot, but the Public Body may select the most favorable overall solution after taking account of any discounts offered.
- 43.3 If the Bidder is awarded more than one lot, a single contract may be concluded covering all those lots.

#### **44. Right to Vary Quantities at Time of Award**

- 44.1 At the time the Contract is awarded, the Public Body reserves the right to increase or decrease, by percentages indicated in the BDS, any of the following:
- (a). the quantity of substantially identical Subsystems; or
  - (b). the quantity of individual hardware, Software, related equipment, Materials, products, and

- other Goods components of the Information System; or
- (c). the quantity of Installation or other Services to be performed,
- from originally specified in Section 6, Statement of Requirement, without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

**45. Announcing and Awarding of the Successful Bidder**

- 45.1 Prior to expiry of the period of bid validity, the Public Body shall notify in writing the result of a bid evaluation to all bidders alike at the same time.
- 45.2 The letter of notification to be disclosed to the unsuccessful bidders on the technical evaluation shall state the reason why they did not succeed in their bid and the identity of the successful bidder
- 45.3 A letter of award to be sent by the Public Body to a successful bidder shall not constitute a contract between him and the Public Body. A contract shall be deemed to have been concluded between the Public Body and the successful bidder only where a contract containing detailed provisions governing the execution of the procurement in issue is signed.
- 45.4 A letter of contract award to be sent to a successful bidder may contain the following information:
- (a). That the Public Body has accepted his bid;
  - (b). The total contract price;
  - (c). The list of items and their respective unit price;
  - (d). The amount of the performance security the successful bidder is required to furnish and the deadline for providing such security.

**46. Signing of Contract**

- 46.1 Promptly after notification of the proposed contract award the Public Body shall send the successful Bidder the Contract.
- 46.2 Within fifteen (15) days of receipt of the notification of award, the successful Bidder shall sign, date, and return it to the Public Body the Contract
- 46.3 The Public Body shall not sign a contract before seven working days from the date bidders are notified of the result of their bid or of any complaint against the bid proceeding.

**47. Performance Security**

- 47.1 Within fifteen (15) days from signing the Contract the successful Bidder shall furnish the performance security in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9, Contract Forms, or another form acceptable to the Public Body.
- 47.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for annulment of the award and forfeiture of the bid security.
- 47.3 Small and micro enterprises shall be required to submit a letter of guarantee written by a competent body organizing and overseeing them in lieu of bid security, performance security or advance payment guarantee.
- 47.4 Where the successful bidder can not or is unwilling to sign a contract or submit the above-mentioned Performance Security, the Public Body may either declare the bidder submitting the

second lowest evaluated bid the successful bidder or invite such bidder to sign a contract or advertise the bid afresh by assessing the benefit of the two options.

## **Section 2. Bid Data Sheet**

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## Section 2. Bid Data Sheet (BDS)

Instructions for Bidders (ITB) reference	Data relevant to ITB
<b>A. Introduction</b>	
<b>ITB 1.1</b>	The Public Body is: <b>Adigrat University (AdU)</b> Registered Address: <b>Adigrat, Tigray, Ethiopia</b>
<b>ITB 1.1</b>	The Bidding Document is issued under Procurement Method: <b>National Competitive Bidding (NCB)</b>
<b>ITB 1.2 and 25.2(b)</b>	The Project name is: <b>Supply and Implementation of VDI Infrastructure Project on Turnkey Basis for AdU</b> General description of Information System and other Goods that are subject of the procurement is: <b>Supply, installation, Configuration, Training, Testing and Commissioning of VDI Infrastructure Project on Turnkey Basis for AdU</b>
<b>ITB 1.3 and 25.2(b)</b>	The Procurement Reference Number is: <b>11/2010</b>
<b>ITB 1.3</b>	The number and identification of Lots in this Bidding Document is: <b>One Lot</b>
<b>ITB 4.1(a)</b>	The individuals or firms in a joint venture, consortium or association jointly and severally liable.
<b>ITB 4.6(b)(ii)</b>	Domestic Bidders shall provide VAT registration certificate issued by the tax authority in case of contract value of and above.
<b>ITB 4.6(b)(iv)</b>	Relevant professional practice certificate required.
<b>ITB 4.8</b>	A Bidder shall amend the evidence of its continued eligibility with the following documents: <b>Renewed business license, TIN Certificate, Supplier registration Certificate, VAT Certificate</b>
<b>ITB 5.6</b>	The Bidder required to include with its bid documentation from the Manufacturer of the Information System and other Goods that it has been duly authorized to supply in Ethiopia the Information System and other Goods indicated in its bid.

**B. Bidding Documents**

ITB 7.1 and 9.4	<p>For <b>questions and/or clarification purposes</b> only, the Public Body's address is:</p> <table border="1"> <tr> <td>Public Body:</td><td>Adigrat University Procurement and Property Administration Director</td></tr> <tr> <td>Attention:</td><td>Mr. Gebremedhin Desta, Director for Procurement and Property Administration</td></tr> <tr> <td>Floor/Room number:</td><td>Block 13, Ground floor, Office Number 07</td></tr> <tr> <td>P.O. Box:</td><td>50</td></tr> <tr> <td>Street Address:</td><td>Zalambesa Street</td></tr> <tr> <td>Town/City:</td><td>Adigrat</td></tr> <tr> <td>Country:</td><td>Ethiopia</td></tr> <tr> <td>Telephone:</td><td>+251344452318</td></tr> <tr> <td>Facsimile:</td><td>+251344452123</td></tr> <tr> <td>E-mail address</td><td>-</td></tr> </table>	Public Body:	Adigrat University Procurement and Property Administration Director	Attention:	Mr. Gebremedhin Desta, Director for Procurement and Property Administration	Floor/Room number:	Block 13, Ground floor, Office Number 07	P.O. Box:	50	Street Address:	Zalambesa Street	Town/City:	Adigrat	Country:	Ethiopia	Telephone:	+251344452318	Facsimile:	+251344452123	E-mail address	-
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Facsimile:	+251344452123																				
E-mail address	-																				
ITB 7.1 and 9.4	<p><b>The deadline for submission of questions and/or clarifications is: no later than fifteen (15) days prior to the deadline for submission of bids</b></p> <p><b>Date: May 22, 2010EC</b></p> <p><b>Time: 10:00 A.M.</b></p>																				
<b>C. Preparation of Bids</b>																					
ITC 11.1	Language of the Bid shall be . <b>English</b>																				
ITB 12.5	The Incoterms edition is: <b>Incoterms 2010</b>																				
ITB 12.6(a)(iii)	Bidders be required to quote the price for inland transportation of the Information System and other Goods to their final destination.																				
ITB 12.8	<p>Prices quoted for each lot shall correspond to at least <b>90 percent</b> of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond to at least <b>90 percent</b> of the quantities specified for each item of a lot.</p>																				
ITB 13.1	For Information System and other Goods that the Bidder will supply from inside Ethiopia the prices shall be quoted in <b>Ethiopian Birr.</b>																				
ITB 14.1	Bidder must provide in the Bidder Certification of Compliance Form information related to its professional qualification and capability for the current and the previous years in order to proof its professional capacity.																				
ITB 15.2(b)	<p>As a proof of the bidder's financial standing the following documents need to be furnished:</p> <p><b>Audited Financial Statements over the last three years by an independent and fully accredited auditor and Credit Facility.</b></p>																				
ITB 16.3	Bidder must submit at least Certificates of satisfactory execution of contracts																				



	provided by contracting parties to the contracts successfully completed in the course of the past years with a budget of at least <b>equal to the bidder's contract value.</b>										
ITB 16.7	The Public Body undertakes physical checking of current Bidder's technical qualifications and competence.										
ITB 17.1	Bidder furnish as part of its bid the following documentary technical evidence: <ul style="list-style-type: none"> <li>• <b>Tender Specific Manufacturing Authorization Form</b></li> <li>▪ <b>Gartner Magic quadrant or equivalent report</b></li> <li>▪ <b>Third party accredited certification</b></li> <li>▪ <b>Certificate of Performance of similar nature, size and complexity of projects</b></li> </ul>										
ITB 17.2(c)	In addition to the topics described in ITB Clause 17.2 (c), the Preliminary Project Plan must address the following topics: <b>active devices and materials</b>										
ITB 17.3	In the interest of effective integration, cost-effective technical support, and reduced re-training and staffing costs, Bidders are required to offer specific brand names and models for the following limited number of specific items: .										
ITB 18.1	Samples of the quoted products be requested. If requested, the following samples must be submitted: <b>Not applicable</b>										
ITB 20.1	Alternative Bids be considered.										
ITB 20.4	If alternative bids are permitted under BDS Clause 20.1 they must meet the following criteria: <b>Not Applicable.</b>										
ITB 21.1	The bid validity period shall be: <b>60 days.</b>										
ITB 22.1	A bid security required. If a bid security is required, the amount of the bid security shall be <b>200,000 ETB.</b>										
ITB 24.1	In addition to the original of the bid, the number of copies required is:										
ITB 24.1	Bidders required submitting bid documents in <b>two envelopes containing the technical original and copy and financial original and copy proposals</b> separately. <ul style="list-style-type: none"> <li>• Technical proposal shall be consisted of mandatory documentary evidence listed in the ITB Clause 23.2 (a) to (e);</li> <li>• Financial proposal shall be consisted of Price Schedule for the Information System and other Goods offered, as stated in the ITB Clause 23.2 (f).</li> </ul>										
<b>D. Submission and Opening of Bids</b>											
ITB 26.1	For <b>bid submission purposes</b> only, the Public Body's address is: <table border="1" data-bbox="522 1644 1385 1883"> <tr> <td>Public Body:</td><td>Adigrat University Procurement and Property Administration Director</td></tr> <tr> <td>Attention:</td><td>Mr. Gebremedhin Desta, Director for Procurement and Property Administration</td></tr> <tr> <td>Floor/Room number:</td><td>Block 13, Ground floor, Office Number 07</td></tr> <tr> <td>P.O. Box:</td><td>50</td></tr> <tr> <td>Street Address:</td><td>Zalambesa Street</td></tr> </table>	Public Body:	Adigrat University Procurement and Property Administration Director	Attention:	Mr. Gebremedhin Desta, Director for Procurement and Property Administration	Floor/Room number:	Block 13, Ground floor, Office Number 07	P.O. Box:	50	Street Address:	Zalambesa Street
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Street Address:	Zalambesa Street										

	<table border="1"> <tr> <td>Town/City:</td><td>Adigrat</td></tr> <tr> <td>Country:</td><td>Ethiopia</td></tr> </table> <p>The deadline for bid submission is:</p> <p><b>Date: May 27, 2010EC</b></p> <p><b>Time: 4:00 A.M LT</b></p>	Town/City:	Adigrat	Country:	Ethiopia												
Town/City:	Adigrat																
Country:	Ethiopia																
ITB 29.1	<p>The bid opening shall take place at:</p> <table border="1"> <tr> <td>Public Body:</td><td>Adigrat University Procurement and Property Administration Director</td></tr> <tr> <td>Floor/Room number:</td><td>Block 13, Ground floor, Office Number 07</td></tr> <tr> <td>Street Address:</td><td>Zalambesa Street</td></tr> <tr> <td>Town/City:</td><td>Adigrat</td></tr> <tr> <td>P.O.Box:</td><td>50</td></tr> <tr> <td>Country:</td><td>Ethiopia</td></tr> <tr> <td>Date:</td><td>May 27, 2010EC</td></tr> <tr> <td>Time:</td><td>4:30 A.M LT</td></tr> </table>	Public Body:	Adigrat University Procurement and Property Administration Director	Floor/Room number:	Block 13, Ground floor, Office Number 07	Street Address:	Zalambesa Street	Town/City:	Adigrat	P.O.Box:	50	Country:	Ethiopia	Date:	May 27, 2010EC	Time:	4:30 A.M LT
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Country:	Ethiopia																
Date:	May 27, 2010EC																
Time:	4:30 A.M LT																
<b>E. Evaluation, and Comparison of Bids</b>																	
ITB 34.2	Bidder has to confirm that he accepts the correction of the calculation error within <b>3 days starting from the first date of notification of the case.</b>																
ITB 37.4(b)	Bidder must provide in the Bidder Certification of Compliance Form information about major relevant contracts successfully completed in the course of the <b>past 3 years.</b>																
ITB 37.5(d)	The average annual turnover for the last business year of the Bidder must exceed times the amount of the financial proposal of the Bid.																
ITB 38.2	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <b>Ethiopian Birr.</b>																
ITB 38.6	Multiple award to one Bidder <b>shall</b> be permitted. The evaluation methodology to determine the lowest-evaluated combination of lots shall be detailed in Section 3 Evaluation Methodology and Criteria.																
ITB 40.2	As additional post qualification measures, the Information System (or components/parts of it) offered by the Lowest Evaluated Bidder may be subjected to the following tests and performance benchmarks prior to Contract award: <b>.Visit show cases.</b>																
<b>F. Award of Contract</b>																	
ITB 44.1	<p>The percentage by which quantities may be increased is: <b>20%</b></p> <p>The percentage by which quantities may be decreased is: <b>.20%</b></p>																

## **Section 3. Evaluation Methodology and Criteria**

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<b>3.</b>	<b>Domestic Preference</b>	<b>5</b>
<b>4.</b>	<b>Evaluation of Multiple Contracts</b>	<b>5</b>
<b>5.</b>	<b>Alternative Bids</b>	<b>5</b>

This section, read in conjunction with Section 1, Instructions to Bidders and Section 2, Bid Data Sheet, contains all the factors, methods and criteria that the Public Body shall use to evaluate a bid and determine whether a bidder has the required qualifications. No other factors, methods or criteria shall be used.

### **1. Professional, Technical, and Financial Qualification Criteria**

The following qualification criteria will be applied to Bidders. In the case of bids submitted by a consortium, these qualification criteria will be applied to the consortium as a whole :

#### **1.1 Professional Qualifications and Capability of the Bidder (ITB Clause 14)**

- (a). ☐ At least staff currently work for the Bidder;
- (b). ☐ Among the staff mentioned in sub-clause (a) should be at least ;
- (c). ☐

#### **1.2 Technical Qualifications, Competence, and Experience of the Bidder (ITB Clause 16)**

- (a). ☐ The Bidder has successfully completed at least contracts with a budget of at least that of this contract in the past years;
- (b). ☐ History of non-performing contracts - Non-performance of a contract did not occur within the last years prior to the deadline for Bid submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.
- (c). ☐ Pending litigation - All pending litigation shall in total not represent more than percent of the Bidder's net worth and shall be treated as resolved against the Bidder.
- (d). ☐

#### **1.3 Financial Standing of the Bidder (ITB Clause 15)**

- (a). ☐ The average annual turnover calculated as total certified payments received for contracts in progress or completed within the last years must exceed times the amount of the financial proposal of the Bid;
- (b). ☐ The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the following cash-flow requirement:
- (c). ☐

### **2. Determining the Successful Bid**

According to the methodology defined in the Public Procurement Proclamation and Directives the Public Body shall select the successful bid by applying the following method:

- A. ☐ The bid that is found to be substantially responsive to the professional, technical, and financial qualification requirements, technically compliant in relation to the technical requirements and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in, substantially, the full required quantities for the entire Information System or, if allowed in the BDS for ITB Clause 1.3, the individual Subsystem or lot, and with the lowest price.
- B. ☐ The bid that is found to be substantially responsive to the professional, technical, and financial qualification requirements, technically compliant in relation to the technical

requirements and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in, substantially, the full required quantities for the entire Information System or, if allowed in the BDS for ITB Clause 1.3, the individual Subsystem or lot, and with the lowest evaluated bid. The lowest evaluated bid shall be the bid offering better economic advantage ascertained on the basis of factors affecting the economic value of the bid.

**A. The Bid with the Lowest Price**

- 2.1 The bids shall be examined to confirm that all documentary evidence establishing the Bidders' qualifications requested in ITB Clause 23 have been provided;
- 2.2 After confirming the bids comprise all mandatory documentary evidence establishing the Bidder's qualification the Public Body will rule on the legal, technical, professional, and financial admissibility of each bid, classifying it as compliant or non-compliant with qualification requirements set forth in the Bidding Document;
- 2.3 The Public Body will then analyze the bids' technical conformity in relation to the technical requirements, classifying them technically compliant or non-compliant.
- 2.4 The Public Body shall continue evaluation of bids that have been determined to be substantially responsive with rectification of nonconformities and omissions in bids, if any.
- 2.5 The Public Body shall examine all bids to ascertain whether there are any arithmetic errors in computation and summation. The Public Body shall notify bidders on adjusted calculation errors and request bidders to confirm that they accept the correction of the calculation error within the time limit of three days from the receiving of the notification.
- 2.6 After evaluation of legal, professional, technical, and financial admissibility of bids the Public Body shall award of the contract the bidder whose bid has been determined to be substantially responsive to the Bidding Documents and with the lowest price.

**B. Determining the Lowest Evaluated Bid Offering the Best Economic Advantage**

- 2.7 Provided all mandatory legal, professional, technical, and financial requirements have been met all technically compliant Bids shall be evaluated and scored using the two-stage bid evaluation and scoring method. In accordance with ITB Clause 38.4(f), the Public Body's evaluation of the Bid will take into account, in addition to the bid price, the following additional technical evaluation criteria in order of their importance and their proportional weight in the total system of evaluation, as specified below:
  - (a). The additional technical evaluation criteria and their weighting factor that indicate their level of importance are determined, as follows:

## **Evaluation Criteria for Technical Qualification of VDI Lot: 2**

The technical document evaluation being completed prior to any financial (Bid offer) proposals being opened and compared. Only qualified technical document proposal for firms scoring **70% and above** points out of 100 will be considered responsive (pass) and their financial proposals will be opened and then the **least financial proposal** will be successful bidder. The Financial Proposals of those bidders who failed in the technical evaluation will be returned unopened. Technical evaluation shall be guided by the under listed criteria.

<b>Technical evaluation Criteria for Qualification of VDI Lot: 2</b>			
No	Criteria	Max. Score	Remark
<b>1</b>	<b>Company Profile</b>	<b>20</b>	
1.1	Experience <ul style="list-style-type: none"> <li>At least one reference of VDI (Virtual Desktop Infrastructure) implementation in similar size, nature and complexity <b>(5pts)</b></li> <li>Showcase of implemented VDI (Virtual Desktop Infrastructure) of selected brand will be considered <b>(5pts)</b></li> </ul> Important Note: <ul style="list-style-type: none"> <li>Attach legal documentary evidences for criteria listed in 1.1</li> </ul>	10	
1.2	Qualification and experience of technical experts: <ul style="list-style-type: none"> <li>Project manager: highly skilled in project management and experienced in ICT infrastructure implementation <b>(5pts)</b>.</li> <li>Minimum of 4 technical engineers/experts. Highly skilled and experienced in cloud computing implementation <b>(5 pts)</b></li> </ul> Important Note: <ul style="list-style-type: none"> <li>Attach relevant certificates of the project manager and technical experts (certifications, CVs and credentials)</li> <li>Team structure and responsibility matrix should be clearly stated.</li> </ul>	10	
<b>2</b>	<b>Hardware, Software, Service technical requirements compliance</b>	<b>45</b>	
2.1	Detailed technical requirements compliance of equipment and materials. Major Devices and Solutions should be from globally recognized brands positioned as leaders in global research organization like Garter.	20	
2.2	Software and service compliance.	10	
2.3	High level design of facilities completeness and clarity	15	
<b>3</b>	<b>Project proposal, methodology, migration, implementation plan and after sales warranty.</b>	<b>25</b>	
3.1	Reporting arrangement, change control procedures and risk management procedures	10	
3.2	Delivery schedule, scheduling of implementation of activities and clarity of time frame <ul style="list-style-type: none"> <li>The maximum delivery time should be less than 90 days(three months) after contract signing</li> </ul>	5	
3.3	After-sales warranty: the main equipment's manufacturer should have local office in Ethiopia in order to achieve high quality after sales service. Note: The proof (register) for manufacturer's local office for service should be provided.	10	
<b>4</b>	<b>Knowledge transfer and experience sharing</b>	<b>10</b>	
4.1	Provide the detailed schedule and location of on training center	5	
4.2	Onsite training. Provide the detailed training subjects and schedule.	5	
<b>5</b>	<b>Must meet criteria</b>		
5.1	Tender specific manufacturer authorization form (MAF). MAF and collaboration shall be subjected to confirmation by the manufacturer	Mandatory	

5.2	Data sheet	Mandatory	
5.3	Compliance table	Mandatory	
5.4	BoQ without price in your technical document	Mandatory	
5.5	Post deployment executions: <ul style="list-style-type: none"> <li>3-years warranty (replace and repair) after acceptance</li> <li>5-years technical support after acceptance</li> </ul>	Mandatory	
5.6	Annual Turnover of the bidder for the five years must be greater than or equal to 60,000,000 ETB	Mandatory	
5.7	Site survey (please check RFP)	Mandatory	

**Important Note:**

- Bidders are expected to carefully see and submit the technical admissibility criteria on the bidding document
- As the project is on the turnkey basis, partial offer will be automatically rejected.
- The winner will be determined according the grand total of price but only if the provider meets the minimum technical requirements.
- Bidders shall present two copies of technical and financial documents.
- Consider as a set (including all minimum requirements for the solution). Any missed item for the solution is the responsibility of the winner.
- Put total cost for installation, factory training for at least five university ICT staffs for this purpose.
- The winner is expected to conduct the installation as per the request of the university.
- Bidders should conduct site survey to provide appropriate solution.
- The on-factory training should be conducted ahead of material delivery to the university.
- The management of the system should be interoperable with university data center management system.

(b). The Public Body will evaluate any additional criterion using the following scoring scale:

SCORING		DESCRIPTION
10	Excellent	Exceeds the requirements of the criteria significantly and in beneficial ways/very desirable
9	Very Good	Exceeds the requirements of the criteria in ways which are beneficial to our needs
7-8	Good	Fully meets the requirement of the criteria
5-6	Average	Adequately meets most of the requirements of the criteria. May be lacking in some areas that are not critical.
3-4	Poor	Addresses all of the requirements of the criterion to the minimum acceptable level.
1-2	Very Poor	Minimally addresses some, but not all, of the requirements of the criteria or lacking in critical areas.
0	Unsatisfactory	Does not satisfy the requirements of the criteria in any manner.

2.8 Individual weighted scores for all technical criteria shall be weighted according to the set proportional weighting factors. The weighted result shall be calculated by multiplying the score by the proportional weighting factor of the individual criterion. The total score for the Bid determined through this method will be the basis for ranking Bids.

- 2.9 Where two bidders get equal merit points in the evaluation, preference shall be given to local products or services.
- 2.10 The Public Body may require bidders scoring equal merit points in the evaluation to submit further proposals on certain aspects of the bid with a view to identifying the successful bidder.
- 2.11 Where by reason of the bidders scoring equal merit points not submitting final proposals they are invited to submit, or by reason of the evaluation result of the final proposals submitted by the bidders being still equal, the successful bidder can not be singled out, the successful bidder shall be determined by casting lot in the presence, as far as possible, of the bidders concerned.

### **3. Domestic Preference**

If the ITB Clause 35 so specifies, the Public Body will grant a margin of preference to goods manufactured in the Federal democratic Republic of Ethiopia for the purpose of bid comparison, in accordance with the procedures outlined in subsequent paragraphs Responsive Bids shall be classified into the following groups:

- (a). Group A: Bids offering locally produced Goods meeting the criteria of ITB Sub-Clause 35.3; and
- (b). Group B: all other Bids.

For the purpose of further evaluation and comparison of Bids only, an amount equal to 15% percent of the evaluated Bid prices determined in accordance with ITB Sub-Clause 35.3 shall be added to all Bids classified in Group B.

### **4. Evaluation of Multiple Contracts**

Since in accordance with ITB Sub-Clause 38.6 the Public Body be allowed to award one or multiple lots to more than one Bidder, the following methodology shall be used for award of multiple contracts:

To determine the lowest-evaluated lot combinations, the Public Body shall:

- (a). evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB 12.8;
- (b). take into account:
  - (i) the lowest-evaluated bid for each lot that meets the requirement of evaluation criteria;
  - (ii) the price reduction per lot and the methodology for their application as offered by the Bidder in its bid; and
  - (iii) the contract-award sequence that provides the optimum economic combination, taking into account any limitations due to constraints in supply or execution capacity.

### **5. Alternative Bids**

Alternative Bids, if permitted under BDS Clause 20.1, will be evaluated as follows:

The Public Body shall only apply the following criteria for evaluation of Alternative Bids:



## **Section 4. Bidding Forms**

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**A. Bid Submission Sheet****Place and Date****Procurement Reference Number:****To:**

**Addis Ababa**  
**Ethiopia**

**SUBMITTED BY<sup>1</sup>:**

	<b>Complete Legal Name and Address of the Seat of the Bidder</b>	<b>Nationality<sup>2</sup></b>
<b>Leader<sup>3</sup></b>		
<b>Member</b>		
<b>Etc ...</b>		

In response to your Bidding Document for the above Procurement Number:, we, the undersigned, hereby declare that:

- (a) We have examined and accept in full the content of the Bidding Document for the, Procurement Number: We hereby accept its provisions in their entirety, without reservation or restriction.
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the delivery schedule specified in the Statement of Requirements the following Information System: ;
- (c) Warranty period for offered Information System is .
- (d) The total price of our Bid, excluding any discounts offered in item (d) below is: ;
- (e) The discounts offered and the methodology for their application are:  
 Unconditional Discounts: If our bid is accepted, the following discounts shall apply. .  
 Methodology of Application of the Discounts: The discounts shall be applied using the following method: ;  
 Conditional Discounts: If our bid(s) are accepted, the following discounts shall apply. .  
 Methodology of Application of the Discounts: The discounts shall be applied using the following method: ;
- (f) Our bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before expiry of that period;

<sup>1</sup> One signed original Bid Submission Form must be supplied together with the number of copies specified in the Instruction to Bidders.

<sup>2</sup> Country in which the legal entity is registered.

<sup>3</sup> Add/delete additional lines for members as appropriate. Note that a subcontractor is not considered to be a member for the purposes of this bidding procedure. If this bid is being submitted by an individual bidder, the name of the bidder should be entered as "leader" and all other lines should be deleted.

- (g) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i. Those prices;
  - ii. The intention to submit a bid; or
  - iii. The methods or factors used to calculate the prices offered.
- (h) The prices in this bid have not been and will not be knowingly disclosed by the , directly or indirectly, to any other bidder or competitor before bid opening.
- (i) We, including any subcontractors for any part of the contract resulting from this procurement process, are eligible to participate in public procurement in accordance with ITB Clause 4.1 and have not been debarred by a decision of the Public Procurement and Property Administration Agency from participating in public procurements for breach of our obligation under previous contract ;
- (j) We are not insolvent, in receivership, bankrupt or being wound up, not have had our business activities suspended and not be the subject of legal proceedings for any of the foregoing;
- (k) We have fulfilled our obligations to pay taxes according to Ethiopian Tax laws
- (l) We have read and understood the provisions on fraud and corruption in GCC Clause 5 and confirm and assure to the Public Body that we will not engage ourselves into these evil practices during the procurement process and the execution of any resulting contract;
- (m) We have not committed an act of embezzlement, fraud or connivance with other bidders.
- (n) We have not given or have been offered to give inducement or bribe to an official or procurement staff of the Public Body to influence the result of the bid in our favor.
- (o) We are not participating, as Bidders, in more than one bid in this bidding process, other than alternative bids in accordance with the Bidding Document;
- (p) We do not have any conflict of interest and have not participated in the preparation of the original Statement of Requirements for the Public Body;
- (q) If our bid is accepted, we commit to submit a performance security in accordance with the GCC Clause 47 of the Bidding Documents, in the amount of for the due performance of the Contract;
- (r) We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries ];
- (s) Offered Information System do not originate in a country in respect of which the Government of the Federal Democratic Republic of Ethiopia has imposed trade ban;
- (t) Offered Information System do not originate in a country under trade embargo of the Security Counsel of the United Nations in which transacting with any business organization or individual who is the national of that country is prohibited;
- (u) We will inform the Public Body immediately if there is any change in the above circumstances at any stage during the implementation of the contract. We also fully recognize and accept that any inaccurate or incomplete information deliberately provided in this bid may result in our exclusion from this and other contracts funded by the Government of the Federal Democratic Republic of Ethiopia.
- (v) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall not constitute a binding contract between us, until a formal contract is prepared and executed.

(w) We understand that you reserve the right to reject any or all bids that you may receive.

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

**Attachments:**

1. Valid trade license indicating the stream of business in which the is engaged;
2. VAT registration certificate issued by the tax authority
3. A valid tax clearance certificate issued by the tax authority ;
4. Business organization registration certificate or trade license issued by the country of establishment ;
5. Relevant professional practice certificates.
6. Bid Security; and
7. Other documents requested by the Public Body.

**B. Price Schedule for Information System<sup>4</sup>****Place and Date****Procurement Reference No.:****Alternative No.:****To:****Addis Ababa**

Item No. <sup>5</sup>	Subsystem / Item <sup>6</sup>	Country of Origin	Percentage of National Origin <sup>7</sup>	Unit of Qty	Qty	Unit Price FOB	Cost of Carriage <sup>8</sup>	Cost of Marine Insurance <sup>9</sup>	Cost of Inland Transport	Custom Duties and Taxes <sup>10</sup>	Unit Price 6+7+8+9+10	Total Price (5x11)
1	2	3		4	5	6	7	8	9	10	11	12
<b>Grand Total</b>												

**Name**

In the capacity of

Signed

Duly authorized to sign the bid for and on behalf of Dated on [insert day] day of [insert month], 20[insert year of signing]

<sup>4</sup> Fill data into table columns as appropriate.<sup>5</sup> Insert Item Number from Technical Offer, Column 1, Section 6, Statement of Requirements.<sup>6</sup> Insert Subsystem / Item from Technical Offer, Column 2, Section 6, Statement of Requirements.<sup>7</sup> Insert percentage of national origin, if margin of preference applies.<sup>8</sup> In accordance with ITB Clause 12.6(a)(ii). Sea transport for every import should be done by the country's flag carrier, Ethiopian Shipping Lines Share Company. If not possible, appropriate waiver must be acquired.<sup>9</sup> All imports should use Ethiopian Insurance Companies to cover marine insurance. If not possible, appropriate waiver must be acquired.<sup>10</sup> Importers to Ethiopia are required to pay Import (Customs) duty, Withholding Tax (a fixed rate of 2%), Excise Tax (if applicable), VAT (a fixed rate of 15%) and Surtax (a fixed rate of 10%).

### C. Bidder Certification of Compliance<sup>11</sup>

**Place and Date**

**Procurement Reference Number:**

**To:**

**Addis Ababa  
Ethiopia**

#### 1. General Information About the Bidder

Bidder's Legal Name:	
In case of Joint Venture, legal name of each party:	
Place of Registration:	
Legal Address in Country of Registration:	
Authorized Representative Information	Name: Position: Address: Telephone/Fax: E-mail address:
Attached copies of original documents of:	<input type="checkbox"/> In case of JV, letter of intent to form JV including a draft agreement, or agreement governing formation of JV, in accordance with ITB Sub-Clause 4.1
	<input type="checkbox"/> Form Data on Joint Ventures
	<input type="checkbox"/> In case of government owned entity from the Public Body's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.4.

We have attached an official written statement by a power of attorney (or notary statement, etc.) proving that the above person, who signed the bid on behalf of the company/joint venture/consortium, is duly authorized to do so.

#### 2. Financial Standing

has adequate financial resources to manage this Contract as established by our financial statements, audited by an independent auditor, submitted in this Bid. The following table contains our financial data. These data are based on our annual audited accounts. Figures in all columns have been provided on the same basis to allow a direct, year-on-year comparison to be made.

<sup>11</sup> One signed original Bidder Certification of Compliance Form must be supplied together with the number of copies specified in the Instruction to Bidders. If this bid is being submitted by a joint venture/consortium, the data in the tables below must be the sum of the data provided by the joint venture/consortium members.

FINANCIAL DATA	Historic Information for Previous Years in				
	Year 2	Year 1	Last Year	Current Year	Average
<b>A. Information from Balance Sheet</b>					
1. Total Assets					
2. Total Liabilities					
I. Net Value (1-2)					
3. Current Assets					
4. Short-term debts					
II. Working Capital (3-4)					
<b>B. Information from Income Statement</b>					
1. Total Revenue					
2. Pre-tax Profits					
3. Losses					

Along with financial data we provided above we have attached the following documents as proof of our financial standing, as required in the BDS:

(a).

(b).

Attached documents comply with the following conditions:

- Documents reflect the financial situation of the Bidder or partner to a Joint Venture, and not sister or parent companies;
- Historic financial statements are audited by a certified accountant;
- Historic financial statements are complete, including all notes to the financial statements;
- Historic financial statements correspond to accounting periods already completed and audited.

Annual Turnover Data	
Year	Amount and Currency
Average Annual Turnover*	

\*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section 3, Evaluation and Qualification Criteria, Sub-Factor 1.3(a), divided by that same number of years.

Financial Resources		
No.	Source of Financing	Amount

### 3. Technical Qualifications, Competence, and Experience in the Procurement Object

As proof of the technical and professional ability in selling and servicing the Information System and other Goods listed in our Bid the tables below summarize the major relevant contracts of a similar nature, complexity, and requiring similar information technology and methodologies to

the contract or contracts for which these Bidding Documents are issued, and which the ] has successfully completed in the course of the past years with a budget of .

Each partner of a Joint Venture should separately provide details of its own relevant contracts.

Name of Bidder or partner in a Joint Venture:	
1. Name of Contract	
Country	
2. Name of client	
Address of client	
Name of contact person	
Function of contact person	
Telephone number	
E-mail address	
4. Nature of Information Systems and special features relevant to the contract for which the Bidding Documents are issued	
5. Contract role (check one)	<input type="checkbox"/> Prime Contractor; <input type="checkbox"/> Subcontractor; <input type="checkbox"/> Partner in a Joint Venture
6. Overall supply value in	
7. Date of award/completion	
8. Final acceptance issued (check one)	Yes: <input type="checkbox"/> Not Yet <input type="checkbox"/> No: <input type="checkbox"/>
9. Number of staff provided	
10. Indicate the approximate percent of total contract value of Information System undertaken by subcontract, if any, and the nature of such Information System	
11. Other relevant information	

The Clients' Certificate concerning the satisfactory execution of contract is attached to this document

#### 4. Historical Contract Non-Performance

Non-Performing Contracts in accordance with Section 3, Evaluation and Qualification Criteria			
<input type="checkbox"/>	Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 1.2(b) of Section 3, Evaluation and Qualification Criteria.		
<input type="checkbox"/>	Contract non-performance during the stipulated period, in accordance with Sub-Factor 1.2(b) of Section 3, Evaluation and Qualification Criteria.		
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value)
		Contract Identification: Name of Client: Address of Client: Matter in dispute:	
Pending Litigation, in accordance with Section 3, Evaluation and Qualification Criteria			
<input type="checkbox"/>	No pending litigation in accordance with Sub-Factor 1.2(c) of Section 3, Evaluation and Qualification Criteria		
<input type="checkbox"/>	Pending litigation in accordance with Sub-Factor 1.2(c) of Section 3, Evaluation and Qualification Criteria, as indicated below		



Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value)
		Contract Identification: Name of Client: Address of Client: Matter in dispute:	
		Contract Identification: Name of Client: Address of Client: Matter in dispute:	

### 5. Current Contract Commitments / Installation in Progress

No.	Name of Contract	Client's Contact Details	Value of outstanding Information System	Estimated Completion Date	Average Monthly Invoicing over Last Six Months

### 6. Professional Qualifications and Capabilities

In order to proof our professional qualifications and capability the following table contains personnel statistics for the current and the two previous years.

Average manpower	Year before last		Last year		This year	
	Overall	Specialists in Technical Area	Overall	Specialists in Technical Area	Overall	Specialists in Technical Area
Permanent						
Temporary						
TOTAL						

The following Team Skill Matrix identifies the skills that are relevant to the role in the contract team and are required for successful execution of the contract:

Expert Name			
Role:	(e.g., System Engineer, Project Manager, Programmer, etc)		
Knowledge	Knowledge Level	Resume Page Reference	Comments
Experience	Knowledge Level	Resume Page Reference	Comments

Additional Knowledge and Experience	Knowledge Level	Resume Page Reference	Comments

Experience indicated in the matrix is backed up in the individual's resume.

We have used the following ratings in order to accurately reflect the skill ratings of our team:

U	Understanding	Has exposure to education in the subject area but has not used this skill set in practice.
W	Working	Has limited working experience using this skill set.
P	Proficient	Has hands-on experience using this skill set to implement between 2 to 5 projects of various scope/complexity.
X	Expert	Has hands-on experience using this skill set in a key role to implement more than 5 projects of various scope/complexity.

**7. Comments and Suggestions on the Statement of Requirements**

**8. Quality Assurance / Managerial and Control Procedures**

**9. Equipment and Facilities**

**10. Bidder's Audit Agency**

**11. Organization of Firm**

**12. Bank Account Number and Bank Address**

The bank account into which payment should be made is the following:

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

Attachments:

1. Statement issued by a power of attorney authorizing the signatory of the Bid;
2. Audited financial statements;
3. Documents required as proof of the bidder's financial standing, as required in the BDS.
4. Certificates of satisfactory execution of contracts provided by contracting parties to the contracts successfully completed in the course of the past years, as required in the BDS.
5. Individual's resume, as required in the BDS.

**D. Curriculum Vitae for Proposed Personnel**

**1. Proposed Position:** \_\_\_\_\_

**2. Name of Firm:** \_\_\_\_\_

**3. Name of Staff:** \_\_\_\_\_

**4. Date of Birth:** \_\_\_\_\_ **Nationality:** \_\_\_\_\_

5. Education: \_\_\_\_\_

6. Membership of Professional Associations: \_\_\_\_\_

7. Other Training: \_\_\_\_\_

8. Countries of Work Experience: \_\_\_\_\_

9. Languages: \_\_\_\_\_

10. Employment Record: \_\_\_\_\_

From: \_\_\_\_\_ To: \_\_\_\_\_

Employer: \_\_\_\_\_

Positions held: \_\_\_\_\_

11. Detailed Tasks Assigned:

12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned:

Name of assignment or project: \_\_\_\_\_

Year: \_\_\_\_\_

Location: \_\_\_\_\_

Client: \_\_\_\_\_

Main project features: \_\_\_\_\_

Positions held: \_\_\_\_\_

Activities performed: \_\_\_\_\_

**13. Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

**E. Form - Data on Joint Venture/Consortium****Date:****Procurement Reference Number:****Alternative No:**

<b>1.</b>	<b>Name of Joint Venture/Consortium</b>	
<b>2.</b>	<b>Managing Board's Address</b>	
	P.O. Box:	
	Street Address:	
	Town/City:	
	Post Code:	
	Country:	
	Telephone:	
	Facsimile:	
	E-mail address	
<b>3.</b>	<b>Agency in the Federal Democratic Republic of Ethiopia, if any (in the case of a joint venture/consortium with a foreign lead member)</b>	
	P.O. Box:	
	Street Address:	
	Town/City:	
	Post Code:	
	Telephone:	
	Facsimile:	
	E-mail address	
<b>4.</b>	<b>Names of Members</b>	
	Member 1	
	Member 2	
	Etc.	
<b>5.</b>	<b>Name of Lead member</b>	
<b>6.</b>	<b>Agreement governing the formation of the joint venture/consortium</b>	
	Date of signature	
	Place	
<b>7.</b>	Proposed proportion of responsibilities between members (in %) with indication of the type of the works to be performed by each	

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

*Note to Bidders: This Bid Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign the Bid Security. It should be included by the Bidder in its bid.*

## **F. Bid Security**

**Date:**

**Procurement Reference Number:**

**Alternative No:**

**To:**

Whereas (hereinafter “the Bidder”) has submitted its bid dated for Procurement reference Number for the supply of , hereinafter called “the Bid.”

KNOW ALL PEOPLE by these presents that WE , of having our registered office at (hereinafter “the Guarantor”), are bound unto (hereinafter “the Public Body”) in the sum of , for which payment well and truly to be made to the aforementioned Public Body, the Guarantor binds itself, its successors or assignees by these presents. Sealed with the Common Seal of this Guarantor this ] day of , .

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Sheet, except as provided in ITB Sub-Clause 21.2; or
2. If the Bidder, having been notified of the acceptance of its bid by the Public Body, during the period of bid validity, fails or refuses to:
  - (a) Execute the Contract; or
  - (b) Furnish the Performance Security, in accordance with the ITB Clause 47; or

We undertake to pay the Public Body up to the above amount upon receipt of its first written demand, without the Public Body having to substantiate its demand, provided that in its demand the Public Body states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including twenty-eight (28) days after the period of bid validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

Name:

In the capacity of

Signed:

Duly authorized to sign the bid for and on behalf of:

Dated on [insert day] day of ], 20

**G. Manufacturer's Authorization**

**Date: .**

**Procurement Reference Number:**

**Alternative No:**

**To:**

WHEREAS , who are official manufacturers of , having factories at , do hereby authorize located at (hereinafter the "Bidder") to submit a bid in relation to the Invitation for Bids indicated above, the purpose of which is to provide the following Information Technologies and other Goods, manufactured by us:

and other Goods,

and to subsequently negotiate and sign the Contract with you.

We hereby confirm that, in case the bidding results in a Contract between you and the Bidder, the above-listed products will come with our full standard warranty.

Name:  
In the capacity of

Signed:

Dated on [\[insert day\]](#) day of ], 20

## **Section 5. Eligible Countries**

### **A. Eligible Countries**

#### **Procurement Reference Number:**

All countries are eligible except countries subject to the following provisions.

A country shall not be eligible if:

- (c). As a matter of law or official regulation, the Government of the Federal Democratic Republic of Ethiopia prohibits commercial relations with that country, provided that the Government of the Federal Democratic Republic of Ethiopia is satisfied that such exclusion does not preclude effective competition for the provision of goods or related services required; or
- (d). By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of the Federal Democratic Republic of Ethiopia prohibits any import of Goods from that country or any payments to persons or entities in that country.

# Part 2 Statement of Requirement

## Section 6. Statement of Requirements

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# Supply and Implementation of VDI Infrastructure Project on Turnkey Basis for AdU

## 1. Introduction

People all over the world are reaching out to share information through new and developing channels. The **Information Communication Technology Directorate Office (ICTDO) of AdU** focuses on the intersection of technology, people who use that technology, policies and regulations that govern the use of that technology and communities or environments in which that technology is used. Believing its importance AdU established ICT Directorate Office as the most important office for enhancing **teaching and learning, community service** as well as **research & development activities**.

When Adigrat University started to integrate ICT in its entire system, it is with full believe and motive to handle issues related to ICT in the university. Since its establishment, the ICTDO has been working closely with different sections of the university to expand ICT services, to create awareness of ICT, to introduce new technologies into the university. As of now the office has been implemented *Main Data Center (IDS 2000-M)*, *distribution rooms* (all-in-one containment), *smart class rooms (RP200)*, *Tele-presence(TP3206)*, *VDI (Virtual Desktop Infrastructure)*, *inter-building fiber installation and intra- building network installation* in the university.

Having this infrastructure, the University need to extend the available services through new technologies. As part of the University strategy for technological enhancement, Research, community, teaching and learning and innovation, AdU is planning to implement VDI Infrastructure development at the university campuses.

The purpose of this project is, therefore, to supply, install, configure, Training, testing and commissioning new VDI Infrastructure for optimization of IT productivity and resource utilization, to implement VDI expansion to give better services for the growing population of students in the University. The University therefore invites interested, experienced and qualified companies to come up with their solution.

**Important Note:**

- *It is mandatory to conduct site survey in order to get comprehensive understanding and come up with complete competitive solution.*
- *It is important to consider these requirements as minimum and generic. Bidders are expected to come with their complete competitive solutions.*
- *As the project is on turnkey basis, partial offer will be automatically rejected.*

## 2. Project Objective

Assist the Adigrat University, meet its mission and vision through Information Technology. To build VDI infrastructure we have put together an RFP consisting VDI infrastructure.

## 3. Project Scope

The project scope of work includes but not limited to the followings:

- Provide all necessary furniture requirements for each VDI workstation such as chairs and tables
- Supply of VDI thin clients and all accessories needed with corresponding hardware/software systems necessary licenses
- Design, install and configure VDI devices, document and train ICT professionals
- Provide three years outright warranty for hardware and software replacement and repair, Provide five years of technical support after acceptance

## 4. Expected Deliverables

### 4.1. Expected Documents

- a. VDI Infrastructure design document including all facilities and descriptions.
- b. Design and implementation documents of VDI infrastructure
- c. Training manuals on
  - Installation and configuration of all VDI hardware and necessary software's including back-up restorations
  - Virtualization configurations and hand-outs must be provided as well
- d. Proposed trainings (abroad and onsite) and industrial certifications should be provided with both technical and financial documents.
- e. High level design documents for VDI infrastructure on this proposal including all facilities and descriptions etc.

## 5. Project Period

The maximum delivery time should be less than 90 days(three months) after contract signing.

## **6. Technical Specifications**

The below stated technical specification are minimum requirement of the organization. Bidders are encouraged to propose better technologies which serve the required purpose. In situation where the propose system don't comply with the specification provided, bidders should present convincing technical explanation and the benefits we get if by taking your proposal.

Adigrat University Virtual Desktop Infrastructure (VDI) National Bid for 2010 E.C Lot:2								
Rno	ITEM	Minimum Requirement		Unit	Qty	Unit price	Total Price	Remark
1	Virtual desktop management platform	Basic features	The virtualization platform and desktop cloud platform must have the same brand. The virtualization platform and desktop cloud platform must have independent intellectual property rights and provide proofs.	set	1			
			The bidder must be a member of international mainstream cloud computing organizations (such as Xen and OpenStack) and provide related proofs.					
			To keep quality, the virtualization platform, server, storage should be listed in Gartner Magic Quadrant, provide related proofs.					
		Requirement	The desktop cloud system can support centralized management of more than 20,000 desktops. The VM can supports a maximum of 1 TB memory The VM can supports a maximum of 64 VCPUs. The VM can supports a maximum of 64TB disk. The VM can supports a maximum of 12 virtual NICs.					

2	<b>Host Blade Servers Chassis</b>	I/O Module	Maximum 4 slots switch modules Switching capability of 15.6 Tbit/s. Four types of interfaces must be supported: GE, 10GE, FC, and IB.	set	1			
		I/O port	A maximum of 128 I/O ports must be supported. 6 pieces of 16*10GE Switch Module should be provided					
		Switch module	multi-plane switch module: 4x10GE+12xGE+8x8G FC uplink, 32xGE+16x8G FC downlink					
		Management module	Complies with IPMI v2.0 and supports management functions such as remote startup, shutdown, reset, logging, hardware monitoring, SOL, KVM over IP, virtual media, fan module monitoring, and PSM monitoring Supports 1+1 redundancy Provides a local KVM port for server management					
		Blade type	Maximum 16 half-width slots or 8 full-width slots; supports flexible configurations of single-slot, dual-slot, full-width, and half-width nodes					
3	<b>Host Blade Servers Type</b>	CPU	X86 series,FCLGA2011,2500MHz,1.8V,64bit,120000mW,Haswe	pcs	8			

			II EP Xeon E5-2670 v3,12Core					
		Number of CPUs	2 CPUs should be provided.					
		Memory type	1.5TB memory is supported.					
		Hard disk type	2.5-inch SAS, SATA, and SSD hot-swappable hard disks must be used. 4*2.5-inch 600GB SAS should be provided for each server.					
		RAID support	RAID 0, 1, 10, 5, 50, 6, and 60. 1 GB RAID cache					
		Driver bay	2pcs-300GB-SAS-10000rpm-2.5 Hot Swappable hard disk should be provided					
4	<b>Storage System</b>	Storage processors	Multi-core processors	set	1			
		System cache per controller	Maximum 128GB, 48GB should be provided					
		number of controllers	Maximum 8 controller should be supported.					

		Front-end port types	1 Gbit/s Ethernet, 10 Gbit/s FCoE, 10 Gbit/s TOE, 16 Gbit/s Fibre Channel, 56 Gbit/s InfiniBand supported, 8*GE port should be provided					
		Disk Bay	25*2.5-inch 900GB 10K RPM SAS hard disk with related disk enclosure should be configured 10*3.5-inch 4TB 7.2K NL-SAS hard disk with related disk enclosure would be configured					
		Max. capacity of a single file	256 TB					
		Key Software Features	Device Management, LUN copy, LUN clone, Snapshot, Thin provisioning, Multi-tenant, Migration, tMotion, QoS, SSD cache, Cache partitioning, Storage tiering Data destruction, Volume mirroring should be provided					
5	Thin client (TC) with 17" monitor for Cloud VDI library with all	One or more GE ports (RJ-45) must be provided.		pcs	700			
		Thin Client, Hisilicon 3716C 1.5GHz(Dual Core),1G DDR3,4G eMMC,no,1000M,(DVI-I),Linux English free version, With DVI-I to VGA Adapter and a Hanging Thing						
		Low-power-consumption ARM dual-core processors must be used, with						



	Accessories	the frequency being 1.5 GHz or higher.						
		NandFlash is supported, with the capacity being 4 GB or larger.						
		The thin clients should be with monitor and all other accessories.						
		When the same content is displayed on DVI and VGA, the maximum resolution must be 1920 x 1200@60 Hz.						
6	Electric Equipment	circuit breaker(63A)	63A	pcs	10			
		Electrical Wire 2.5 mm2 with	Red color ( 10 roll)	roll	15			Elswedy or other equivalent is recommended
			Green Color ( 10 roll)	roll	15			
			Blue Color (10 roll)	roll	15			
			Yellow Color ( 10 roll)	roll	15			
			Brown Color (10 roll)	roll	15			
			Black color ( 10 roll)	roll	15			
		Electrical cable	Electrical cable 5x6 mm2 from main distribution to sub distribution board	Meter	200			
		Circuit Breaker	Circuit breaker of 63A	pcs	15			Chint or equivalent.
		Connector	With 0.9 mm2 diameter	pkt	60			1 packet=100

								pcs.
		Twin socket flush mountable	10-16A/1P twin socket outlet	Pcs	700			
		Distribution board	<p>Flush mounting distribution board SDB-A1 in sheet steel enclosure with lockable door and with phase, neutral and earth bus-bars of 63A rating consists of</p> <ul style="list-style-type: none"> <li>• 1Pcs main MCB of 63A/3P</li> <li>• 12Pcs MCB of 25A/1P</li> <li>• 25% reserve pitches</li> </ul>	pcs	5			
			<p>Flush mounting distribution board SDB-A1 in sheet steel enclosure with lockable door and with phase, neutral and earth bus-bars of 40A rating consists of</p> <ul style="list-style-type: none"> <li>• 1Pcs main MCB of 40A/3P</li> <li>• 8Pcs MCB of 25A/1P</li> </ul> <p>25% reserve pitches</p>	pcs	4			
		End tap	To close the end part of the trunk	Pcs	25			
		Trunk	100mm*50mm double compartment PVC trunking/pcs. Each piece should be 2 meters.	Pcs	250 0			
		Divider	Power divider with 6 ports	Pcs	15			

		Elbow	T type	pcs	100			
			L type	pcs	50			
		Junction box or Scatola	With a diameter of 65mm2	Pcs	550			
		Cable tie	<ul style="list-style-type: none"> <li>• Beaded cable ties: cable to be releasable and reusable. Standard black.</li> <li>• Self-locking cable ties with specially designed end for easier insertion into the lock</li> <li>• Flame resistance, Tensile strength, Good resistance to chemicals, Black version for outdoor use. Length more than 140 mm</li> </ul>	pcs	200			

7	<b>Furniture</b>	Computer Table	Computer table(Mahogany)-computer table, all parts to be made up of high pressure laminated (HPL) chip wood material and laminated with mahogany veneer material to form the panels having a minimum thickness of 20mm. Exposed parts will be covered by mahogany shelf and sliding keypad Tryon rollers will NOT be provided, caster wheel will not be provided. The depth stand should be 250 mm far from the rear side of the table. The table should have three standard holes of 100mm diameter in the rear view with in the 150 mm distance from it. The holes should be at the middle of the table with distance of 170mm between them. Size: 800mmx500mmx750mm. More clarification can be obtained from the customer	pcs	700			Import standard
		Chair (Grey)	Chair (Grey) – chair to be provided will be without arm set, deep cushioned and back upholster with thickness of 30mm foam and packed by plastic or plywood, covered with high quality fabric, constructed with 20*20*15mm square pipe support with rubber foot, gray, 460*420*450.	pcs	700			Import standard
8	<b>Accessories</b>	All accessories such as decoration, furniture's, carpets, electrical equipment's, fiber related components, UTP cable and related units,		set	1			

		Network equipment, installations and other relevant materials for successful deployment of the solution should be considered.						
9	Installation, Commissioning, and testing	Successful Bidders are required to install, commission, and test all VDI facilities after delivery. Successful Bidders are required to extend the optic fiber lines to the VDI rooms from the near by building or the university data center. They are also required to make necessary splicing and expansion of fiber lines. Any form of deformations or changes to the building or other facilities during installation, commissioning, and testing must be patched or repaired or restored by the supplier/winner.		set	1			
10	Relevant Trainings & Visits	On-Site Trainings	Successful Bidders are required to arrange germane onsite trainings for the AdU-ICT staffs covering all concomitant expenses during & after installation & commissioning.	pcs	5			
		On-factory Trainings & Visits	Successful Bidders are required to arrange visits to factories and on-factory trainings (on Facilities installation, configuration, & management) & certifications prior to the start of installation works covering all concomitant expenses (per-dime + certification fees + Air transport fares).	pcs	5			
Total Price								

**Important Notes:**

- 1) The winner will be determined according the grand total of price but only if the provider meets the minimum technical requirement's (see a separate evaluation criteria document).
- 2) Bidders shall present two copies of technical and financial documents.
- 3) Consider as a set (including all minimum requirements for the solution). Any missed item for the solution is the responsibility of the winner.
- 4) Put total cost for installation, training for at least Five university ICT staffs for this purpose.
- 5) The winner is expected to conduct the installation as per the request of the university. (The winner is responsible to install all the listed items as per the request of the University)
- 6) Bidders should conduct site survey to provide appropriate solution and should get final approval from AdU ICT. The site survey (mandatory) will be conducted on May 21, 2018 and May 23, 2018 10:00 AM at the university.
- 7) The on-factory training should be conducted ahead of material delivery to the university.

## **7. Training**

Bidders should give special emphasis to knowledge transfer. Training types categorized in to two First is on factory training and second is onsite training.

Bidders must provide a detailed schedule of training courses including course profiles, for personnel to attend, and minimum number of candidates as stated in the bid document and duration as well prerequisite skills.

Suppliers should describe their approach regarding training planning, design and delivery. Training must be coordinated with the implementation of VDI infrastructure. The Supplier must provide a training plan as part of the project management plan in the technical proposal.

Comprehensive training documents **MUST** be provided in the English language, including where possible on-line help. The cost of all training must be included in the Supplier's total solution cost.

The Design, Implementation and Administration of VDI Infrastructure Training course should have on factory Training for 5 AdU ICT staffs and onsite Training. For the on factory training, bidders should indicate the training institution where the course will be provided; training place should be specified and cost should include full expenses related to the training

## A. Technical Offer + Compliance Sheet

Place and Date

Procurement Reference No.:

Alternative No.:

To:

## Ethiopia

Line Item No.	Subsystem / Component / Item	Technical Specification Reference Number	Unit of Measure	Qty	Specification Offered	Bidder's Commentary on Compliance of Specification Offered	Evaluation Committee's Remark on Specification Offered		
							Observations	Overall Compliance	
								yes	no
1	2	3	4	5	6	7	8	9	10
								<input type="checkbox"/>	<input type="checkbox"/>
								<input type="checkbox"/>	<input type="checkbox"/>
								<input type="checkbox"/>	<input type="checkbox"/>
								<input type="checkbox"/>	<input type="checkbox"/>

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

Attachments:

1. Documentary technical evidence in accordance with ITB Clause 17 (if required in BDS);
2. Preliminary project Plan in accordance with ITB Clause 17.2(c);
3. Written Confirmation of Responsibility for Integration and Interoperability of Information Technologies in accordance with ITB Clause 17.2(d);
4. Manufacturer Authorization Letter in accordance with ITB Clause 5.6;
5. List of Proposed Subcontractors;
6. List of Proposed Software;
7. List of Custom Materials.



**B. Delivery, Implementation, and Completion Schedule****Place and Date****Procurement Reference No.:****Alternative No.:****To:****Ethiopia**

Line Item No.	Subsystem / Component / Item	Technical Specification Reference No.	Unit of Measure	Quantity	Delivery (Bidder to specify in the Preliminary Project Plan)	Installation (weeks from Effective Date)	Acceptance (weeks from Effective Date)	Delivery Completion period (days/weeks/months)	Site / Site Code	Liquidated Damages Milestone
1	2	3	4	5	6	7	8	9	10	11

Name

In the capacity of .

Signed

Duly authorized to sign the bid for and on behalf of .

Dated on [insert day] day of ], 20

**C. Forms to be Attached to the Technical Offer****1. List of Proposed Subcontractors**

No.	Item	Proposed Subcontractor	Place of Registration & Qualifications

**2. List of Proposed Software**

No.	Software Item					
		System Software	General-Purpose Software	Application Software	Standard Software	Custom Software

**3. List of Custom Materials**

No.	Custom Materials

# Part 3      Contract

## Section 7.      General Conditions of Contract

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## Section 7 General Conditions of Contract

### A. General Provisions

#### 1. Definitions

1.1 The headings and titles of these General Conditions of Contract shall not limit, alter or affect the meaning of the Contract.

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

(a). "Application Software"	means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 2 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software;
(b). "Authorized Officer"	means a person designated as such by the Public Body from time to time as notified in writing to the Supplier to act as the representative of the Public Body for all purposes connected with the Contract, including any authorized representative of such person;
(c). "Bankrupt"	means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due;
(d). "Commissioning"	means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 53.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test(s);
(e). "Completion"	means the fulfillment of the Contract by the Supplier in accordance with the terms and conditions set forth in the Contract;
(f). "Contract Agreement"	means the agreement entered into between the Public Body and the Supplier using the form of Contract Agreement contained in the Section 9 of the Bidding Documents and any modifications to this form agreed to by the Public Body and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.
(g). "Contract Documents"	means the documents listed in the GCC, including all attachments, appendices, and all documents incorporated by reference therein, and shall include any amendments thereto;
(h). "Contract Manager"	means a person designated as such by the Supplier from time to time as notified in writing to the Public Body to act as the duly authorized representative of the Supplier for all purposes connected with the Contract, including any authorized representative of such person;
(i). "Contract Period"	is the time period during which this Contract governs the relations and obligations of the Public Body and Supplier in relation to the



	System, as specified in the SCC;
(j). "Contract Price"	means the money payable by the Public Body to the Supplier based on the Contract Agreement and shall include all royalties, license fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property or Intellectual Property Rights for the purpose of performing the Contract;
(k). "Contract"	means the binding Contract Agreement entered into between the Public Body and the Supplier, comprising Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.
(l). "Coverage Period"	means the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available;
(m). "Custom Materials"	means Materials developed by the Supplier at the Public Body's expense under the Contract and identified as such in Appendix 3 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
(n). "Custom Software"	means Software identified as such in Appendix 2 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software;
(o). "Day"	means calendar day of the Gregorian Calendar;
(p). "Defect Liability Period"	(also referred to as the "Warranty Period") means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Subsystem[s]) as provided in GCC Clause 57 (Defect Liability);
(q). "Delivery"	means the transfer of the Information System and other Goods from the Supplier to the Public Body in accordance with the terms and conditions set forth in the Contract;
(r). "Effective Date"	means the date of fulfillment of all conditions specified in Article 2 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Subsystem(s);
(s). "Eligible Countries"	means the countries and territories eligible for participation in procurements as listed in Section 5 of the Bidding Document;
(t). "General Conditions of Contract"	hereinafter referred to as "GCC", means the conditions in this section of the Contract, which shall govern the Contract, except where amended by the SCC or Contract Agreement;
(u). "General-Purpose Software"	means Software that supports general-purpose office and software development activities and is identified as such in Appendix 2 of the Contract Agreement and such other Software as the parties may agree in writing to be General- Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and

	application development software.
(v). "Good Industry Practice"	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of Information System and other Goods similar to the Information System and other Goods under the same or similar circumstances as those applicable to the Contract and which are in accordance with any codes of practice published by relevant trade associations;
(w). "Goods"	means all equipment, machinery, furnishings, materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and materials, but excluding the Supplier's Equipment;
(x). "Government"	means the Government of the Federal Democratic Republic of Ethiopia;
(y). "In writing"	shall be interpreted to include any document which is recorded in manuscript or typescript;
(z). "Information System"	also called "the System", means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under the Contract;
(aa). "Information Technologies"	means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract;
(bb). "Installation"	means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 52 (Installation);
(cc). "Intellectual Property Rights"	means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so;
(dd). "Liquidated damages"	means the compensation stated in the contract as being payable by Supplier to the Public Body for failure to perform the contract or part thereof within the periods under the contract, or as payable by Supplier to the Public Body for any specific breach identified in the contract;
(ee). "Materials"	means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Public Body under the Contract;
(ff). "Member"	means any of the entities that make up the joint venture / consortium / association; and "Members" means all these entities;

(gg). "Operational Acceptance Tests"	means the tests specified in the Technical Requirements and Agreed and Finalized Project Plan to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed and Finalized Project Plan, in accordance with the provisions of GCC Clause 53.2 (Operational Acceptance Test);
(hh). "Operational Acceptance"	means the acceptance by the Public Body of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 53.3 (Operational Acceptance)
(ii). "Party"	means the Public Body or the Supplier and includes their permitted successors and "Parties" means both of them;
(jj). "Post-Warranty Services Period"	means the number of years defined in the SCC (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s);
(kk). "Pre-commissioning"	means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 52 (Installation);
(ll). "Project Manager"	means the person named as such in the SCC or otherwise appointed by the Public Body in the manner provided in GCC Clause 11.1 (Project Manager) to perform the duties delegated by the Public Body;
(mm). "Project Plan"	means the document to be developed by the Supplier and approved by the Public Body, pursuant to GCC Clause 44, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's bid. The "Agreed and Finalized Project Plan" is the version of the Project Plan approved by the Public Body, in accordance with GCC Clause 44.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
(nn). "Project Site(s)"	means the place(s) specified in the SCC for the supply and installation of the System;
(oo). "Public Body"	means public body, which is partly or wholly financed by the Federal Government Budget, higher education institutions, and public institutions of like nature which has the powers and duties to conclude a Contract for the supply of Information System and other Goods, as named in the SCC;
(pp). "Purchase Order"	or acronym "PO" means an individual order for Information System and other Goods issued by Public Body pursuant to the terms, conditions, and pricing established in a Contract. Each individual Purchase Order is a binding contractual instrument and will refer and incorporate the terms and conditions of this Contract and specify the Goods to be supplied, delivery schedule, and price;
(qq). "Services"	means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management

	and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support;
(rr). "Software"	means that part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations;
(ss). "Source Code"	means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software)
(tt). "Special Conditions of Contract"	hereinafter referred to as "SCC", means the conditions attached to the Contract Agreement, which shall govern the Contract and shall prevail over these General Conditions of Contract;
(uu). "Standard Materials"	means all Materials not specified as Custom Materials;
(vv). "Standard Software"	means Software identified as such in Appendix 2 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software;
(ww). "Subcontractor"	means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns with whom the Supplier contracts for the supply or execution of any part of the Information System to be provided by the Supplier under the Contract (such as the supply of major hardware, software, or other components of the required Information Technologies specified, or the performance of related Services, e.g., software development, transportation, installation, customization, integration, commissioning, training, technical support, maintenance, repair, etc.).
(xx). "Subsystem"	means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System;
(yy). "Supplier"	means a natural or juridical person under contract with a Public Body to supply Information System and other Goods;
(zz). "Supplier's Equipment"	means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.
(aaa). "Supplier's Representative"	means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Public Body in the manner provided in GCC Clause 11.2 (Supplier's Representative) to perform the duties delegated by the Supplier
(bbb). "System Software"	means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 2 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to,

	micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.
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## **2. Appointment**

2.1 The Public Body appoints the Supplier to perform the Contract:

- (a). Promptly (and in any event within any time targets as may be set out in the Section 6, Statement of Requirements) and in a professional and courteous manner so as to reflect and promote the image of the Public Body;
- (b). Strictly in accordance with the Statement of Requirements and all provisions of the Contract; and
- (c). In accordance with all applicable laws and regulations of the Federal Democratic Republic of Ethiopia and Good Industry Practice; and
- (d). In accordance with the policies, rules, and procedures of the appropriate Authority as amended from time to time.
- (e). In accordance with the quality standards set by the Quality and Standards Authority of Ethiopia (QSAE) and applicable international standards;
- (f). In accordance with the terms and conditions of appointment as provided in this Clause in consideration of the Contract Price.

## **3. Relationship of the Parties**

- 3.1 The Supplier shall not incur any liabilities on behalf of the Public Body or enter into any contract or obligation on behalf of the Public Body.
- 3.2 The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.
- 3.3 Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Public Body, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Public Body.

## **4. Due Diligence**

- 4.1 The Supplier acknowledges that it:
  - (a). Has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Public Body;
  - (b). Has raised all relevant due diligence questions to the Public Body before the Effective Date; and
  - (c). Has entered into this Contract in reliance on its own due diligence alone.
- 4.2 Any disputes relating to due diligence shall be resolved in accordance with the Ethiopian Law.

**5. Fraud and Corruption**

- 5.1 It is the Government of the Federal Democratic Republic of Ethiopia's policy to require that Public Body, as well as bidders/suppliers, to observe the highest standards of ethics during the procurement and the execution of contracts. In pursuance of this policy, the Government of the Federal Democratic Republic of Ethiopia represented by the Public Procurement and Property Administration Agency (herein referred to as the Agency) requires that Contracting Authorities shall include in bidding documents, provisions against corrupt practices.
- 5.2 The Agency defines, for the purposes of these provisions, the terms set forth below as follows:
- (a). "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution, and
  - (b). "Fraudulent practice" is any act or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.
  - (c). "Collusive practices" is a scheme or arrangement between two or more Suppliers, with or without the knowledge of the Public Body, designed to establish prices at artificial, non competitive levels, and
  - (d). "Coercive practices" is harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
  - (e). "Obstructive practice" is
    - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Federal Ethics and Anticorruption Commission, the Federal Auditor General and the Public Procurement and Property Administration Agency or their auditors' investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent their from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (ii) acts intended to materially impede the exercise of inspection and audit rights provided for under GCC Sub-clause 39.2.
- 5.3 The Agency will debar a Supplier from participation in public procurement for a specified period of time if it at any time determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract.
- 5.4 The Agency reserves the right, where a Supplier has been found by a national or international entity to have engaged in corrupt or fraudulent practice, to declare that such a Supplier is ineligible, for a stated period of time, to be awarded a Government funded contract.
- 5.5 The Agency will have the right to require that, in contracts funded by the Government of Ethiopia, a provision be included requiring suppliers to permit the Agency to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Agency, if the supplier engages in any corrupt practice.
- 5.6 Any communications between the Supplier and the Public Body or the Agency related to matters of alleged fraud or corruption must be made in writing.

**6. Interpretation**

6.1 If the context so requires it, singular means plural and vice versa.

6.2 In these terms and conditions, words referring any particular gender include all other genders.

6.3 Incoterms

(a). Unless otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

(b). DDP, EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

6.4 Entire Agreement

The Contract constitutes the entire agreement between the Public Body and the Supplier and supersedes all communications, negotiations and agreements of parties with respect thereto made prior to the date of Contract.

6.5 Amendment

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

6.6 Nonwaiver

(a). Subject to GCC Sub-Clause 6.6(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b). Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

6.7 Severability

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

**B. The Contract****7. Contract Documents**

7.1 The documents forming the Contract shall be interpreted in the following order of precedence in the event of any conflict between the documents comprising this Contract:

(a). The Contract Agreement and the Appendices attached to the Contract Agreement;

(b). The Special Conditions of Contract;

(c). The General Conditions of Contract;

(d). Bid Submission Sheet with Annexes;

- (e). Price Schedule;
- (f). Bidder Certification of Compliance with Annexes;
- (g). Technical Specification + Technical Offer + Compliance Sheet with Annexes;
- (h). Any other document listed in the SCC as forming part of the Contract.

- 7.2 All documents forming the Contract are intended to be correlative, complementary, and mutually explanatory.
- 7.3 Any action required or permitted to be taken, and any document required or permitted to be provided, under the Contract by the Public Body or the Supplier may be taken or provided by the authorized representatives specified in the SCC.
- 7.4 The Contract constitutes the entire agreement between the Public Body and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

## **8. Governing Law**

- 8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Federal Democratic Republic of Ethiopia, unless otherwise specified in SCC.

## **9. Language**

- 9.1 The Contract as well as all written and oral communication and documents relating to the Contract exchanged by the Supplier and the Public Body, shall be in language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language, but any documents provided in another language must be accompanied by an accurate translation into language specified in the SCC. For purposes of interpretation of the Contract, this translation shall govern.
- 9.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

## **10. Notices and written communications**

- 10.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. The term “in writing” means communicated in written form with proof of receipt.
- 10.2 Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 10.3 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SCC.

## **11. Authorized Representatives**

### **11.1 Project Manager**

- (a). If the Project Manager is not named in the Contract, then within fourteen (14) days of the



Effective Date, the Public Body shall appoint and notify the Supplier in writing of the name of the Project Manager. The Public Body may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. Subject to the extensions and/or limitations specified in the SCC (if any), the Project Manager shall have the authority to represent the Public Body on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Public Body pursuant to GCC Clause 10.

#### 11.2 Supplier's Representative

- (a). If the Supplier's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier's Representative and shall request the Public Body in writing to approve the person so appointed. The request must be accompanied by detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the Supplier's Representative. If the Public Body does not object to the appointment within fourteen (14) days, the Supplier's Representative shall be deemed to have been approved. If the Public Body objects to the appointment within fourteen (14) days giving the reason thereof, then the Supplier shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Clause 11.2(a).
- (b). Subject to the extensions and/or limitations specified in the SCC (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier pursuant to GCC Clause 10.
- (c). The Supplier shall not revoke the appointment of the Supplier's Representative without the Public Body's prior written consent, which shall not be unreasonably withheld. If the Public Body consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative, pursuant to the procedure set out in GCC Clause 11.2.(a).
- (d). The Supplier's Representative and staff are obliged to work closely with the Public Body's Project Manager and staff, act within their own authority, and abide by directives issued by the Public Body that are consistent with the terms of the Contract. The Supplier's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.
- (e). The Supplier's Representative may, subject to the approval of the Public Body (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.
- (f). Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 11.2.(e) shall be deemed to be an act or exercise by the Supplier's Representative.

#### 11.3 Objections and Removals

- (a). The Public Body may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of

the Public Body, may have behaved inappropriately, be incompetent, or be negligent. The Public Body shall provide evidence of the same, whereupon the Supplier shall remove such person from work on the System.

- (b). If any representative or person employed by the Supplier is removed in accordance with GCC Clause 11.3(a), the Supplier shall, where required, promptly appoint a replacement..

## **12. Assignment**

- 12.1 An assignment is a written agreement by which the Supplier transfers its contract or part thereof to a third party.
- 12.2 The Supplier shall not, without the prior written consent of the Public Body, assign the Contract or any part thereof, or any benefit or interest thereunder, except in the following cases.
- (a). A charge, in favor of the Supplier's bankers, of any monies due or to become due under the Contract; or
  - (b). Assignment to the Supplier's insurers of the Supplier's right to obtain relief against any other person liable in cases where the insurers have discharged the Supplier's loss or liability.
- 12.3 With the exception of the carriage of the Information Technologies, Materials, and other Goods to the Location, the Supplier shall not sub-contract the production or supply of any Information Technologies, Materials, and other Goods without the previous consent in writing of the Public Body, such consent not to be unreasonably withheld or delayed.
- 12.4 For the purpose of GCC Clause 12.2 the approval of an assignment by the Public Body shall not relieve the Supplier of its obligations for the part of the Contract already performed or the part not assigned.
- 12.5 If the Supplier has assigned his Contract without authorization, the Public Body may, without giving formal notice thereof, apply as of right the sanctions for breach of Contract provided for in GCC Clauses 18 and 20.
- 12.6 Assignees must satisfy the eligibility criteria applicable for the award of the Contract and they can not be in any of the situations excluding them from participating in Contract.
- 12.7 Every assignment shall be subject to the provisions of this Contract and shall incorporate the terms and conditions of this Contract.

## **13. Subcontracting**

- 13.1 A sub-contract shall be valid only if it is a written agreement by which the Supplier entrusts performance of a part of the Contract to a third party.
- 13.2 Appendix 1 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Public Body. The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to this GCC Clause.
- 13.3 The Supplier may from time to time propose additions to or deletions from any such list. In the event the Supplier requires the supply or services of sub-contractors that are not included in the List of Approved Subcontractors, the Supplier shall obtain the prior written approval and clearance of Public Body for all sub-contractors. The supply or services to be sub-contracted and the identity of the subcontractors shall be notified to the Public Body. The Public Body shall with due regard to the provisions of GCC Clause 10 within 15 days of receipt of the notification, notify

the Supplier of its decision, stating reasons should he withhold such authorization.

- 13.4 The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.
- 13.5 The Public Body shall have no contractual relations with the Sub-Contractors.
- 13.6 Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract and they can not be in any of the situations excluding them from participating in contract.
- 13.7 The Supplier shall be responsible for the acts, defaults and negligence of his Sub-Contractors and their agents or employees, as if they were the acts, defaults or negligence of the Supplier, his agents or employees. The approval by the Public Body of the sub-contracting of any part of the contract or of the Sub-Contractor to perform any part of the services shall not relieve the Supplier of any of his obligations under the contract.
- 13.8 If the Supplier enters into a subcontract without approval, the Public Body may apply, as of right without giving formal notice thereof, the sanctions for breach of contract provided for in GCC Clauses 18 and 20.
- 13.9 If a Sub-Contractor is found by the Public Body to be incompetent in discharging its duties, the Public Body may request the Supplier forthwith, either to provide a Sub-Contractor with qualifications and experience acceptable to the Public Body as a replacement, or to resume the implementation of the tasks itself.

## **14. Changes in Contract Elements**

### **14.1 Introducing a Change**

- (a). Subject to GCC Clauses 14.2(e) and 14.2(g), the Public Body shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract. A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 49 (Product Upgrades).
- (b). The Supplier may from time to time during its performance of the Contract propose to the Public Body (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality or efficiency of the System. The Public Body may at its discretion approve or reject any Change proposed by the Supplier.
- (c). Notwithstanding GCC Clauses 14.1(a) and 14.1(b), no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.
- (d). The procedure on how to proceed with and execute Changes is specified in GCC Clauses 14.2 and 14.3, and further details and sample forms are provided in the Bidding Documents.
- (e). Moreover, the Public Body and Supplier will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.

**14.2 Changes Originating from Public Body**

- (a). If the Public Body proposes a Change pursuant to GCC Clauses 14.1(a), it shall send to the Supplier a "Request for Change Proposal," requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:
  - (i) brief description of the Change;
  - (ii) impact on the Time for Achieving Operational Acceptance;
  - (iii) detailed estimated cost of the Change;
  - (iv) effect on Functional Guarantees (if any);
  - (v) effect on any other provisions of the Contract.
- (b). Prior to preparing and submitting the "Change Proposal," the Supplier shall submit to the Project Manager a "Change Estimate Proposal," which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier's Change Estimate Proposal, the Public Body shall do one of the following:
  - (i) accept the Supplier's estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal;
  - (ii) advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate;
  - (iii) advise the Supplier that the Public Body does not intend to proceed with the Change.
- (c). Upon receipt of the Public Body's instruction to proceed under GCC Clause 14.2(b)(i), the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Clause 14.2(a). The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Public Body and Supplier has not reached agreement in accordance with GCC Clause 14.2(f), then GCC Clause 14.2(g) shall apply.
- (d). The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.
- (e). If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 14 would be to increase or decrease the Contract Price by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Public Body accepts the Supplier's objection, the Public Body shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.

The Supplier's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.
- (f). Upon receipt of the Change Proposal, the Public Body and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Public Body shall, if it intends to proceed with the Change, issue the Supplier a Change Order. If the Public Body is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Public

Body decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 14.2.(b).

- (g). If the Public Body and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 23 (Settlement of Disputes).

#### **14.3 Changes Originating from Supplier**

- 14.4 If the Supplier proposes a Change pursuant to GCC Clause 14.1.(b), the Supplier shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Clause 14.2.(a). Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 14.2(f) and 14.2(g). However, should the Public Body choose not to proceed or the Public Body and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Public Body and the Supplier to the contrary.

#### **15. Change in Laws and Regulations**

- 15.1 Unless otherwise expressly agreed in the SCC if, after the deadline for submission of the Bid, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the Federal Democratic Republic of Ethiopia where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Contract Price shall not be correspondingly increased or decreased and/or the Delivery Date shall not be adjusted to the extent that Supplier has thereby been affected in the performance of any of its obligations under the Contract.

#### **16. Taxes and Duties**

- 16.1 For the Information Technologies, Materials, and other Goods supplied from outside the Federal Democratic Republic of Ethiopia, the Supplier shall bear the costs of all taxes, custom duties, formalities, license fees, and other such levies imposed outside the Federal Democratic Republic of Ethiopia, unless otherwise specified in the SCC.
- 16.2 At the request of the Public Body, the Supplier will make available a representative or agent during the process of customs clearance in the Federal Democratic Republic of Ethiopia for goods supplied from outside the Federal Democratic Republic of Ethiopia. In the event of delays in customs clearance that are not the fault of the Supplier:
  - (a). the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 54;
  - (b). the Contract Price shall be adjusted to compensate the Supplier for any additional storage charges that the Supplier may incur as a result of the delay.
- 16.3 For the Information Technologies, Materials, and other Goods supplied from within the Federal

Democratic Republic of Ethiopia, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted the Information Technologies, Materials, and other Goods to the Public Body, unless otherwise specified in the SCC.

### **17. Force Majeure**

- 17.1 For the purposes of the Contract, “Force Majeure” shall mean an event or events which are beyond the reasonable control of a Supplier, and which makes a Supplier’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes:
- (a). An official prohibition preventing the performance of a contract,
  - (b). A natural catastrophe such as an earthquake, fire, explosion lightening, floods, or other adverse weather conditions, or
  - (c). International or civil war, or
  - (d). The death or a serious accident or unexpected serious illness of the supplier, or
  - (e). Other instances of Force Majeure identified as such by the civil code.
- 17.2 The following occurrences shall not be deemed to be cases of Force Majeure:
- (a). A strike or lock-out taking of a party or affecting the branch of business in which he carries out his activities, or
  - (b). An increase or reduction in the price of raw materials necessary for the performance of the contract, or
  - (c). The enactment of new legislation where by the obligations of the debtor becomes more onerous, or
  - (d). Any event which is caused by the negligence or intentional action of a Supplier or such Supplier’s Subcontractors or agents or employees; or
  - (e). Any event which a diligent Party could reasonably have been expected to both:
    - (i) Take into account from the effective date of the Contract; and
    - (ii) Avoid or overcome in the carrying out of its obligations; or
  - (f). Insufficiency of funds or failure to make any payment required hereunder.
- 17.3 The failure of a Supplier to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, the Contract insofar as such inability arises from an event of Force Majeure, provided that the Supplier affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Contract.
- 17.4 A Supplier affected by an event of Force Majeure shall take all reasonable measures to
- (a). Remove such Supplier’s inability to fulfill its obligations hereunder with a minimum of delay; and
  - (b). Minimize the consequences of any event of Force Majeure.
- 17.5 A Supplier affected by an event of Force Majeure shall notify the Public Body of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 17.6 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Supplier shall be entitled to continue to be paid under the terms of the Contract as

well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Services after the end of such period.

- 17.7 Not later than thirty (30) days after the Supplier, as the result of an event of Force Majeure, has become unable to fulfill its obligations under the Contract, the Parties shall consult with each other in good faith and use all reasonable endeavors to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract..

## **18. Breach of Contract**

- 18.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the specific contract.
- 18.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
- (a). Compensation / Claim for liquidated damages as specified in GCC Clause 24; and/or
  - (b). Termination of the contract.
- 18.3 In any case where the Public Body is entitled to damages, it may deduct such Suspension damages from any sums due to the Supplier or call on the appropriate guarantee.

## **19. Suspension of Assignment**

- 19.1 The Public Body may, by written notice of suspension of the assignment to the Supplier, suspend all payments to the Supplier hereunder if the Supplier fails to perform any of its obligations under the Contract provided that such notice of suspension shall:
- (a). Specify the nature of the failure; and
  - (b). Request the Supplier to remedy such failure within a period not exceeding thirty days after receipt by the Supplier of such notice of suspension.

## **20. Termination**

- 20.1 Termination shall be without prejudice to any other rights or powers under the contract of the Public Body and the Supplier.

### **Termination for Public Body's Convenience**

- 20.2 The Public Body, in its sole discretion and for any reason whatsoever, may decide to terminate the Contract by giving the Supplier a notice of termination of not less than sixty days that refers to this GCC Clause 20.2.
- 20.3 Upon receipt of the notice of termination under GCC Clause 20.2, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination:
- (a). Cease all further work, except for such work as the Public Body may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
  - (b). Terminate all subcontracts, except those to be assigned to the Public Body pursuant to GCC Clause 20.3(d) (ii) below;
  - (c). Remove all Supplier's Equipment from the site, repatriate the Supplier's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;

- (d). In addition, the Supplier, subject to the payment specified in GCC Clause 20.4, shall
  - (i) Deliver to the Public Body the parts of the System executed by the Supplier up to the date of termination;
  - (ii) To the extent legally possible, assign to the Public Body all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Public Body, in any subcontracts concluded between the Supplier and its Subcontractors;
  - (iii) Deliver to the Public Body all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System
- 20.4 In the event of termination of the Contract under GCC Clause 20.2, the Public Body shall pay to the Supplier the following amounts:
  - (a). The Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
  - (b). The costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;
  - (c). Any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
  - (d). Costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 20.3 (a); and
  - (e). The cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 20.3 (a) through (d) above.
- 20.5 If the Public Body terminates the Contract in the event specified in GCC Clause 20.2 the notice of termination shall specify that termination is for the Public Body's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

#### **Termination for Supplier's Default**

- 20.6 In addition to the grounds for termination defined in these General Conditions, the Public Body may, by not less than thirty days written notice of termination to the Supplier stating the reason for termination of the contract and the date on which such termination becomes effective, terminate the Contract if:
  - (a). The supplier has without valid reason failed to commence work on the System promptly or persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
  - (b). The Supplier fails to remedy a failure in the performance of their obligations as specified in a notice of suspension of assignment pursuant to GCC Clause 19 within thirty days of receipt of such notice of suspension of assignment or within such period other agreed between the Parties in writing;
  - (c). The Supplier becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary, other than for a reconstruction or amalgamation;
  - (d). The Supplier fails to comply with any final decision reached as a result of direct informal negotiation pursuant to GCC Sub-Clause 23.2 hereof;



- (e). The Supplier is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days;
  - (f). The Supplier assigns the contract or sub-contracts without the authorization of the Public Body;
  - (g). The Supplier has been guilty of grave professional misconduct proven by any means which the Public Body can justify;
  - (h). The Supplier has been declared to be in serious breach of contract financed by the Federal Democratic Republic of Ethiopia's budget for failure to comply with its contractual obligations.
  - (i). The Supplier has been engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
  - (j). Any organizational modification occurs involving a change in the legal personality, nature or control of the Supplier, unless such modification is recorded in an addendum to the Contract;
  - (k). Any other legal disability hindering performance of the Contract occurs;
  - (l). The Supplier fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.
  - (m). Where the procurement requirement of the Public Body changes for any apparent or obvious reason;
  - (n). Where it emerges that the gap between the value of the Contract and the prevailing market price is so wide that allowing the implementation of the contract to proceed places the Public Body concerned at a disadvantage;
  - (o). The accumulated liquidated damage reached its maximum as stated in GCC Clause 24.1(b).
- 20.7 In the event the Public Body terminates the Contract pursuant to the GCC Sub-Clause 20.2 (a) to (o) the Public Body may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Public Body may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to GCC Sub-Clause 20.6 (a) to (o).
- 20.8 Upon receipt of the notice of termination under GCC Sub-Clause 20.6 (a) to (o), the Supplier shall, either immediately or upon such date as is specified in the notice of termination:
- (a). Cease all further work, except for such work as the Public Body may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
  - (b). Terminate all subcontracts, except those to be assigned to the Public Body pursuant to GCC Clause 20.8(d) below;
  - (c). Deliver to the Public Body the parts of the System executed by the Supplier up to the date of termination;
  - (d). To the extent legally possible, assign to the Public Body all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Public Body, in any subcontracts concluded between the Supplier and its Subcontractors;
  - (e). Deliver to the Public Body all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.
- 20.9 The Public Body may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Public

Body thinks appropriate, the Public Body shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.

- 20.10 In the event of any termination by the Public Body under this Clause, for the avoidance of doubt, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to the GCC Sub-Clause 20.8(a). Any sums due the Public Body from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.
- 20.11 If the Public Body completes the System, the cost of completing the System by the Public Body shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 20.10, plus the reasonable costs incurred by the Public Body in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 20.10, the Supplier shall pay the balance to the Public Body, and if such excess is less than the sums due the Supplier under GCC Clause 20.10, the Public Body shall pay the balance to the Supplier. The Public Body and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid

#### **Termination by Supplier**

- 20.12 The Supplier may, by not less than thirty days written notice to the Public Body, of such notice to be given after the occurrence of any of the events specified in GCC Sub-Clauses 20.12 (a) to (e) terminate the Contract if:
- (a). The Public Body fails to pay any money due to the Supplier pursuant to the Contract and not subject to dispute pursuant to GCC Clause 23, within forty-five days after receiving written notice from the Supplier that such payment is overdue;
  - (b). The Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Public Body, including but not limited to the Public Body's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System;
  - (c). The Public Body is in material breach of its obligations pursuant to the Contract and has not remedied the same within forty-five days (or such longer period as the Supplier may have subsequently approved in writing) following the receipt by the Public Body of the Supplier's notice specifying such breach;
  - (d). The Supplier is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days; or
  - (e). The Public Body fails to comply with any final decision reached as a result of settlement of disputes pursuant to GCC Clause 23 hereof.
- 20.13 If the Contract is terminated under GCC Sub-Clause 20.12 (a) to (e), then the Supplier shall immediately:
- (a). Cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
  - (b). Terminate all subcontracts, except those to be assigned to the Public Body pursuant to GCC Clause 20.13(d)(ii);
  - (c). Remove all Supplier's Equipment from the site and repatriate the Supplier's and its Subcontractor's personnel from the site.

(d). In addition, the Supplier, subject to the payment specified in GCC Clause 20.14, shall:

- (i) deliver to the Public Body the parts of the System executed by the Supplier up to the date of termination;
- (ii) to the extent legally possible, assign to the Public Body all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Public Body, in any subcontracts concluded between the Supplier and its Subcontractors;
- (iii) to the extent legally possible, deliver to the Public Body all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

20.14 If the Contract is terminated under GCC Sub-Clauses 20.12 (a) to (e), the Public Body shall pay to the Supplier all payments specified in GCC Clause 20.4, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with, or in consequence of such termination.

20.15 Termination by the Supplier pursuant to this GCC Clause 20 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Clause 20.

20.16 In this GCC Clause 20, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

20.17 In this GCC Clause 20, in calculating any monies due from the Public Body to the Supplier, account shall be taken of any sum previously paid by the Public Body to the Supplier under the Contract, including any advance payment paid pursuant to this Contract.

20.18 If either Party disputes whether an event specified in this GCC Clause 20 has occurred, such Party may, within forty-five days after receipt of notice of termination from the other Party, refer the matter to settlement of disputes pursuant to GCC Clause 23 and the Contract shall not be terminated on account of such event except in accordance with the terms of any resolution award.

## **21. Arrangements on Termination**

21.1 The Public Body and the Supplier agree that termination or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the expiration or termination of the Contract.

21.2 After termination or expiry all data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the all work executed, Services provided, and all Information Technologies, or other Goods acquired shall be delivered by the Supplier to the Public Body provided that the Supplier shall be entitled to keep copies thereof to the extent that the information contained therein does not relate solely to the Information Technologies, Materials, and other Goods or to the extent that the Supplier is required by law to maintain copies thereof or to the extent that the Supplier was possessed of such data documents and records prior to the date of the Contract. In addition, the Supplier shall co-operate fully with the Public Body during the handover leading to the termination of the Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.

**22. Cessation of Rights and Obligations**

- 22.1 Upon termination of the Contract pursuant to GCC Clause 20, or upon completion of the Contract, all rights and obligations of the Parties hereunder shall cease, except
- (a). Such rights and obligations as may have accrued on the date of termination or expiration;
  - (b). The Supplier's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clause 39; and
  - (c). Any right which a Party may have under the Governing Law
  - (d). The warranty rights provided for under Paragraph E.

**23. Settlement of Disputes**

- 23.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Public Body requests in writing that the Supplier does not do so).
- 23.2 The Public Body and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, controversy or dispute arising between them under or in connection with the Contract or interpretation thereof.
- 23.3 If a dispute arises between the Public Body and the Supplier in relation to any matter which cannot be resolved by the Authorized Officer and the Supplier Contract Manager either of them may refer such dispute to the procedure described in ITB Sub-Clause 23.4.
- 23.4 In the second instance each of the Public Body and the Supplier shall appoint more senior representatives than those referred to in Sub-Clause 23.3 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Public Body (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 23.5 If the Parties fail to resolve such a dispute or difference amicably within twenty-eight (28) days from the commencement of such procedure, either party may require that the dispute be referred for resolution through the courts in accordance with Ethiopian Law.
- 23.6 Only those Public Bodies that are allowed by law to proceed to arbitration can do so.

**24. Liquidated Damages**

- 24.1 Except as provided under GCC Clause 17, if the Supplier fails to deliver any or all of the Information Technologies and other Goods or perform the Related Services within the period specified in the Contract, the Public Body may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages the following:
- (a). A penalty of 0.1% or 1/1000 of the value of undelivered item for each day of delay until actual delivery or performance,
  - (b). The cumulative penalty to be paid by the supplier shall not exceed 10% of the contract price.
- 24.2 If the delay in performing the contract affects its activities, the Public Body may terminate the contract by giving advance notice to the Supplier pursuant to GCC Clause 20 without any obligation to wait until the penalty reaches 10% of the value of the Contract.

**25. Confidentiality**

- 25.1 The Public Body and the Supplier shall keep confidential and shall not disclose to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract if their disclosure would be contrary to law, would impede law enforcement, would not be in public interest, would prejudice legitimate commercial interest of the parties or would inhibit fair competition.. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Public Body to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under this Clause.
- 25.2 The Public Body shall not use such documents, data, and other information received from the Supplier for any purpose other than the operation, maintenance and further development of the System. Similarly, the Supplier shall not use such documents, data, and other information received from the Public Body for any purpose other than those that are required for the performance of the Contract.
- 25.3 The obligation of a party under this Clause, however, shall not apply to any Confidential Information that:
- (a). The Public Body or Supplier need to share with any other institutions participating in the financing of the Contract;
  - (b). Now or hereafter enters the public domain other than by breach of the Contract or other act or omissions of that Party;
  - (c). Is obtained by a third party who is lawfully authorized to disclose such information;
  - (d). Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (e). Is authorized for release by the prior written consent of the other party.
- 25.4 The Parties shall not be prevented from using any general knowledge, experience or skills which were in their possession prior to the commencement of the Contract;
- 25.5 The Supplier authorizes the Public Body to disclose the Confidential Information:
- (a). to such person(s) as may be notified to the Supplier in writing by the Public Body from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Information Technologies and other Goods supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Public Body shall use all reasonable endeavors to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Public Body shall not without good reason claim that the lowest price available in the market is the realistic market price;
  - (b). to its support service suppliers and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and
  - (c). to its affiliates and subsidiaries.
- 25.6 The Supplier agrees that:
- (a). Subject to Sub-Clause 25.6 (b), the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Public Body;

- (b). Where the Public Body is managing a request as referred to in Sub-Clause 25.6 (a), the Supplier shall co-operate with the Public Body making the request and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.
- 25.7 The Supplier shall procure that its Subcontractors shall provide the Public Body with a copy of all information in its possession or power in the form that the Public Body requires within five (5) working days (or such other period as the Public Body may specify) of the Public Body requesting that Information.
- 25.8 The Public Body may consult the Supplier in relation to any request for disclosure of the Supplier's Confidential Information in accordance with all applicable guidance.
- 25.9 The above provisions of this Clause shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.
- 25.10 This Clause 25 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Except as aforesaid and unless otherwise expressly set out in the Contract, this Clause 25 shall remain in force for a period of 3 years after the termination or expiry of this Contract.
- 25.11 In the event that the Supplier fails to comply with this Clause 25, the Public Body reserves the right to terminate the Contract by notice in writing with immediate effect.

## **26. Copyright**

- 26.1 The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 26.2 The Public Body agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 27, except that additional copies of Standard Materials may be made by the Public Body for use within the scope of the project of which the System is a part, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- 26.3 The Public Body's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or as may be otherwise specified in the SCC.
- 26.4 As applicable, the Public Body's and Supplier's rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials, are specified in the SCC. Subject to the SCC, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 2 and 3 of the Contract Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Public Body. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Public Body may consider necessary or desirable to perfect the right, title, and interest of the Public Body in and to those rights. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of a moral right in such an item does not assert it, and the Supplier shall, if requested to do so by the Public Body and where permitted by applicable law, ensure that the holder of such a moral right waives it.
- 26.5 The parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are specified in the SCC and in accordance with the SCC.

**27. Software License Agreements**

- 27.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Public Body, the Supplier hereby grants to the Public Body license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

(a). be:

- (i) nonexclusive;
- (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 20.2 or 20.12);
- (iii) valid throughout the territory of the Federal Democratic Republic of Ethiopia (or such other territory as specified in the SCC); and
- (iv) subject to additional restrictions (if any) as specified in the SCC.

(b). permit the Software to be:

- (i) used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's bid), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup;
- (ii) as specified in the SCC, used or copied for use on or transferred to a replacement computer(s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's bid specifies a class of computer to which the license is restricted and unless the Supplier agrees otherwise in writing, the replacement computer(s) is(are) within that class;
- (iii) if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
- (iv) reproduced for safekeeping or backup purposes;
- (v) customized, adapted, or combined with other computer software for use by the Public Body, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract;
- (vi) as specified in the SCC, disclosed to, and reproduced for use by, support service suppliers and their subcontractors, (and the Public Body may sublicense such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and
- (vii) disclosed to, and reproduced for use by, the Public Body and by such other persons as are specified in the SCC (and the Public Body may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract

- 27.2 The Standard Software may be subject to audit by the Supplier, in accordance with the terms specified in the SCC, to verify compliance with the above license agreements.

**28. Commencement and Operational Acceptance**

- 28.1 The Supplier shall commence work on the System within the period specified in the SCC, and without prejudice to GCC Clause 56.2 (Operational Acceptance Time Guarantee), the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule in the Section 6 and any refinements made in the Agreed and Finalized Project Plan.
- 28.2 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time specified in the SCC and in accordance with the time schedule specified in the Implementation Schedule in the Section 6 and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 54 (Extension of Time for Achieving Operational Acceptance).

**29. Miscellaneous**

- 29.1 Any provision of the Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 29.2 The failure by the Public Body and Supplier to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 29.3 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 29.4 The Supplier warrants represents and undertakes to the Public Body that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier and that there are no material contracts existing to which the Supplier is a party which prevent it from entering into the Contract; and that the Supplier has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 29.5 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by any other contract or document. In this provision "right" includes any power, privilege, remedy, or proprietary or security interest.

**C. Obligations of the Public Body****30. Provision of Assistance**

- 30.1 The Public Body shall ensure the accuracy of all information and/or data to be supplied by the Public Body to the Supplier, except when otherwise expressly stated in the Contract
- 30.2 The Public Body shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 44.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and



decision making may constitute grounds for Termination pursuant to GCC Clause 20.12 (b).

- 30.3 The Public Body shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.
- 30.4 If requested by the Supplier, the Public Body shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.
- 30.5 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Public Body shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.
- 30.6 The Public Body shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Public Body may result in an appropriate extension of the Time for Operational Acceptance, at the Supplier's discretion.
- 30.7 Unless otherwise specified in the Contract or agreed upon by the Public Body and the Supplier, the Public Body shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Technical Requirements Section's Implementation Schedule and the Agreed and Finalized Project Plan.
- 30.8 The Public Body will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.
- 30.9 The Public Body assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 53.3, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Supplier's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.
- 30.10 The Public Body is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Supplier elsewhere in the Contract.
- 30.11 All costs and expenses involved in the performance of the obligations under this GCC Clause 30 shall be the responsibility of the Public Body, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Clause 53.3.
- 30.12 Other Public Body responsibilities, if any, are as stated in the SCC.

## **D. Payment**

### **31. Contract Price**

- 31.1 Prices charged by the Supplier for the System or Subsystem(s), Goods and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.
- 31.2 The Contract Price shall be net i.e. after the deduction of all agreed discounts. In the absence of written agreement by the Parties to the contrary, the Contract Price shall include the cost of packaging, packing materials, addressing, labeling, loading and delivery to the Location, and all appropriate tax and duty.
- 31.3 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 31.4 Except as provided in GCC Sub-Clause 15.1, the Contract price may only be increased above amounts stated in GCC Sub-Clause 31.1 if the Parties have agreed to change contract elements in accordance with GCC Clause 14.

### **32. Price Adjustments**

- 32.1 Contracts Prices shall be fixed throughout the Supplier's performance of the Contract and not subject to adjustment on any account.
- 32.2 This provision remains in effect for the duration of the contract once it becomes effective.
- 32.3 Any discount offered by the Supplier under this Contract cannot be reduced during the Term of this Contract without the agreement in writing of the Public Body.

### **33. Mode of Billing and Terms of Payment**

- 33.1 In consideration of the Supplier's due and proper performance of its obligations under the Contract, the Supplier may charge the Public Body the Contract Price in accordance with this Clause and SCC.
- 33.2 The Supplier's request for payment shall be made to the Public Body in writing, accompanied by an invoice. Invoices shall not be rendered by the Supplier until completion of delivery of all of the Systems and other Goods to be supplied, installed, integrated, and made operational which are the subject of the Purchase Order unless otherwise agreed in writing. Where the Parties agree delivery by installments, the Supplier may render an invoice for each delivered installment.
- 33.3 An invoice is correctly rendered if:
  - (a). The invoice is addressed to the Public Body's officer specified in the Purchase Order to receive invoices and identifies the number of relevant Purchase Order and Contract;
  - (b). The invoice includes date of issuance and its serial number;
  - (c). The amount claimed in the invoice is due for payment;
  - (d). The amount specified in the invoice is correctly calculated in accordance with the Contract;
  - (e). The invoice is set out in a manner that enables the Public Body to ascertain which System or Subsystem(s), Goods or Service the invoice covers (description, quantity, and unit of measure) and the respective Price, or Charge payable in respect of that System or

Subsystem(s), Goods or Service;

- (f). The invoice is accompanied by the relevant Certificate of Acceptance signed by the Public Body's official representative certifying that the amount specified in the invoice is in accordance with the Contract and delivered System or Subsystem(s), Goods or Services meet all Purchase Order and acceptance criteria requirements;
- (g). The invoice includes the name and address of Supplier to whom payment is to be sent;
- (h). The invoice includes the name, title, and phone number of person to notify in the event of defective invoice;
- (i). The invoice includes Supplier's bank account information, and
- (j). The invoice is, where appropriate, certified as sales tax exempt.

Failure to provide such information will entitle the Public Body to delay payment of the Contract Price until such information is provided.

- 33.4 The Public Body shall pay the Contract Price to the Supplier, within the period specified in the SCC and upon receipt of the valid invoice (rendered in accordance with Sub-Clause 33.3).
- 33.5 All payment to the Supplier under this Contract shall be made in currency specified in the SCC.
- 33.6 The invoice provided to the Public Body by the Supplier in accordance with this Clause shall show appropriate taxes separately.
- 33.7 The Public Body shall not be responsible for the payment of any charges for System or Subsystem(s), and Goods supplied in excess of the System or Subsystem(s), and Goods required by the Purchase Order or any variation of it unless authorized in writing by a further Purchase Order.
- 33.8 No payment of or on account of the Contract Price shall be deemed to constitute acceptance by the Public Body of the System or any Subsystem(s).
- 33.9 If the Supplier requests an advance payment the advance may be paid by the Public Body in an amount not exceeding 30% of the total contract price.
- 33.10 As a prerequisite for such advance payment supplier shall submit advance payment security in an amount equal to the advance payment it receives in the form of a certified cheque or unconditional bank guarantee at its option from a reputable bank, together with its request for advance payment as per the contract.
- 33.11 Should the advance payment security cease to be valid and the Supplier fails to re-validate it, a deduction equal to the amount of the advance payment may be made by the Public Body from future payments due to the Supplier under the Contract.
- 33.12 If a Contract is terminated for any reason, the guarantee securing the advance payment may be invoked in order to recover the balance of the advance payment still owed by the Supplier.

## **E. Obligations of the Supplier**

### **34. Supplier's Responsibilities**

- 34.1 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

- 34.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Public Body and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date twenty-eight (28) days prior to bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 34.3 The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually agreed and Finalized Project Plan (pursuant to GCC Clause 44.2) within the time schedule specified in the Implementation Schedule in the Section 6. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 20.6.
- 34.4 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local or national government authorities or public service undertakings in the Federal Democratic Republic of Ethiopia that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Public Body under GCC Clause 30.4 and that are necessary for the performance of the Contract
- 34.5 The Supplier shall comply with all laws in force in the Federal Democratic Republic of Ethiopia. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Public Body from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 30.1. The Supplier shall not indemnify the Public Body to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Public Body.
- 34.6 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 34.7 Other Supplier responsibilities, if any, are as stated in the SCC.

### **35. Joint Venture, Consortium or Association**

- 35.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Public Body for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Public Body.

### **36. Eligibility**

- 36.1 Any Information Technologies or other Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under the rules further elaborated in Section 5.

- 36.2 For purposes of this Clause, “origin” means the place where the Information Technologies or other goods were mined, grown, or produced, or from which the Services are supplied. Information Technologies or other Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 36.3 The origin of Goods and Services is distinct from the nationality of the Supplier

### **37. Code of Conduct**

- 37.1 The Supplier shall, at all times, act loyally and impartially and as a faithful adviser to the Public Body in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. The Supplier shall, in particular, at all times refrain from making any public statements concerning the Information Technologies, Materials and other Goods as well as the performance of all Services without the prior approval of the Public Body, and from engaging in any activity which conflicts with its obligations towards the Public Body under the contract. It shall not commit the Public Body without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.
- 37.2 If the Supplier or any of its Subcontractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Public Body, or for showing favor or disfavor to any person in relation to the contract or any other contract with the Public Body, then the Public Body may terminate the contract, without prejudice to any accrued rights of the Supplier under the contract.
- 37.3 The payments to the Supplier under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.
- 37.4 The Supplier shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Public Body.
- 37.5 The Supplier and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Public Body, neither the Supplier nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Public Body, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.
- 37.6 The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.
- 37.7 The Supplier shall supply to the Public Body on request supporting evidence regarding the conditions in which the contract is being executed. The Public Body may carry out whatever documentary or on-the spot checks it deems necessary to find evidence in case of suspected

unusual commercial expenses.

### **38. Conflict of Interests**

- 38.1 The Supplier shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests, which could arise during performance of the Contract, must be notified in writing to the Public Body without delay.
- 38.2 The Public Body reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Supplier shall ensure that its staff, including its management, is not placed in a situation, which could give rise to conflict of interests. Without prejudice to Clause 24, the Supplier shall replace, immediately and without compensation from the Public Body, any member of its staff exposed to such a situation.
- 38.3 The Supplier shall refrain from any contact, which would compromise its independence or that of its personnel. If the Supplier fails to maintain such independence, the Public Body may, without prejudice to compensation for any damage, which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.
- 38.4 The Supplier shall, after the conclusion or termination of the contract, limit its role in connection to the provision of the Information Technologies, Materials and other Goods as well as the performance of all Services. Except with the written permission of the Public Body, the Supplier and any other supplier with whom the Supplier is associated or affiliated shall be disqualified from the execution of works, Information Technologies, Materials and other Goods as well as the performance of all Services for the Public Body in any capacity.

### **39. Accounting, Inspection and Auditing**

- 39.1 The Supplier shall keep accurate and systematic accounts and records relating to the performance of the Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs.
- 39.2 For the purpose of the examination and certification of the Public Body's accounts; or any examination of the economy, efficiency and effectiveness with which the Public Body has used its resources, the Federal Auditor General and the Public Procurement and Property Administration Agency or its auditors may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanation as he considers necessary. The Supplier acknowledges that it will fully cooperate with any counter fraud policy or investigation carried out by authorized body at any time.

### **40. Data Protection**

- 40.1 The Supplier shall comply with all applicable data protection legislation. In particular the Supplier agrees:
- (a). To maintain appropriate technical and organizational security measures;
  - (b). To only process Personal Data for and on behalf of the Public Body, in accordance with the instructions of the Public Body and for the purpose of performing its obligations under the Contract;
  - (c). To allow the Public Body to audit the Supplier's compliance with the requirements of this

Clause on reasonable notice and/or to provide the Public Body with evidence of its compliance with the obligations set out in this Clause.

- 40.2 The Supplier agrees to indemnify and keep indemnified the Public Body against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Public Body as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Supplier's unauthorized processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Supplier, its employees or agents in the Supplier's performance of the Contract or as otherwise agreed between the Parties.

#### **41. Review**

- 41.1 The Supplier shall attend formal review meetings (each such meeting being a "Review"), as required by the Authorized Officer, to discuss the Public Body's levels of satisfaction in respect of the Information Technologies, Materials and other Goods as well as the performance of all Services supplied under the Contract and to agree any necessary action to address areas of dissatisfaction. The Supplier will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorized and sufficiently senior employees of both the Public Body and the Supplier together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

#### **42. Performance Security**

- 42.1 The Supplier shall, within fifteen (15) days from signing the contract, provide a Performance Security for the due performance of the Contract in the amount specified in the SCC.
- 42.2 The proceeds of the Performance Security shall be payable to the Public Body as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 42.3 The Performance Security shall be denominated in currency specified in the SCC, and shall be in the form of cash, cheque certified by a reputable bank, letter of credit, or Bank Guarantee in the format specified in the SCC.
- 42.4 The Performance Security shall be discharged by the Public Body and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.
- 42.5 Upon Operational Acceptance of the entire System, the security shall be reduced to the amount specified in the SCC, on the date of such Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.
- 42.6 Notwithstanding the provision of GCC Sub-Clause 42.2 above, the Performance Security may be returned to the Supplier where the Procurement Endorsing Committee ascertains that the noncompliance of the Supplier does not affect the interest of, or entail additional cost on the Public Body and is not due to the fault of the Supplier.
- 42.7 The Public Body shall be required to submit any document in its possession in relation to a procurement in which it authorizes the return of the Performance Security to the Supplier and account for its action under the preceding GCC Sub-Clause 42.6 to the Public Procurement and Property Administration Agency or other competent body if and when required to do so.

### **F. Performance of the Contract**

**43. Scope of the System**

- 43.1 Unless otherwise expressly limited in the SCC or Technical Requirements, the Supplier's obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed and Finalized Project Plan.
- 43.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and / or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and / or items and Materials were expressly mentioned in the Contract.
- 43.3 The Supplier's obligations (if any) to provide Goods and Services as implied by the Supplier's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as specified in the SCC, including the relevant terms, characteristics, and timings

**44. Project Plan**

- 44.1 In close cooperation with the Public Body and based on the Preliminary Project Plan included in the Supplier's bid, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as specified in the SCC and/or Technical Requirements.
- 44.2 The Supplier shall formally present to the Public Body the Project Plan in accordance with the procedure specified in the SCC.
- 44.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 14 and 54.
- 44.4 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.
- 44.5 The Progress and other reports specified in the SCC shall be prepared by the Supplier and submitted to the Public Body in the format and frequency specified in the Technical Requirements.

**45. Design and Engineering****45.1 Technical Specifications and Drawings**

- (a). The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice. The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Public Body.
- (b). The Supplier shall be entitled to disclaim responsibility for any design, data, drawing,



specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Public Body, by giving a notice of such disclaimer to the Project Manager.

#### **45.2 Codes and Standards**

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified in the SCC. During Contract execution, any changes in such codes and standards shall be applied after approval by the Public Body and shall be treated in accordance with GCC Clause 14.3.

#### **45.3 Approval/Review of Technical Documents by the Project Manager**

- (a). The Supplier shall prepare and furnish to the Project Manager the documents as specified in the SCC for the Project Manager's approval or review.

Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents.

GCC Clauses 45.3(b) through 45.3(g) shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- (b). Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 45.3(a), the Project Manager shall either return one copy of the document to the Supplier with its approval endorsed on the document or shall notify the Supplier in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.
- (c). The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.
- (d). If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 45.3(b). If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 45.3(e). The procedure set out in GCC Clauses 45.3(b) through 45.3(d) shall be repeated, as appropriate, until the Project Manager approves such documents.
- (e). If any dispute occurs between the Public Body and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document the Public Body and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, controversy or dispute arising between them.
- (f). The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Public Body.
- (g). The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 45.3. If the Project Manager requests any change in any already approved document and/or in any document

based on such an approved document, the provisions of GCC Clause 14 shall apply to such request.

**46. Delivery**

- 46.1 Subject to related Public Body's responsibilities pursuant to GCC Clause 30, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.
- 46.2 Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with any delivery instructions in the SCC, Purchase Order or as agreed by the Parties in writing.
- 46.3 Delivery shall be completed when the Information Technologies, Materials, and other Goods have been unloaded at the Location and such delivery has been accepted by a duly authorized agent, employee or Location representative of the Public Body. The Public Body shall procure that such duly authorized agent, employee or Location representative of the Public Body is at the delivery location in order to accept such delivery.
- 46.4 In the event that the Public Body require next day or short notice deliveries which are not provided for in the SCC Clause 46.2, the Supplier may pass on any additional costs relating to the delivery of the Information Technologies, Materials, and other Goods to the Public Body.
- 46.5 Early or partial deliveries require the explicit written consent of the Public Body, which consent shall not be unreasonably withheld.
- 46.6 Unless otherwise stated in the SCC, the Supplier is responsible for obtaining all export and import licenses for the Information Technologies, Materials, and other Goods and shall be responsible for any delays due to such licenses not being available when required.
- 46.7 In the case of any Information Technologies, Materials, and other Goods supplied from outside the Federal Democratic Republic of Ethiopia, the Supplier shall ensure that accurate information is provided to the Public Body as to the country of origin of the Information Technologies, Materials, and other Goods and shall be liable to the Public Body for any additional duties or taxes for which the Public Body may be accountable should the country of origin prove to be different from that advised by the Supplier.
- 46.8 Any arrangement to deliver the Information Technologies, Materials, and other Goods where carriage is to be charged separately or any arrangement by which the Information Technologies, Materials, and other Goods are collected by the Public Body in return for a discount on the Contract Price shall be recorded in writing and signed by a duly authorized signatory on behalf of the Public Body. Where due to an emergency such arrangements cannot be committed to writing and signed off as aforesaid the Parties shall confirm such arrangements in writing as soon as possible thereafter.
- 46.9 The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

**47. Packing, Marking, and Documents**

- 47.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment to their final destination, as indicated in the Contract. During shipment, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Information

Technologies, Materials, and other Goods' final destination and the absence of heavy handling facilities at all points in transit.

- 47.2 Unless otherwise specified in SCC, the following details shall be shown on the outside of every package:
- (a). A description of the Information Technologies, Materials, and other Goods which shall include, without limitation, the weight of the Information Technologies, Materials, and other Goods where available and the Public Body's Purchase Order number;
  - (b). The quantity in the package where available;
  - (c). Any special directions for storage;
  - (d). The expiry date of the contents where available;
  - (e). The batch number; and
  - (f). The name of the manufacturer of the Information Technologies, Materials, and other Goods and the Supplier.
- 47.3 All Information Technologies, Materials, and other Goods that customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact.

#### **48. Containers and Pallets**

- 48.1 The Supplier shall collect without charge any returnable containers (including pallets) within 21 days of the date of the relevant delivery note unless otherwise instructed by the Public Body. Empty containers not so removed may be returned by the Public Body at the Supplier's expense or otherwise disposed of at the Public Body's discretion. The Supplier shall credit in full any charged containers upon collection or return.

#### **49. Product Upgrades**

- 49.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to offer to the Public Body the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 14 (Changes in Contract Elements).
- 49.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Public Body any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Supplier in the Federal Democratic Republic of Ethiopia, pursuant to GCC Clause 14 (Changes in Contract Elements).
- 49.3 During performance of the Contract, the Supplier shall offer to the Public Body all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in the Federal Democratic Republic of Ethiopia, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for this Software exceed those quoted by the Supplier in the Recurrent Costs tables in its Bid.
- 49.4 During the Warranty Period, unless otherwise specified in the SCC, the Supplier will provide at no additional cost to the Public Body all new versions, releases, and updates for all Standard Software that are used in the System, within thirty (30) days of their availability from the Supplier to other clients of the Supplier in the Federal Democratic Republic of Ethiopia, and no later than

twelve (12) months after they are released in the country of origin of the Software.

- 49.5 The Public Body shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Supplier shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Supplier stop supporting or maintaining a version or release of the Software less than twenty four (24) months after the Public Body receives a production-ready copy of a subsequent version, release, or update. The Public Body shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

## **50. Implementation, Installation, and Other Services**

- 50.1 The Supplier shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.
- 50.2 Prices charged by the Supplier for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other Clients in the Federal Democratic Republic of Ethiopia for similar services.

## **51. Inspections and Tests**

- 51.1 The Public Body or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.
- 51.2 The Public Body or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Public Body shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 51.3 Should the inspected or tested components fail to conform to the Contract, the Public Body may reject the component(s), and the Supplier shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Public Body.
- 51.4 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impede the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
- 51.5 If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 23 (Settlement of Disputes).

**52. Installation of the System**

- 52.1 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements, the SCC and the Agreed and Finalized Project Plan, the Supplier shall so notify the Public Body in writing.
- 52.2 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 52.1, either issue an Installation Certificate in the form specified in the Bidding Documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified pursuant to the SCC for GCC Clause 53.3), has achieved Installation by the date of the Supplier's notice under GCC Clause 52.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Subsystem and, when in the Supplier's opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Public Body in writing, in accordance with GCC Clause 52.1. The procedure set out in this GCC Clause 52.2 shall be repeated, as necessary, until an Installation Certificate is issued.
- 52.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 52.1, or if the Public Body puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier's notice or repeated notice, or when the Public Body put the System into production operation, as the case may be

**53. Commissioning and Operational Acceptance****Commissioning**

- 53.1 Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 53.3) shall be commenced by the Supplier:
- (a). immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 52.2; or
  - (b). as otherwise specified in the Technical Requirement or the Agreed and Finalized Project Plan; or
  - (c). immediately after Installation is deemed to have occurred, under GCC Clause 52.3.
- 53.2 The Public Body shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning.

Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.

**Operational Acceptance Tests**

- 53.3 The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Public Body (in accordance with GCC Clause 30.9), but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or major components or Subsystem[s] if specified in the SCC and supported by the Technical Requirements), to ascertain

whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Supplier's bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during Commissioning will be conducted as specified in the SCC, the Technical Requirements and/or the Agreed and Finalized Project Plan.

At the Public Body's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

- 53.4 If for reasons attributable to the Public Body, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the SCC for GCC Clause 53.3) cannot be successfully completed within the period specified in the SCC, from the date of Installation or any other period agreed upon in writing by the Public Body and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, SCC and/or the Agreed and Finalized Project Plan, and GCC Clauses 56.2 and 56.3 shall not apply.

#### **Operational Acceptance**

- 53.5 Subject to GCC Clauses 53.11, 53.12, and 53.13 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when:
- (a). the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or
  - (b). the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Public Body within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 53.4 above; or
  - (c). the Public Body has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Public Body and document such use.
- 53.6 At any time after any of the events set out in GCC Clause 53.5 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.
- 53.7 After consultation with the Public Body, and within fourteen (14) days after receipt of the Supplier's notice, the Project Manager shall:
- (a). issue an Operational Acceptance Certificate; or
  - (b). notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
  - (c). issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 53.5(b) arises.
- 53.8 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Public Body, and the Public Body, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Public Body of its request for Operational Acceptance Certification, in accordance with GCC Clause 53.7. The Public Body shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 53.7(a), or shall notify the Supplier of further defects, deficiencies,

or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 53.8 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.

- 53.9 If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clauses 53.3 and 53.4, then either:
- (a). the Public Body may consider terminating the Contract, pursuant to GCC Clause 20.6(a);  
or
  - (b). if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Public Body to fulfill its obligations under the Contract, then the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clause 58.3 shall not apply.
- 53.10 If within fourteen (14) days after receipt of the Supplier's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the Supplier's said notice.

#### **Partial Acceptance**

- 53.11 If so specified in the SCC for GCC Clause 53.3, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 53.12.
- 53.12 The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 53.11 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 33.2 and 53.3) once all major components and Subsystems have been supplied, installed, tested, and commissioned.
- 53.13 In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Public Body or Supplier.

#### **54. Extension of Time for Achieving Operational Acceptance**

- 54.1 The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:
- (a). any Change in the System as provided in GCC Clause 14 (Change in the Information System);
  - (b). any occurrence of Force Majeure as provided in GCC Clause 17 (Force Majeure);
  - (c). default of the Public Body; or

(d). any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

- 54.2 Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Public Body and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Public Body's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 23.
- 54.3 The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

## **55. Performance Measurement**

- 55.1 The Public Body shall ascertain whether the Supplier's provision of the Information Technologies, Materials, and other Goods in question meets any performance criteria as specified in the Statement of Requirements or, if the criteria are not so specified, meets the standards of a professional supplier of the Information Technologies, Materials, and other Goods. On or before the fifteenth working day of each calendar month during the Contract Period and within 14 days after termination of the Contract, the Public Body may:
- (a). Each Performance Notice issued by the Public Body shall include a proposed rebate of the Contract Price commensurate to the under-performance of the Supplier as recorded in the Performance Notice;
  - (b). If the Supplier disputes any matter referred to in any Performance Notice and/or the proposed rebate of the Contract Price, the Supplier may raise this objection with the Public Body and if this matter is not resolved within 7 days the matter shall be referred to the Dispute Resolution Procedure; and
  - (c). If the Supplier has not risen any objection to the Performance Notice within 7 days of receipt (or such other period as agreed between the Parties) then that Performance Notice shall be deemed to have been accepted by the Supplier and the rebate on the Contract Price referred to therein shall become immediately effective.
- 55.2 The Public Body's rights under this Clause are without prejudice to any other rights or remedies the Public Body may be entitled to.
- 55.3 If required by the Public Body, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Public Body.

## **G. Guaranties and Liabilities**

### **56. Operational Acceptance Time Guarantee**

- 56.1 The Supplier guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 53.3) within the time periods specified in the Implementation Schedule in the Technical Requirements Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 28.2,



or within such extended time to which the Supplier shall be entitled under GCC Clause 54 (Extension of Time for Achieving Operational Acceptance).

- 56.2 If the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 53.3) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Technical Requirement or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 54 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the Public Body liquidated damages at the rate specified in the GCC Clause 24.1(a) as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the GCC Clause 24.1(b) ("the Maximum"). Once the Maximum is reached, the Public Body may consider termination of the Contract, pursuant to GCC Clause 20.6(a).
- 56.3 Unless otherwise specified in the SCC, liquidated damages payable under GCC Clause 56.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Technical Requirements and/or Agreed and Finalized Project Plan. This GCC Clause 56.3 shall not limit, however, any other rights or remedies the Public Body may have under the Contract for other delays.
- 56.4 If liquidated damages are claimed by the Public Body for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Public Body in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

## **57. Defect Liability**

- 57.1 The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. Exceptions and/or limitations, if any, to this warranty with respect to Software (or categories of Software), shall be as specified in the SCC. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.
- 57.2 The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
- 57.3 In addition, the Supplier warrants that:
- (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines;
  - (ii) they have been previously released to the market; and
  - (iii) those specific items identified in the SCC (if any) have been in the market for at least the minimum periods specified in the SCC.
- 57.4 The Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time specified in the SCC.

- 57.5 If during the Warranty Period any defect as described in GCC Clause 57.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Public Body regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.
- 57.6 The Supplier shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the System arising out of or resulting from any of the following causes:
- (a). improper operation or maintenance of the System by the Public Body;
  - (b). normal wear and tear;
  - (c). use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
  - (d). modifications made to the System by the Public Body, or a third party, not approved by the Supplier.
- 57.7 The Supplier's obligations under this GCC Clause 57 shall not apply to:
- (a). any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
  - (b). any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Public Body or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 45.1.(b).
- 57.8 The Public Body shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Public Body shall afford all reasonable opportunity for the Supplier to inspect any such defect. The Public Body shall afford the Supplier all necessary access to the System and the site to enable the Supplier to perform its obligations under this GCC Clause 56.
- 57.9 The Supplier may, with the consent of the Public Body, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Public Body may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.
- If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Public Body and the Supplier.
- 57.10 If the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period specified in the SCC, the Public Body may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Public Body in connection with such work shall be paid to the Public Body by the Supplier or may be deducted by the Public Body from any monies due the Supplier or claimed under the Performance Security.
- 57.11 If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period

during which the System or Subsystem could not be used by the Public Body because of such defect and/or making good of such defect.

- 57.12 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- 57.13 At the request of the Public Body and without prejudice to any other rights and remedies that the Public Body may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Public Body to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Public Body of the benefit of any warranties given by such producers or licensors to the Supplier.

## **58. Functional Guarantees**

- 58.1 The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Public Body's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 53 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.
- 58.2 If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier shall notify the Public Body upon completion of the necessary changes, modifications, and/or additions and shall request the Public Body to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.
- 58.3 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Public Body may consider termination of the Contract, pursuant to GCC Clause 20.6(a), and forfeiture of the Supplier's Performance Security in accordance with GCC Clause 42 in compensation for the extra costs and delays likely to result from this failure.

## **59. Intellectual Property Rights Warranty**

- 59.1 The Supplier hereby represents and warrants that:
- (a). the System as supplied, installed, tested, and accepted;
  - (b). use of the System in accordance with the Contract; and
  - (c). copying of the Software and Materials provided to the Public Body in accordance with the Contract

do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Public Body to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

**60. Intellectual Property Rights Indemnity**

- 60.1 The Supplier shall indemnify and hold harmless the Public Body and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Public Body or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:
- (a). installation of the System by the Supplier or the use of the System, including the Materials, in the Federal Democratic Republic of Ethiopia, where the site is located;
  - (b). copying of the Software and Materials provided the Supplier in accordance with the Agreement; and
  - (c). sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Public Body's breach of GCC Clause 59.2
- 60.2 Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied by the Supplier, where the infringement arises because of such association or combination and not because of use of the System in its own right.
- 60.3 Such indemnities shall also not apply if any claim of infringement:
- (a). is asserted by a parent, subsidiary, or affiliate of the Public Body's organization;
  - (b). is a direct result of a design mandated by the Public Body's Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Bid; or
  - (c). results from the alteration of the System, including the Materials, by the Public Body or any persons other than the Supplier or a person authorized by the Supplier.
- 60.4 If any proceedings are brought or any claim is made against the Public Body arising out of the matters referred to in GCC Clause 59.1, the Public Body shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Public Body's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- If the Supplier fails to notify the Public Body within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Public Body shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Public Body within the twenty-eight (28) days, the Public Body shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Public Body shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 60.5 The Public Body shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Public Body or any persons (other than the Supplier) contracted by the Public Body, except to the extent that such losses, liabilities, and costs arise as a

result of the Supplier's breach of GCC Clause 59.8

60.6 Such indemnity shall not cover:

- (a). any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
- (b). any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Public Body or any other person contracted by the Public Body, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right

60.7 Such indemnities shall also not apply

- (a). if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Supplier's organization;
- (b). to the extent that any claim of infringement is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Public Body or any persons contracted by the Public Body.

60.8 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GCC Clause 59.5, the Supplier shall promptly give the Public Body notice of such proceedings or claims, and the Public Body may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Public Body fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Public Body has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Public Body's request, afford all available assistance to the Public Body in conducting such proceedings or claim and shall be reimbursed by the Public Body for all reasonable expenses incurred in so doing

## **61. Limitation of Liability**

61.1 Except in cases of criminal negligence or willful misconduct,

- (a). The Supplier shall not be liable to the Public Body, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Public Body and
- (b). The aggregate liability of the Supplier to the Public Body, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Public Body with respect to patent infringement.

## **H. Risk distribution**

## **62. Transfer of Ownership**

62.1 With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Public Body at the time of Delivery or otherwise under

terms that may be agreed upon and specified in the Contract Agreement.

- 62.2 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 26 (Copyright) and any elaboration in the Technical Requirements.
- 62.3 Any tools, patterns, materials, drawings, specifications and/or other data provided by the Public Body to the Supplier in connection with the Contract will at all times be at the Supplier's risk and remain the property of the Public Body and shall be delivered up to the Public Body immediately on request and are to be used by the Supplier solely for the purpose of completing the Purchase Order.
- 62.4 Any tools which the Supplier may construct or acquire specifically in connection with the Information Technologies and other Goods will remain the property of the Supplier unless it is agreed in writing that the property of the tools will be transferred to the Public Body upon payment by the Public Body of a charge

### **63. Care of the System**

- 63.1 The Public Body shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Public Body shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 53 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.
- 63.2 If any loss or damage occurs to the System or any part of the System by reason of:
  - (a). (insofar as they relate to the Federal Democratic Republic of Ethiopia where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 65;
  - (b). any use not in accordance with the Contract, by the Public Body or any third party;
  - (c). any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Public Body, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 45.1(b),

the Public Body shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Public Body requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Public Body in accordance with GCC Clause 14. If the Public Body does not request the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Public Body shall either request a change in accordance with GCC Clause 14, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Public Body shall terminate the Contract pursuant to GCC Clause 20.2.

- 63.3 The Public Body shall be liable for any loss of or damage to any Supplier's Equipment which the Public Body has authorized to locate within the Public Body's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or

omissions of the Supplier, its employees, or subcontractors

**64. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

- 64.1 The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Federal Democratic Republic of Ethiopia.
- 64.2 Subject to GCC Clause 63.3, the Supplier shall indemnify and hold harmless the Public Body and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Public Body or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Public Body, its contractors, employees, officers, or agents.
- 64.3 If any proceedings are brought or any claim is made against the Public Body that might subject the Supplier to liability under GCC Clause 63.2, the Public Body shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Public Body's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Public Body within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Public Body shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Public Body within the twenty-eight (28) day period, the Public Body shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Public Body shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 64.4 The Public Body shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Public Body, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 65 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.
- 64.5 If any proceedings are brought or any claim is made against the Supplier that might subject the Public Body to liability under GCC Clause 63.4, the Supplier shall promptly give the Public Body notice of such proceedings or claims, and the Public Body may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Public Body fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Public Body has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Public Body's request, afford all available assistance to the Public Body in conducting such proceedings or claim and shall be reimbursed by the Public Body for all reasonable expenses incurred in so doing.

- 64.6 The party entitled to the benefit of an indemnity under this GCC Clause 63 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

## **65. Insurances**

- 65.1 The Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Public Body, who should not unreasonably withhold such approval.

(a). Cargo Insurance During Transport

As applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.

(b). Installation "All Risks" Insurance

As applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.

(c). Third-Party Liability Insurance

On terms as specified in the SCC, covering bodily injury or death suffered by third parties (including the Public Body's personnel) and loss of or damage to property (including the Public Body's property and any Subsystems that have been accepted by the Public Body) occurring in connection with the supply and installation of the Information System.

(d). Automobile Liability Insurance

In accordance with the statutory requirements prevailing in the Federal Democratic Republic of Ethiopia, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e). Other Insurance (if any), as specified in the SCC.

- 65.2 The Public Body shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 64.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 64.1 except for Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

- 65.3 The Supplier shall deliver to the Public Body certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

- 65.4 The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.

- 65.5 If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 64.1, the Public Body may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the Supplier under the Contract any premium that the Public Body shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.

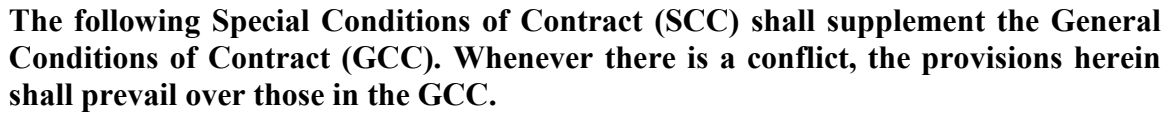


- 65.6 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 64, and all monies payable by any insurers shall be paid to the Supplier. The Public Body shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Public Body's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Public Body. With respect to insurance claims in which the Supplier's interest is involved, the Public Body shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier

## **Section 8. Special Conditions of Contract**

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Issued by:

GCC Clause Reference	Section 8. Special Conditions of Contract																																													
	Street Address: Town/City: Post Code: Country: Telephone: Facsimile: E-mail address																																													
<b>GCC 8.1</b>	The governing law shall be .																																													
<b>GCC 9.1</b>	Language of the Contract shall be .																																													
<b>GCC 10.2 and 10.3</b>	<p>For <b>notices</b>, the Public Body's address shall be:</p> <table border="1" data-bbox="451 699 1369 1092"> <tr><td>Public Body:</td><td></td></tr> <tr><td>Attention:</td><td></td></tr> <tr><td>Floor/Room number:</td><td></td></tr> <tr><td>P.O. Box:</td><td></td></tr> <tr><td>Street Address:</td><td></td></tr> <tr><td>Town/City:</td><td></td></tr> <tr><td>Post Code:</td><td></td></tr> <tr><td>Country:</td><td>Ethiopia</td></tr> <tr><td>Telephone:</td><td></td></tr> <tr><td>Facsimile:</td><td></td></tr> <tr><td>E-mail address</td><td></td></tr> </table> <p>For <b>notices</b>, the Supplier's address shall be:</p> <table border="1" data-bbox="451 1144 1369 1539"> <tr><td>Supplier:</td><td></td></tr> <tr><td>Attention:</td><td></td></tr> <tr><td>Floor/Room number:</td><td></td></tr> <tr><td>P.O. Box:</td><td></td></tr> <tr><td>Street Address:</td><td></td></tr> <tr><td>Town/City:</td><td></td></tr> <tr><td>Post Code:</td><td></td></tr> <tr><td>Country:</td><td>Ethiopia</td></tr> <tr><td>Telephone:</td><td></td></tr> <tr><td>Facsimile:</td><td></td></tr> <tr><td>E-mail address</td><td></td></tr> </table>		Public Body:		Attention:		Floor/Room number:		P.O. Box:		Street Address:		Town/City:		Post Code:		Country:	Ethiopia	Telephone:		Facsimile:		E-mail address		Supplier:		Attention:		Floor/Room number:		P.O. Box:		Street Address:		Town/City:		Post Code:		Country:	Ethiopia	Telephone:		Facsimile:		E-mail address	
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<b>GCC 11.1 (a)</b>	The Public Body's Project Manager shall have the following additional powers and / or limitations to his or her authority to represent the Public Body in matters relating to the Contract .																																													
<b>GCC 11.2 (b)</b>	The Supplier's Representative shall have the following additional powers and / or limitations to his or her authority to represent the Supplier in matters relating to the Contract .																																													
<b>GCC 15.1</b>	In case of change of laws and regulation after the deadline for submission of the Bid Contract Price be correspondingly increased or decreased and/or the Delivery Date be reasonably adjusted to the extent that Supplier has thereby been affected																																													

GCC Clause Reference	Section 8. Special Conditions of Contract
	in the performance of any of its obligations under the Contract.
GCC 16.1	For the Information Technologies, Materials, and other Goods supplied from outside the Federal Democratic Republic of Ethiopia The Supplier shall be responsible for all taxes, custom duties, formalities, license fees except for the following:
GCC 16.3	For the Information Technologies, Materials, and other Goods supplied from within the Federal Democratic Republic of Ethiopia the Supplier shall be responsible for all taxes, formalities, license fees except for the following:
GCC 26.3	The Public Body may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the Supplier's prior written consent, under the following circumstances:
GCC 26.4	The Public Body's and Supplier's rights and obligations with respect to Custom Software or elements of the Custom Software are as follows .  The Public Body's and Supplier's rights and obligations with respect to Custom Materials or elements of the Custom Materials are as follows [.
GCC 26.5	
GCC 27.1(a)(iii)	The Standard Software license shall be valid .
GCC 27.1(a)(iv)	Use of the software shall be subject to the following additional restrictions .
GCC 27.1(b)(ii)	The Software license shall permit the Software to be used or copied for use or transferred to a replacement computer .
GCC 27.1(b)(vi)	The Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by , subject to the same restrictions set forth in this Contract.
GCC 27.1(b)(vii)	In addition to the persons specified in GCC Clause 27.1 (b) (vi), the Software may be disclosed to, and reproduced for use by, subject to the same restrictions as are set forth in this Contract.
GCC 27.2	The Supplier's right to audit the Standard Software will be subject to the following terms:
GCC 28.1	The Supplier shall commence work on the System within of days from the Effective Date of the Contract.
GCC 28.2	Operational Acceptance will occur on or before .
	<b>C. Obligations of the Public Body</b>
GCC 30.12	The Public Body shall have the following additional responsibilities: .
	<b>D. Payment</b>

GCC Clause Reference	Section 8. Special Conditions of Contract
GCC 33.1	<p>Subject to the provisions of GCC Clause 33, the Public Body shall pay the Contract Price to the Supplier according to the categories and in the manner specified below. Only the categories Advance Payment and Complete System Integration relate to the entire Contract Price. In other payment categories, the term "total Contract Price" means the total cost of goods or services under the specific payment category. Within each such category, the Contract Implementation Schedule may trigger pro-rata payments for the portion of the total Contract Price for the category corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted, at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.</p> <p>(a). Advance Payment Ten percent (10%) of the entire Contract Price, exclusive of all Recurrent Costs, shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 33.10.</p> <p>(b). Information Technologies, Materials, and other Goods, with the exception of Custom Software and Custom Materials:  (i) sixty percent (60%) of the total or pro-rata Contract Price for this category against Delivery;  (ii) ten percent (10%) of the same price against Installation;  (iii) ten percent (10%) of the same price against Operational Acceptance.</p> <p>(c). Custom Software and Custom Materials:  (i) sixty percent (60%) of the total or pro-rata Contract Price for this category against Installation;  (ii) twenty percent (20%) of the same price against Operational Acceptance.</p> <p>(d). Services other than Training: Eighty percent (80%) of the pro-rata Contract Price for services performed will be paid monthly in arrears, on submission and Public Body's approval of invoices.</p> <p>(e). Training  (i) thirty percent (30%) of the total Contract Price for training services at the start of the full training program;  (ii) fifty percent (50%) of the pro-rata Contract Price for training services performed will be paid monthly in arrears, on submission and approval of appropriate invoices.</p> <p>(f). Complete System Integration Ten percent (10%) of the entire Contract Price, exclusive of all Recurrent Costs, as final payment against Operational Acceptance of the System as an integrated whole.</p> <p>(g). Recurrent Costs One hundred percent (100%) of the price of the services actually delivered will be paid monthly in arrears, on submission and Public Body's approval of invoices.</p>

GCC Clause Reference	Section 8. Special Conditions of Contract
GCC 33.4	The Public Body shall pay the Contract Price to the Supplier, within the period of the .
GCC 33.5	<p>For Goods and Services supplied locally all payment to the Supplier under this Contract shall be made in ETB.</p> <p>For Goods supplied from outside the Federal Democratic Republic of Ethiopia all payment to the Supplier under this Contract shall be made in .</p>
	<b>E. Obligations of the Supplier</b>
GCC 34.7	The Supplier shall have the following additional responsibilities: .
GCC 42.1	The amount of the Performance Security shall be:
GCC 42.3	<p>The types of acceptable Performance Securities are: .</p> <p>The currency shall be: .</p>
GCC 42.4	Discharge of the Performance Security shall take place:
GCC 42.5	During the Warranty Period (i.e., after Operational Acceptance of the System), the Performance Security shall be reduced to percent of the Contract Price, excluding any Recurrent Costs.
	<b>F. Performance of the Contract</b>
GCC 43.1	The Scope of Supply shall be defined in:
GCC 43.3	<p>The Supplier's obligations under the Contract will include the following recurrent cost items:</p> <p>The Supplier agrees to supply spare parts required for the operation and maintenance of the System, as stated below, for the beginning with Operational Acceptance. Moreover, the price of such spare parts shall be those specified in the spare parts price schedule submitted by the Supplier as part of its bid. These prices shall include the purchase price for such spare parts and other costs and expenses (including the Supplier's fees) relating to the supply of spare parts.</p>
GCC 44.1	Chapters in the Project Plan shall address the following subject: .
GCC 44.2	Within days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Public Body. The Public Body shall, within days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 44.2 called "non-conformities" below). The Supplier shall, within days of receipt of such notification, correct the Project Plan and resubmit to the Public Body. The Public Body shall, within days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary

GCC Clause Reference	Section 8. Special Conditions of Contract
	until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Public Body shall provide confirmation in writing to the Supplier. This approved Project Plan (“the Agreed and Finalized Project Plan”) shall be contractually binding on the Public Body and the Supplier.
GCC 44.5	The Supplier shall submit to the Public Body the following reports:
GCC 45.2	The Contract shall be executed in accordance with the edition or the revised version of all referenced codes and standards current at the date
GCC 45.3 (a)	The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager’s approval before proceeding with work on the System or any Subsystem covered by the documents:
GCC 46.2	The Supplier shall deliver the Information Technologies, Materials, and other Goods to the following Locations: .
GCC 46.6	The Supplier responsible for obtaining all export and import licenses for the Information Technologies, Materials, and other Goods
GCC 46.9	The shipping and other documents to be furnished by the Supplier are:
GCC 47.2	The following details must be shown on the outside of every package :
GCC 49.4	The Supplier shall provide the Public Body: .
GCC 52.1	
GCC 53.3	Operational Acceptance Testing shall be conducted in accordance with .
GCC 53.4	If the Operational Acceptance Test of the System, or Subsystem(s), cannot be successfully completed within days from the date of Installation or any other period agreed upon by the Public Body and the Supplier, then GCC Sub-Clauses 53.9 (a) or (b) shall apply, as the circumstances may dictate.
	<b>G. Guarantees and Liabilities</b>
GCC 56.3	Liquidated damages shall be assessed .
GCC 57.1	For Software, exceptions or limitations to the Supplier’s warranty obligations shall be as follows: .
GCC 57.3 (iii)	The Supplier warrants that the following items have been released to the market for the following specific minimum time periods: .
GCC 57.4	The Warranty Period shall begin from the date of Operational Acceptance of the System or Subsystem and extend for .
GCC 57.10	During the Warranty Period, the Supplier must commence the work necessary to remedy defects or damage within of notification.
	<b>H. Risk Distribution</b>



GCC Clause Reference	Section 8. Special Conditions of Contract
<b>GCC 65.1(c)</b>	The Supplier shall obtain Third-Party Liability Insurance in the amount of with deductible limits of no more than . The insured Parties shall be . The Insurance shall cover the period from until .
<b>GCC 65.1(e)</b>	<p>For example:</p> <p>The Supplier shall obtain Worker's Compensation Insurance in accordance with the statutory requirements of the Federal Democratic Republic of Ethiopia. Specifically: . The Insurance shall cover the period from until .</p> <p>The Supplier shall obtain Employer's Liability Insurance in accordance with the statutory requirements of the Federal Democratic Republic of Ethiopia. Specifically: . The Insurance shall cover the period from until .</p>

## **Section 9. Contract Forms**

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**A. Contract Agreement****for the Procurement of****Procurement Reference No:**

This Contract Agreement is made on the    day of the month of , **BETWEEN**

**of the Federal Democratic Republic of Ethiopia**, and having its principal place of business (hereinafter called the “Public Body”),

**and**

a corporation incorporated under the laws of    and having its principal place of business at (hereinafter called the “Supplier”), of the other part

**WHEREAS**

- (d). The Public Body invited bids for the following Information System (“the System”) and has accepted a Bid by the Supplier for the supply of this Information System in the sum of (hereinafter called “the Contract Price”) in the manner and on the terms described herein
- (e). The Supplier having represented to the Public Body that it has the required skills, personnel and technical resources, has agreed to provide the Information System on the terms and conditions set forth in this Contract;

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

**1. The Agreement**

- 1.1 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
- 1.2 The following documents shall constitute the Contract between the Public Body and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - 1. This Contract Agreement and Appendices attached to the Contract Agreement;
  - 2. The Special Conditions of Contract;
  - 3. The General Conditions of Contract;
  - 4. The Bid Submission Sheet with Annexes;
  - 5. Price Schedule;
  - 6. Bidder Certification of Compliance with Annexes;
  - 7. Technical Specification + Technical Offer + Compliance Sheet with Annexes;
  - 8.
- 1.3 This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
- 1.4 In consideration of the payments to be made by the Public Body to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Public Body to provide the Information System and to remedy defects therein in conformity in all respects with the provisions of the Contract.
- 1.5 The Public Body hereby covenants to pay the Supplier in consideration of the provision of the Information System and the remedying of defects therein, the Contract Price or such other sum

as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

**2. Effective Date for Determining Time for Operational Acceptance**

2.1 The time allowed for supply, installation, and achieving Operational Acceptance of the Information System shall be determined from the date when all of the following conditions have been fulfilled:

- (a). This Contract Agreement has been duly executed for and on behalf of the Public Body and the Supplier;
- (b). The Supplier has submitted to the Public Body the performance security and the advance payment security, in accordance with GCC Clause 55 and GCC Clause 33.10;
- (c). The Public Body has paid the Supplier the advance payment, in accordance with GCC Clause 33;
- (d). .

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

2.2 If the conditions listed under 2.1 are not fulfilled within two (2) months from the date of this Contract Agreement because of reasons not attributable to the Supplier, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

**3. Appendixes**

3.1 The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

3.2 Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

**SIGNED** for and on behalf of

**Signature:**

**Name:**

**Position:**

**Date:**

**WITNESS** to signature on behalf of

**Signature:**

**Name:**

**Position:**

**Date:**

**SIGNED** for and on behalf of

**Signature:**

**Name:**

**Position:**

**Date:**

**WITNESS** to signature on behalf of

**Signature:**

**Name:**

**Position:**

**Date:**



## 2. Appendix 2 - Categories of Software

[illegible]

### 3. Appendix 3 - List of Custom Materials

[illegible]

**C. Performance Security  
(Bank Guarantee)**

**Date:**

**Procurement Reference No:**

**To:**

WHEREAS (hereinafter “the Supplier”) has undertaken, pursuant to Contract No. dated , to supply (hereinafter “the Contract”).

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned , legally domiciled in [\[insert complete address of Guarantor\]](#), (hereinafter the” Guarantor”), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the day of , .

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No 458.

Name:

In the capacity of

Signed:

Duly authorized to sign the Security for and on behalf of:

Dated on [\[insert day\]](#) day of ], 20



**D. Advance Payment Security  
(Bank Guarantee)**

**Date:**

**Procurement Reference No:**

**To:**

In accordance with the payment provision included in the Contract, in relation to advance payments, (hereinafter called “the Supplier”) shall deposit with the Public Body a security consisting of , to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of .

We, the undersigned , legally domiciled in (hereinafter “the Guarantor”), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Public Body on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding .

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

Name:

In the capacity of

Signed:

Duly authorized to sign the Security for and on behalf of:

Dated on [\[insert day\]](#) day of ], 20

**E. Installation and Acceptance Certificates****1. Installation Certificate****Place and Date****Procurement Reference Number:****To:**

Dear Sir or Madam:

Pursuant to GCC Clause 52 (Installation of the System) of the Contract entered into between yourselves and the (hereinafter the “Public Body”) dated , relating to the , we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component):
2. Date of Installation:

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Public Body

Name:

In the capacity of

Signed:

Duly authorized to sign the Installation Certificate for and on behalf of:

Dated on [insert day] day of ], 20

**2. Operational Acceptance Certificate****Place and Date****Procurement Reference Number:****To:**

Dear Sir or Madam:

Pursuant to GCC Clause 53 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the (hereinafter the “Public Body”) dated , relating to the , we hereby notify you that the System (or a Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Public Body hereby takes over the System (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the System (or Subsystem or major component): Date of Operational Acceptance:

This letter shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Public Body

Name:

In the capacity of

Signed:

Duly authorized to sign the Installation Certificate for and on behalf of:

Dated on [insert day] day of ], 20