

**INTER-AMERICAN DEVELOPMENT BANK
STANDARD TERMS AND CONDITIONS OF AGREEMENT
FOR SERVICES**

1. WORK

“Work” is defined as the whole of the activities, services, materials, equipment, software, matters and things required to be done, delivered or performed by the seller (“Supplier”) in accordance with the terms of the contract or purchase order (“Agreement”) with the Inter-American Development Bank (“Bank”).

2. RELATIONSHIP OF PARTIES

Nothing contained in the entire Agreement shall be construed as the establishment or creation of a relationship of employer and employee between the Supplier and the Bank, it being agreed that the position of the Supplier and anyone else performing any of the Work hereunder is that of an independent contractor. The employees of Supplier engaged in performing Work hereunder are employees of Supplier for all purposes and will under no circumstances be deemed to be employees of the Bank.

3. SUB-CONTRACTING

Supplier may not subcontract any of the Work hereunder without the prior written approval of the Bank. If sub-contracting is approved by the Bank, Supplier shall properly direct and control its sub-contractors and shall have full responsibility for all Work, whether performed by Supplier or its sub-contractors. Supplier shall ensure that any and all sub-contractors shall be bound to the terms and conditions of this Agreement.

4. TAXES and IMMUNITIES

4.1. The Bank is exempt by law from payment or collection of all taxes. The Bank shall provide the Supplier with tax exemption certificates as evidence of exemption from payment of sales and use taxes as may be required. The Supplier shall inform the Bank if any taxing authority refuses to recognize the Bank's proof of its exemption from taxation. The Bank's exemption from taxation does not extend to any taxes Supplier must contribute or withhold on behalf of its officers, agents or employees, including but not limited to, payroll and social security taxes or to any sales or other taxes Supplier may incur.

4.2. Nothing in this Agreement shall operate to restrict, limit or defeat any rights, privileges or immunities granted to the Bank or Bank personnel under any treaty or domestic or international law. Supplier shall promptly inform the Bank, in cases where public authorities or private concerns refuse to recognize the Bank's privileges and immunities accorded by its constituent Treaty or local legislation so that the Bank can take the actions it deems appropriate to protect such privileges and immunities. Nothing herein shall preclude the Bank from taking whatever actions are necessary to prevent immediate, irreparable harm to its privileges and immunities.

5. CONFIDENTIALITY

5.1. The Supplier and its employees or agents are aware that in discharging their obligations pursuant to this Agreement, they may have access to privileged, confidential and/or proprietary information of the Bank or of another but in possession of the Bank including without limitation the Bank's financial, statistical, marketing, business and personnel information, projections, plans, forecasts, reports, service capabilities or any other data or information collected and gathered in the provision of the Work and relating to the Bank's business and any information whether written or oral identified as confidential by the Bank, is confidential information of the Bank (“Confidential Information”). Under no circumstances, except with the Bank's express written permission, shall Supplier and its employees or its agents copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose to any person or organization, in any manner or form, now or after the expiration of the Agreement, such Confidential Information or any part thereof.

5.2. Upon request by the Bank or upon completion of the Work, Supplier will immediately return to the Bank at Supplier's expense all Confidential Information of the Bank and any other Bank documents or data and all copies thereof.

6. RIGHTS IN INTELLECTUAL PROPERTY

All reports, studies, plans, drawings, source code, technical data, specifications, deliverables and any other material prepared by or worked upon by Supplier exclusively for the Bank under this Agreement are the sole and exclusive property of the Bank and as such the Bank has exclusive title, rights and interest in all such material including the right of dissemination, reproduction and publication. All such material shall be considered Confidential Information of the Bank.

7. WARRANTIES

7.1. Supplier represents and warrants that it is experienced in and familiar with all aspects of the Work to be provided under the terms of this Agreement. If any Work has been commenced or performed prior to the issuance of this Purchase Order Agreement, such Work shall be subject to the terms and conditions of this Agreement.

7.2. Supplier represents and warrants that each of its employees or agents performing Work under this Agreement shall abide by the confidentiality obligations established herein and in addition Supplier represents and warrants as part of its employment or contracting process that all of its employees or agents having access to Confidential Information will be advised of their obligation hereunder with respect to the Bank's Confidential Information. In addition, the Bank may request Supplier to sign a Non-Disclosure Agreement prior to performance of any Work under this Agreement.

7.3. Supplier represents and warrants that it is properly licensed, qualified, equipped, organized and financially able to perform the Work in accordance with all applicable laws, ordinances, codes and regulations.

7.4. Supplier represents and warrants it has the full legal right and corporate power and authority to enter into and perform all its obligations under this Agreement.

7.5. Supplier represents and warrants that the personnel used in the performance of the Work hereunder will have the qualifications, skills and experience necessary to perform the Work and will have the work record as represented to the Bank.

7.6. Supplier warrants that any product, equipment, software, methodology, design, device, material, process, report, trademark, documentation or information provided to the Bank or used in connection therewith does not violate or infringe upon any patent, copyright, trade secret or other proprietary right of any third party and hereby indemnifies and holds the Bank, its officers, agents and employees harmless for any losses, damages, liabilities, causes of action, judgments, costs, or expenses, including attorneys' fees, which may result from the breach or alleged breach of this warranty.

7.7. At no additional cost to the Bank, Supplier agrees to replace any infringing part and to provide any service necessary to maintain the level of performance thereof, provided, however, that upon notice of an infringement or alleged infringement, the Bank shall have the right to terminate this Agreement upon written notification to Supplier.

7.8. Supplier represents and warrants that its organization, any parent, any subsidiary, or any previous form of organization constituted by or with any of the same individuals as principal(s) is not currently suspended or debarred from doing business with the Bank, and that it is not currently suspended or debarred by the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the World Bank Group.

7.9. Supplier represents and warrants that it has disclosed to the Bank whether: (i) it has, at any time during the previous five (5) years, been subject to suspension or debarment by the Bank under any of its policies and procedures; and (ii) it has, at any time during the previous five (5) years, been subject to a Sanction by any other International Financial Institution¹.

7.10. Supplier represents and warrants that it will report to the Bank any suspected Prohibited Practices² related to Bank-financed activities of which it has knowledge or of which it becomes aware, and that it will assist the Bank in investigating any allegations and in uncovering any evidence of Prohibited Practices related to Bank-financed activities as applicable.

¹ *International Financial Institutions* refers to financial institutions that have been established and are owned by the national governments of two or more countries (e.g., World Bank Group institutions, International Monetary Fund, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development).

² *Prohibited Practice* means any corrupt practice, fraudulent practice, coercive practice, collusive practice or obstructive practice in a Bank-financed activity by parties thereto as such terms are defined below: a. *A corrupt practice* is the offering, giving, receiving, or soliciting, directly or

8. PERSONNEL OF SUPPLIER

8.1 Supplier shall supervise the performance of the Work to ensure compliance with the Agreement including all specifications and schedules.

8.2 If requested by the Bank, Supplier shall submit qualifications of key personnel to perform Work under this Agreement and such qualifications shall be reviewed by the Bank prior to assignment or commencement of any Work under this Agreement. Personnel with satisfactory qualifications for the Work shall be assigned for the duration of this Agreement as required.

8.3 Supplier agrees to assume full responsibility for any and all liability to its employees on account of injury, disability, and death resulting from, or sustained by, said employees in the performance of the Work defined herein.

8.4 At the Bank's request, Supplier shall remove its personnel due to nonperformance or workplace conflicts while performing Work and shall upon the Bank's request make all reasonable efforts to assign new personnel for performance of the Work. In addition, if during this Agreement Supplier at its own initiative removes or substitutes key personnel assigned to the Bank, Supplier shall assume the cost of 5 working days to bring such newly assigned personnel to a productive status.

8.5 Supplier agrees to use commercially reasonable efforts to ensure that all key and/or onsite personnel performing Work under this Agreement are not relatives³ of an active Bank employee or subject to any work restrictions by virtue of his/her former employment with the Bank. If it becomes known that any of Supplier's key and/or onsite personnel performing the Work is a Bank relative, Supplier shall promptly replace such personnel with one having equivalent skills at no additional cost to the Bank.

9. PERFORMANCE STANDARDS

Supplier shall perform the Work hereunder with care, skill and diligence in accordance with the standards of professional skill and care common to the profession. Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Work performed under this Agreement.

10. ACCESS TO INSPECTION OF WORK AND AUDIT

10.1. The Bank shall at all times have access to the Work being performed under this Agreement wherever it may be in progress or preparation. The Bank shall have the right to comment at any time on Supplier's performance and to request modifications in performance and in preparation of the Work within the scope of this Agreement. Supplier shall keep and maintain accurate accounts and records with respect to the services hereunder, in accordance with internationally accepted accounting principles, and in such form and detail as will clearly identify all relevant charges and costs and the bases thereof. Supplier shall permit the Bank or its designated representative to periodically inspect and audit all relevant accounts and records. Supplier shall preserve all accounts and records relating to this Agreement for a period of three (3) years after final payment under this Agreement.

10.2. Supplier hereby acknowledges and agrees that, in the event the Work hereunder requires access by Supplier and/or any of its employees or sub-contractors to internal Bank systems through real-time computer connections, Supplier will obtain the written approval of the Bank's Information Technology Department before initiating any such connections. In addition, Supplier understands and agrees that the Bank has the right to audit the security measures in effect on any of Supplier's connected systems at any time without prior notice and to immediately terminate any network connection with any Supplier system that is deemed by the Bank to have insufficient security measures in effect.

indirectly, anything of value to influence improperly the actions of another party; b. A *fraudulent practice* is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; c. A *coercive practice* is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; d. A *collusive practice* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and e. An *obstructive practice* is (a) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights.

³ spouse, Bank-registered domestic partner, mother, father, brother, sister, child, uncle, aunt, nephew, niece, (son-daughter-brother-sister) in law, grandparent, grandchild, first cousin, step- (parent-children-brother-sister), (parent or grandparent)-in law, and spouses of brothers-in-law or sisters-in-law, great (grandchild –uncle-aunt-nephew-niece-grandparent)

10.3. For multi-year service contracts with a total contract value in excess of \$500,000, the Supplier shall annually provide to the Bank's authorized representative, as set forth in Article 16, "Notices," a copy of its audited financial statements for the previous fiscal year. Such financial statements shall be provided no later than ninety (90) days following the close of Supplier's fiscal year. Upon reviewing such audited financial statements, the Bank reserves the right, if it deems it necessary, to require additional financial information.⁴

11. ARBITRATION

If any dispute shall arise between the Supplier and the Bank as to the performance or interpretation of this Agreement or any matter or thing in connection therewith which cannot be settled by amicable agreement, then, upon either party's giving Notice of the difference or dispute to the other in accordance with article 16 herein, the same shall be referred to arbitration and final determination by a single arbitrator. The arbitration shall be administered by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration shall be Washington, D.C. The language to be used in the arbitral proceedings shall be English. The arbitrator shall have legal counsel if so desired or if one of the parties so requests. The expenses of any arbitration proceeding shall be borne equally by the Supplier and the Bank.

12. JURISDICTION AND GOVERNING LAW

All questions, matters or disputes including but not limited to questions of interpretation, construction, validity and performance arising from this Agreement or any part thereof shall be governed by the laws of the District of Columbia, except that nothing in this clause or this Agreement shall operate to restrict, limit or defeat any rights, privileges or immunities granted to the Bank or Bank personnel under any treaty or domestic or international law.

The United States District Court for the District of Columbia shall have jurisdiction in connection with this Agreement exclusively for the following legal actions: 1) to compel arbitration by a party that refuses to submit to arbitration after receiving notice from the other party pursuant to Article 16 herein; 2) to enforce an arbitration award issued by the arbitrators following the arbitration clause; 3) to decide if the arbitrators exceeded their authority by addressing issues not raised or issues not pertinent to the arbitration; and/or 4) to determine whether proper procedures were followed during arbitration. The United States District Court for the District of Columbia shall have no jurisdiction to review or decide on the matter under arbitration.

13. ADVERTISING OF AWARD

Supplier shall obtain the prior and express written consent of the Bank before using the Bank's name for any purpose.

14. INDEMNIFICATION

Supplier agrees to defend, indemnify, and hold the Bank, its officers, employees, agents, and invitees harmless from and against all claims, liabilities, causes of action, judgments, damages, costs and expenses, including but not limited to reasonable attorneys' fees, each and all of them may sustain by reason of damage or injury to the extent caused by Supplier, its officers, agents and/or employees either by wrongful or negligent act or omission, including, but not limited to any unauthorized use or disclosure of confidential or proprietary information of the Bank or of another but in possession of the Bank or improper or defective Work. Supplier further agrees to defend, indemnify and hold the Bank, its officers, employees and agents harmless from and against any employment-related claims made by personnel engaged to perform Work hereunder but only to the extent the employment related claim is caused by Supplier.

15. INSURANCE

15.1. Supplier shall be responsible for maintaining the following insurance coverage:

- Worker's Compensation Insurance as required by law and Employer's Liability with a minimum limit of \$1 million dollars.
- Professional Liability Insurance with limits of not less than \$1,000,000/per occurrence;
- Comprehensive Automobile Liability Insurance and automobile contractual liability coverage for owned, hired and non-owned autos with a combined single limit for each accident of not less than \$1,000,000.

⁴ The execution of this clause shall be the responsibility of Corporate Procurement.

- Commercial General Liability Insurance with primary limits of \$2 million dollars and an annual aggregate of \$5 million dollars and the policy shall be indorsed to include: Subcontractors, Products, Completed Operations and Contractual liability.

15.2. With the exception of Worker's Compensation and Professional Liability Insurance, if Supplier shall be on the Bank's premises at any time in the performance of Work, the Bank shall be named as an additional insured and such certificates of insurance shall be provided to the Bank prior to commencement of any Work. Such certificates shall be faxed to 202-623-1693, Attention: Corporate Procurement and Contracts Section.

15.3. Supplier, its officers, employees and agents understand that the Bank is not responsible for life, health, and accident insurance for Supplier's employees or agents. Supplier, its officers, employees and agents understand that the Bank is not responsible for any personal property they may bring into the Bank's premises, agree to look to their own insurance policies for any coverage in case of damage, disappearance or destruction of such property, waive any right of subrogation and shall hold the Bank harmless from and against any liabilities, claims, damages, judgments, costs or expenses they or their insurer may have against the Bank in connection with such property damage, disappearance or destruction.

15.4. Nothing in any other provision of the entire Agreement between Supplier and the Bank shall be interpreted as diminishing legal responsibility as specified in Articles 7, 14 and 15.

16. NOTICES

Any notice or request required to be given or made under this Agreement shall have been duly made or given when delivered by hand or by certified mail to the party addressed as follows:

INTER-AMERICAN DEVELOPMENT BANK
1300 New York Avenue, NW
Washington, D.C. 20577
Attention: Chief, Procurement and Contracts

Supplier: TBD

17. MODIFICATIONS, EXTRAS AND AMENDMENTS

All amendments and/or purchase order revisions for modifications, additions, or deletions to this Agreement shall be in writing and Supplier shall provide a written proposal for such contemplated change. Such change shall not be effective until accepted in by the Corporate Procurement and Contracts Section of the Bank (ACP/PRC). In the event Supplier effects any changes at the direction of any Bank personnel other than ACP/PRC personnel, such changes shall be deemed to have been made without proper authority and no adjustment will be made in the Agreement to cover any increase in costs incurred as a result thereof.

18. ELECTRONIC SIGNATURE

An electronic signature representing the facsimile of an original signature on purchase orders, contracts, amendments, notices or any other documents under this Agreement shall be deemed an original signature of the respective duly authorized representative.

19. TERMINATION

The Bank may terminate this Agreement in whole or in part for its convenience upon five (5) days written notice to Supplier of its intent to terminate and shall pay Supplier for Work satisfactorily performed up to the date of such termination. Furthermore, the Bank may terminate this Agreement, by giving written notice to Supplier, immediately at any time if: 1) By reason of strike, war, riots, national emergency, natural catastrophe, or Acts of God, performance by the Supplier of its obligations hereunder is substantially impaired for a prolonged period of time; 2) Supplier files a petition under a bankruptcy act, is adjudicated bankrupt, or has a receiver appointed for its business; 3) Supplier makes assignment of or subcontracts any of its obligations or rights under this Agreement without the Bank's prior written consent; or 4) Supplier makes assignment of any shipped goods for the benefit of creditors; 5) Supplier fails to correct any breach of contract within ten (10) days after receipt of written notice of such breach by the Bank; 6) Supplier and the Bank fail to reach mutual agreement regarding any modification contemplated to this Agreement; 7) Supplier has failed to maintain appropriate standards of performance as required by the terms of this Agreement

and has failed to respond appropriately to a request for modification of such performance; 8) Supplier's ability to perform is diminished due to unforeseen events.

20. PAYMENT

Supplier shall be paid upon submission of a properly documented invoice which properly reflects the rates/costs stipulated herein for products or services delivered and accepted by the Bank in accordance with the terms of this Agreement. Supplier shall provide detailed supporting information upon the Bank's request to substantiate any charge or clarify any invoice.

21. REPORTING

Supplier and the Bank shall mutually agree to the frequency of meetings and reports required to monitor and track the activities of this Agreement, however it shall be Supplier's responsibility for ensuring that such meetings are conducted and such reports are submitted to the Bank.

22. ASSIGNMENT

Neither party shall assign this Agreement in whole or in part, or any of its responsibilities and obligations hereunder, without the prior written consent of the other party.

23. SEVERABILITY

If any provision of this Agreement is declared invalid by an arbitrator or any court of competent jurisdiction, the remaining provisions shall not be affected thereby and shall remain in full force and effect.

24. NO WAIVER

Except as otherwise specifically provided in this Agreement, a waiver by either Party of any breach of any provision of this Agreement, or either Party's decision not to invoke or enforce any right under this Agreement, will not be deemed a waiver of any right or subsequent breach, and all provisions of this Agreement will remain in force.

25. NONEXCLUSIVITY

Nothing in this Agreement will be construed to restrict the Bank's soliciting, purchasing or performing work similar or identical to the Work being performed by Supplier.

26. ORDER OF PRECEDENCE

In the event of conflict among any terms and conditions of the Agreement, the provisions contained in these Standard Terms and Conditions of Agreement shall govern.

27. INTEGRATION

The terms and conditions of this Agreement including any attachments incorporated herein and attached hereto, embody the whole of the Agreement. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.