



CONTRACT NO. PUR/*REFERENCE*

BETWEEN

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

AND

FULL NAME OF THE CONTRACTOR

**FOR THE PROVISION OF
*INSERT CONTRACT REFERENCE***

CONTRACT NO. PUR/REFERENCE
FOR THE PROVISION OF INSERT CONTRACT REFERENCE

THIS CONTRACT is dated *day, month and year* and concluded between:

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

AND

- (2) *full name of the company*, a company organised and existing under the laws of *insert country* with its registered office located at *insert address* (the "**Contractor**").

WHEREAS:

- (A) The Bank wishes to acquire certain Services (as defined below) in respect of *describe the services sought* and issued a Request for Proposals (as defined below) on or about *day, month and year* seeking bids from reputable companies with particular expertise and skills in *include description*.
- (B) The Contractor is engaged in the business of *include description* and submitted a Proposal (as defined below) to the Bank in response to the Request for Proposals.
- (C) The Bank, relying on the specialist skills of and the Proposal submitted by the Contractor, wishes to appoint the Contractor, on an *exclusive/non-exclusive basis* to provide the Services described in and upon the terms and conditions of this Contract.
- (D) The Contractor has agreed to provide the Services to the Bank, upon the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

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

"**Acceptance**" means the process of the acceptance of the Services for and on behalf of the Bank as described in *Schedule 1*.

"**Additional Fees**" means the fees payable by the Bank in consideration of the provision of the Additional Services as set out in the Variation Order duly accepted and signed by the Bank pursuant to the terms and conditions of *Section 7*.

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

"Audits" means the audits and reviews carried out by the Bank or the Bank's auditors, experts and insurers, as the case may be in accordance with the terms and conditions set out in [Section 18](#).

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

"Bank's Representative" means the person nominated or such person for the time being or from time to time duly appointed by the Bank to manage the Contract on its behalf, as set out in [Section 31.2](#).

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

"Commencement Date" means [day, month and year](#).

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

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

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

"Contract Price" means the total fees and other compensation (exclusive of any applicable VAT) payable to the Contractor under the Contract by the Bank, as set out in [Schedule 4](#) for the full and proper performance of the obligations of the Contractor under the Contract, taking into account the effect of any permitted adjustment of the Contract Price in accordance with [Section 3.3](#).

"Contractor's Personnel" or **"Personnel"** means any person(s) whose services are to be provided by the Contractor in order to discharge its obligations under this Contract and, where the context permits, shall include persons provided by or through the Contractor's permitted subcontractor(s), including the Personnel identified in [Schedule 6](#).

"Contractor's Representative" means the person nominated or such person for the time being or from time to time duly appointed by the Contractor to manage the Contract on its behalf, as set out in [Section 31.2](#).

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

"Event of Force Majeure" means in relation to either Party any event or circumstance which is beyond the reasonable control of that Party and which results in, or causes the failure of, that Party to perform any or all of its obligations under this Contract including an Act of God, fire, explosion, epidemic, war, terrorist acts, blockades and embargoes, strikes and riots,

insurrection, civil commotion, save that, for the avoidance of doubt, strikes and lock-out of the Contractor's employees or Personnel shall not be deemed to be beyond the Contractor's reasonable control, nor an inability to obtain any requisite licence, authorisations or consent required to be obtained by the Contractor to perform its obligations, nor the failings of a subcontractor engaged by the Contractor.

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of all due skill, care, prudence and foresight which would be expected in those circumstances from a recognised industry leading service provider providing services identified or similar to the Services.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, rights to goodwill, rights in designs, computer software, database rights, know-how, trade secrets and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights.

"Intellectual Property Rights Infringement" means infringement or alleged infringement in of any Intellectual Property Right of a third party connection with this Contract by the Contractor, its directors, officers, Personnel, employees, sub-contractors or agents.

"Materials" means reports, memoranda, documentation and other printed materials, data, accounts, programmes, software, code, graphics, works of art, guidance, drawings, models, designs, advertisements, information prepared by the Contractor in connection with this Contract.

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

"Payment Schedule" means the payment schedule on the basis which the Contract Price will be paid by the Bank as set out in *Schedule 5*.

"Prohibited Practices" means coercive practices, collusive practices, corrupt practices and fraudulent practices defined in the Bank's Enforcement Policy and Procedures. These are currently published by the Bank at the following website: <http://www.ebrd.com/downloads/integrity/epp.pdf>.

"Project Timetable" means the timetable and plan for the performance of the Services under the terms of this Contract, which is agreed between the Parties and attached hereto as *Schedule 3*.

"Project Manager(s)" means the Contractor's Project Manager and the Bank's Project Manager appointed by each of the Parties in accordance with *Section 6*. The initial Project Managers and their contact details are described in *Schedule 7*.

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

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

"Request for Proposals" means the request for proposal concerning the delivery of the Services issued by the Bank on *day, month and year*.

"Service Level Agreement" or "SLA" or "Agreed Service Levels" means:- (i) the description of standards; (ii) the performance indicators and requirements; (iii) the service levels against

which the delivery of the Services shall be measured; and (iv) the specific remedies for the breach of the Agreed Service Levels as set out in Schedule 2.

"Services" means the services to be provided by the Contractor during the Term to the Bank as specified in [Schedule 1](#).

"Specification" means the description and specification of the Services to be provided by the Contractor to the Bank pursuant to this Contract as specified in [Schedule 1](#). The Services must comply with the Specifications.

"Site" means the Bank's headquarters at One Exchange Square, London EC2A 2JN, United Kingdom.

"Term" means the period between the Commencement Date and Termination Date.

"Termination Assistance" means those services, resources and facilities to be provided by the Contractor, upon the Bank's request, to assist the Bank in relation to the termination or expiry of this Contract as provided in [Schedule 9](#).

"Termination Date" means the date on which:- (i) this Contract expires as set out in [Section 3.2](#); or (ii) following an extension of the Term pursuant to the terms and conditions set out in [Section 3.3](#), the date of which is specified as the date of expiry of any extension period; (iii) the date of termination or partial termination of the Contract in accordance with the applicable law or [Section 25](#) and [Section 26](#) of the Contract.

"Variation Order" has the meaning ascribed thereto in [Section 7.1](#).

- 1.2 Unless the context otherwise requires, words denoting the singular shall include the plural and *vice versa* and references to any gender shall include all other genders. References to any person shall include the person's successors and assigns in accordance with this Contract.
- 1.3 The Schedules attached to this Contract form part of this Contract and, subject to the terms set out in [Section 1.7](#) below, they shall have the same force and effect as if set out in the main body of this Contract.
- 1.4 References to recitals, schedules and sections are to (respectively) recitals, sections and clauses of this Contract (unless otherwise specified) and references within a schedule to sections are to sections of that schedule (unless otherwise specified).
- 1.5 References in this Contract to any Act of Parliament of the United Kingdom, to the regulations made pursuant to such Act, any statute, statutory provision or a regulation or a directive of the relevant institution of the European Union or other legislation include a reference to that Act of Parliament or regulations made pursuant to such Act, any statute, statutory provision, directive or legislation as amended, extended, consolidated or replaced from time to time (whether before or after the Commencement Date of this Contract) and include any order, regulation, instrument or other subordinate legislation made under the relevant statute, statutory provision, directive or legislation.
- 1.6 The words "*other*", "*include*" and "*including*" do not connote limitation in any way. Any reference to "*writing*" or "*written*" includes faxes and any legible reproduction of words delivered in permanent and tangible form.
- 1.7 In the event of any conflict or inconsistency between the terms and conditions of the main body of the Contract and any schedules or any Variation Orders, the provisions of those

documents shall, only to the extent of any such conflict or inconsistency, take precedence in the following order:-

- (i) the Variation Order(s);
- (ii) the schedules attached to the Contract (except the Contractor's Proposal attached in [Schedule 10](#));
- (iii) the main body of the Contract; and
- (iv) the Proposal of the Contractor attached in [Schedule 10](#).

2. Appointment of the Contractor

- 2.1 The Contractor shall:- (i) perform all of the Services during the Term; (ii) deliver the Services in accordance with the Project Timetable and the Service Level Agreement and in accordance with the Specifications; and (iii) the Contractor shall be responsible for the delivery and acceptance process set out herein. The Contractor shall appoint one or more Project Manager responsible for the administration of this Contract in accordance with the terms agreed herein.
- 2.2 In providing the Services hereunder, the Contractor shall at all times ensure the diligent, due and proper execution of the Services by its Personnel. The Contractor shall use up-to-date, relevant professional techniques and standards in order to carry out the Services with the care, skill and diligence required in accordance with the Good Industry Practice, the Quality Standards, all applicable laws, enactments, orders, regulations, standards and other statutory instruments and all applicable terms and conditions of this Contract.
- 2.3 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Bank by the Contractor in connection with the supply of the Services.
- 2.4 The Bank may inspect and examine the manner in which the Contractor provides the Services during normal business hours on reasonable notice.
- 2.5 Any date, deadline, or period mentioned in this Contract may be extended by the Bank but otherwise time shall be of the essence for any obligation of the Contractor set out in this Contract.

3. Term

- 3.1 This Contract concluded hereunder by the Parties shall enter into force upon the Commencement Date.
- 3.2 This Contract is concluded for a period of twelve (12) months from the Commencement Date.
- 3.3 The Term of the Contract may be extended for one (1) further twelve (12) months period at the discretion of the Bank. Any extension of the Contract shall be on the terms and conditions set out herein subject to agreeing a revised Contract Price. The Bank shall give the Contractor not less than ninety (90) days' notice of its intent to extend the Term of this Contract. If the Parties are unable to agree on the new Contract Price within thirty (30) days following the notice of extension by the Bank to the Contractor, the Contract shall expire at the end of its current term, unless terminated earlier in accordance with the terms and conditions of [Section 25](#) and [Section 26](#) below.

4. The Contractor's Personnel

- 4.1 The Contractor shall:- (i) provide experienced and high quality individuals for the provision of the Services; (ii) ensure that all Personnel providing the Services to the Bank shall be

adequately skilled, qualified and trained for the tasks they are to perform; (iii) unless otherwise permitted by the Bank, ensure that all of its Personnel engaged in the provision of the Services are in the employment of the Contractor; and (iv) provide, upon the Bank's request, full details of the job descriptions and applicable training and qualification records of the Contractor's Personnel assigned to work under this Contract.

- 4.2 If in the opinion of the Bank any of the Contractor's Personnel is:- (i) incapable of carrying out his/her duties; or (ii) is unsuitable to provide the Services for whatever reason, the Bank may require that the Contractor replace such Personnel. Upon receipt of such a request, the Contractor shall forthwith substitute a satisfactory individual for such Personnel. The cost of such replacement shall be at the Contractor's expense and the substitute shall be no less experienced or qualified than the Personnel being replaced.
- 4.3 The Contractor may, with the consent of the Bank (such consent not to be unreasonably withheld or delayed) and upon reasonable written notice to the Bank (unless in the incidence of emergency or sickness) substitute for its Personnel other suitable individuals. Such substitution shall be in all respects at the expense of the Contractor and the substitute shall be no less experienced or qualified than the Personnel being replaced.
- 4.4 For the purpose of and during the Term of this Contract, the Contractor's Personnel shall, and shall be deemed to, be employees, consultants, contractors or agents of the Contractor (as the case may be) and nothing in this Contract shall establish the relation of employer and employee or a master and servant as between the Bank and the Contractor's Personnel. The Contractor's Personnel shall not be members of the Bank's staff and they cannot claim to have the status of a member of staff or an official of the Bank nor the benefits, privileges and immunities attached to the status of being a staff member or official of the Bank.

5. Working in the Site

- 5.1 The Contractor's Personnel shall work such hours at the Site as are required to provide the Services and as may be set out in the schedules of this Contract or any Variation Order. The Contractor shall not deliver any equipment nor begin any work on the Site without obtaining prior approval from the Bank. The Contractor shall take reasonable care to ensure that in carrying out the Services, its Personnel do not interfere with the operations of the Bank. For avoidance of doubt, the Contractor agrees that: (i) any access to the Site shall be strictly limited to those areas of the Site, as determined by the Bank, necessary for the Contractor to fulfill the Contractor's obligations to perform the Services under this Contract; (ii) where applicable, any access to Bank information or systems while on the Site shall be strictly limited to such information or systems, as determined by the Bank, necessary for the Contractor to fulfill the Contractor's obligations to perform the Services under this Contract; (iii) while working on the Site or, as the case may be, accessing the Bank's systems, the Contractor shall be accompanied by a representative of the Bank at all times or, as the case may be, supervised by a representative from the Bank's IT department; and (iv) in no event shall the Contractor copy or remove any information or documents from the Site without the prior written consent of the Bank. The Contractor acknowledges and agrees that any such access granted by the Bank to the Site or, where applicable, to the Bank's information or systems whether accessed on the Site or remotely, shall not constitute a waiver, renunciation or modification of any of the immunities, privileges or exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990, international convention or any applicable law.
- 5.2 The Bank shall have the right, at any time, to refuse admittance to, or order the removal from, the Site of any Personnel, subcontractor, or other person acting on behalf of the Contractor or subcontractor who in the opinion of the Bank is not a fit and proper person to be on the Site.

Any steps taken under this [Section 5.2](#) shall be confirmed to the Contractor's Project Manager by the Bank and shall not relieve the Contractor of its obligations under the Contract.

- 5.3 The Contractor shall ensure that all its Personnel and permitted subcontractor(s) operating on the Site, are made aware of, and comply with, the [Bank's Health and Safety Policy](#), the [Code of Practice for Contractors](#), [Basic Fire Instructions and Security Procedures for the Contractors](#) and all such other regulations and instructions as may be issued by the Bank from time to time as notified to the Contractor.
- 5.4 The Bank will ensure that the Site is reasonably safe for the purposes of the performance of the Services. The Contractor will report immediately to the Bank any:- (i) circumstances or events which might reasonably be expected to affect the safety of any person or the Site; (ii) accident or injury to any person and any damage to the property of the Bank or any third party at the Site; or (iii) circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Services. The Contractor is deemed to have inspected the Site before submitting its Proposal and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 5.5 The Contractor shall be responsible at its own risk and expense for the delivery to, unloading at and removal from the Site of all things of all kinds necessary for carrying out the Services. Unless otherwise agreed with the Bank, all such items shall remain the responsibility of the Contractor who shall be liable for the care, safety and storage thereof and shall remove them at the end of each visit or upon termination or expiry of the Contract (as may be agreed) and leave the Site in a clean, tidy and safe condition. The Contractor shall, at the Bank's written request, at its own expense and as soon as reasonably practicable:- (i) remove from the Site any equipment which in the reasonable opinion of the Bank is either hazardous, noxious or not in accordance with the Contract; and (ii) replace such item with a suitable substitute item of equipment.

6. Project Organisation

- 6.1 Each Party shall appoint a Project Manager who shall:- (i) provide professional and prompt liaison with the other Party in connection with the Services and the compliance with the Service Level Agreement; and (ii) have the necessary expertise in the subject matter of this Contract. Each Party is entitled to change its Project Manager(s) by providing a prior written notification to the other Party. In addition to the Project Managers, the basic project organization roles together with the detailed responsibilities of the Project Managers and the established project committees under this Contract are described in [Schedule 7](#).
- 6.2 The appointed Project Managers shall meet in accordance with the frequency agreed by the Project Managers from time to time, unless indicated otherwise in [Schedule 7](#). All meetings conducted pursuant to this Contract will have an agenda issued by the Contractor to the Bank sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare for the meeting and for the Bank to add items to the agenda as necessary. The Contractor will take minutes of all such meetings and will provide a copy to the Bank within [one \(1\) week](#) of the date of the meeting. Unless agreed otherwise, meetings of the Project Managers and the project organs will take place in the Site.

7. Variation Orders

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

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

- 7.2 The Bank or the Contractor may, during the Term, propose to the other Party that Additional Services are to be provided. If the Contractor proposes to implement Additional Services or if such a proposal has been made by the Bank, the Contractor shall, subject to the terms of [Section 7.5](#), serve on the Bank a notice specifying:- (i) how the Additional Services will be provided; (ii) the timetable for providing the Additional Services, including the number of days of work, the Additional Fees and which of the Contractor's Personnel will carry out the work (in case of new services) or the change of the Contract Price charged under this Contract (in case a change of the scope of the Services); (iii) and terms of payment in respect of the Additional Fees or the change of the terms of payment in respect of the revised Contract Price (in case a change of the scope of the Services).
- 7.3 Within [ten \(10\) days](#) of receipt of the notice described in [Section 7.2](#) above, the Bank shall advise whether or not it wishes to receive the Additional Services on the terms set out in the aforementioned notice. In this case, the Bank shall issue a Variation Order and forward it to the Contractor for acceptance.
- 7.4 In the event the Bank and the Contractor cannot agree on the terms and conditions relating to the Additional Services, the Bank shall be entitled to, at its discretion:- (i) allow the Contractor to fulfil its obligations under the Contract without the variation to the Services; or (ii) obtain such Additional Services from a third party and the Contractor shall cooperate with such third party as may be required in connection with the provision of such Additional Services.
- 7.5 The Bank will not be responsible for payment and will not be charged for the investigations by the Contractor or implementation of any Additional Services that have not been expressly agreed to in writing by the Bank.

8. Subcontractors

The Contractor shall notify the Bank in writing of all sub-contracts awarded under the Contract if not already specified in [Schedule 6](#). The use of subcontractors shall not relieve the Contractor from any of its liabilities or obligations under the Contract and the Contractor shall ensure that its subcontractors comply with all applicable provisions of the Contract. The Contractor shall fully responsible for its subcontractors involved in the completion of the present Contract. All subcontractors not specified in [Schedule 6](#) shall be subject to the prior approval of the Bank.

9. Intellectual Property Rights

- 9.1 The Contractor acknowledges that all Materials, in whatever medium or format, produced for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract, shall be the sole property of the Bank.
- 9.2 The Contractor hereby assigns to the Bank, with full title guarantee, all Intellectual Property Rights which may subsist in the Materials prepared in accordance with [Section 9.1](#). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of any Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment. The Contractor shall ensure that any and all Intellectual Property Rights arising out of or related to the Materials and the work to be performed in providing the Services to the Bank will vest or will be caused to vest in the Bank and that the

Contractor's Personnel will have no title, right or interest whether legal or beneficial in any such Intellectual Property Rights. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright in Materials prepared in accordance with [Section 9.1](#).

- 9.3 The Contractor shall not, and shall ensure that the Contractor's Personnel shall not, (except when necessary for the performance of the Contract) without prior approval of the Bank, use any Intellectual Property Rights in the Materials.

10. Announcements and EBRD Logo

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

11. Confidential Information

- 11.1 The Contractor will keep the Confidential Information confidential and will not disclose that Confidential Information to any third party or make any use of the Confidential Information for any purpose other than fulfilling its obligations under this Contract. The Contractor will, on request from the Bank, promptly return or destroy any Confidential Information belonging to the Bank.
- 11.2 Notwithstanding the foregoing, the Contractor may disclose Confidential Information to its Personnel or a permitted subcontractor involved in providing or supervising the performance of the obligations of the Contractor under this Contract on a need-to-know basis, provided that, if disclosed to the Contractor's Personnel or a subcontractor, the Contractor undertakes to ensure that such Personnel or subcontractors are bound by an obligation of confidentiality on terms materially similar to this [Section 11](#).
- 11.3 Confidential Information shall not include information which:-
- (i) in the public domain otherwise than as a result of breach by the Contractor of its obligations under this Contract;
 - (ii) is already in the possession of the Contractor at the time of disclosure to it and which was not provided by the Bank or by a third party in breach of a confidentiality undertaking;
 - (iii) is received after disclosure to the Contractor from a third party without an accompanying obligation of confidentiality;
 - (iv) is independently developed by the Contractor without reference to Confidential Information of the Bank;
 - (v) subject to the Bank's privileges and immunities, is required to be disclosed by law or order of a court or a governmental agency, provided that the Contractor shall forthwith provide the Bank with notice of the disclosure requirement prior to making any such disclosure.
- 11.4 On expiration of the Term or earlier termination of this Contract for whatever reason, the Contractor shall as soon as reasonably practicable, but in any event no more than [fourteen \(14\)](#) days from the Termination Date, return to the Bank all of the Bank's Confidential Information and the Materials and all copies thereof held by the Contractor in connection with the provision of Services or otherwise relating to this Contract.

12. Code of Conduct

The Contractor's Personnel who have, or are likely to have, access to the Site and/or to documents and information relating to the Bank's policies or operations, may at the discretion of the Bank be required to sign an undertaking to comply with the Bank's:- (i) *Code of Conduct for EBRD Personnel and Experts*; (ii) *Policy on the Use of Bank IT Facilities*; (iii) the *policy on Security Arrangements at the EBRD: Systems, Procedures and Guidelines*; and (iv) an undertaking of confidentiality prior to commencing their assignment.

13. Change Control

- 13.1 The Contractor shall notify the Bank on any Change Control Event in writing in *thirty (30) days*, specifying:- (i) the details of the Change Control Event; and the (ii) impact of the Change Control Event to the Services.
- 13.2 The Bank may, by written notice, terminate this Contract if it finds, at its discretion, that the Change Control Event is not acceptable. Such notice shall be served no later than *six (6) months* from:- (i) the date of the receipt of the Contractor's notice described in Section 13.1; or (ii) where no notification has been made, the date that the Bank becomes aware of the Change Control Event in accordance with *Section 25.1 (iv)*.
- 13.3 The Bank shall not be permitted to terminate the Contract where an approval was granted by the Bank to the change of Control prior to the Change Control Event.

14. Prohibited Practices

- 14.1 The Contractor warrants that it has not engaged in Prohibited Practices. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Prohibited Practices by its Personnel.
- 14.2 The Bank, without prejudice to any other remedy for breach of contract may, by written notice, terminate this Contract if in its judgement, the Contractor has engaged in Prohibited Practices in accordance with *Section 25.1 (iii)* of this Contract.

15. Background Checks

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

16. Inspections and Tests

The inspections, acceptance tests and the process of accepting the performance of the Contractor in connection with the Services provided by the Contractor under this Contract shall be described in *Schedule 1* attached hereto.

17. Insurance

- 17.1 During the Term, the Contractor shall carry and maintain adequate:- (i) *public liability insurance*, with cover up to a limit, for any single event or series of related events in a single calendar year, of £1,000,000 (one million pounds sterling); and (ii) *employers' liability insurance*, covering its Personnel and subcontractor(s) engaged in performance of the Services with cover up to a limit not less than required by law in the applicable location. Unless otherwise advised by the Bank, the Contractor agrees that it shall not be able to claim or

benefit from any insurance policy of the Bank while performing its obligations under this Contract.

- 17.2 During the Term, and for a period of *one (1) year* following the Termination Date, the Contractor shall carry and maintain for the benefit of itself and the Bank adequate *professional liability insurance product liability insurance* cover up to a limit (for each single event or series of related events in a single calendar year) of £1,000,000 (one million pounds sterling).
- 17.3 Proof of insurance certifying compliance with *Section 17.1* and *Section 17.2* above must be furnished to the Bank within fifteen (15) days of request. Failure to provide the insurance certificate may be taken by the Bank to indicate that the Contractor has failed to meet his obligations to provide adequate insurance cover under this Contract and treat this event as a material breach of the Contractor's obligations pursuant to *Section 25.1 (i)*.

18. Audit Rights

- 18.1 The Bank shall have the right to perform Audits in connection with this Contract. The Contractor shall, without charge to the Bank, provide reasonable access to the Bank and/or its auditors, experts and insurers:- (i) any premises from which the Services are being performed together with its records related to the provision of the Services; and (ii) the Contractor's officers, Personnel and subcontractor(s) engaged in the performance of the Services to enable the Bank and/or its auditors, experts and insurers, to conduct appropriate audits and examinations of the operations of the Contractor in relation to the performance of the Services.
- 18.2 The Audits will be for the purpose of verifying:- (i) the accuracy of the Contractor's invoices to the Bank in respect of the Services rendered to the Bank; (ii) that the Contractor is exercising (if the Services are provided on a time and material basis), reasonable procedures to control and to minimise the use of the resources provided by the Bank; (iii) that Services are being provided in accordance with the Service Level Agreement and that the Contractor is complying with its obligations under the Contract; (iv) the compliance with the requirement to conduct Background Checks in accordance with *Section 15*; and (v) any matter relevant to the provision of the Services by the Contractor which the Bank's insurers may require for the purposes of the Bank maintaining or obtaining insurance cover.
- 18.3 The Bank shall provide reasonable written notice to the Contractor prior of exercising its right to Audit. Audits shall be carried out during the Contractor's normal working hours. The Bank shall perform such Audits no more frequently than once every *twelve (12) months* during the Term, provided that the Contractor will not withhold prevent an Audit if the Bank can demonstrate a reasonable requirement to perform such an Audit at any time, subject to reasonable written notice being given to the Contractor.
- 18.4 During the conduct of any Audit, the Contractor shall permit access to all records and information relating to the Services and their provision, except that the Contractor may refuse to provide access to:- (i) any information proprietary or relating to the Contractor's other customers or its third party licensors; and (ii) any other confidential information unconnected with the provision of the Services other than Confidential Information as defined in the Contract.

19. Force Majeure

- 19.1 Neither Party shall be liable for any delay in performance or breach of its obligations hereunder resulting from an Event of Force Majeure, provided that such Party:- (i) has taken all reasonable steps to prevent and avoid the Event of Force Majeure; (ii) takes all reasonable steps to overcome and mitigate the effects of the Event of Force Majeure as soon as reasonably practicable; and (iii) on becoming aware of the Event of Force Majeure, promptly

informs the other Party and confirms in writing the Event Force Majeure in accordance with [Section 19.2](#) below.

- 19.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure. The notice shall contain:- (i) details of the circumstances giving rise to the Event of Force Majeure; (ii) the known or anticipated impact of the Event of Force Majeure; and (iii) a reasonable estimate of the period during which the Event of Force Majeure will continue and details of how the affected Party will deal with such Event of Force Majeure.
- 19.3 If the Event of Force Majeure shall continue for more than [thirty \(30\)](#) calendar days, then the Party unaffected by the Event of Force Majeure shall be entitled to terminate the Contract with immediate effect by providing a written notice to the Party affected by the Event of Force Majeure in accordance with [Section 25.1 \(viii\)](#) and [Section 26 \(iii\)](#). Neither Party shall have any liability to the other in respect of the termination of this Contract as a result of an Event of Force Majeure.

20. Payment terms

- 20.1 The Parties agree that in consideration of the Services, the Bank will pay the Contract Price as provided in [Schedule 5](#).
- 20.2 The Bank shall pay the invoice amount to the Contractor, within [thirty \(30\)](#) days of receipt of a valid invoice, providing there is no dispute as to the amount payable. In the event of a dispute of the amount payable, the Bank will only pay the undisputed proportion of the invoice, and the outstanding sum shall be paid once the dispute has been resolved.
- 20.3 The Contractor shall ensure that all invoices bear the Contract reference number and if applicable a valid authorised purchase order number. Failure to adhere to this requirement may delay payment by the Bank. Payments will be made (unless agreed otherwise by the Parties) in [GBP \(pound sterling\) / EUR \(euro\)](#).
- 20.4 Value added tax, if applicable, shall be shown separately on all invoices as a strictly net extra charge and shall, subject to the Bank's privileges and immunities, be borne by the Bank. The Contractor shall be responsible for all other taxes, charges, and levies relating to this Contract.
- 20.5 Payment by the Bank of invoices concerning the Services shall be subject to satisfactory delivery of the Services in accordance with the Specifications and the Service Level Agreement.

21. Expenses

Unless expressly stated otherwise in this Contract, all costs and expenses arising in relation to or incurred in providing the Services will be borne by the Contractor, including travel, accommodation and other expenses. Any expense reimbursement in connection with the Services is subject to the prior written consent of the Bank's Representative.

22. The Contractor's Representations and Warranties

- 22.1 The Contractor hereby represents and warrants to the Bank that:- (i) it is duly incorporated under the laws of [insert country of incorporation](#); (ii) there are no insolvency proceedings against it of any kind; (iii) it has all licenses and permits and fulfils all legal and administrative requirements that are necessary for the performance of this Contract; (iv) it has the sufficient resources and expertise to perform its obligations hereunder; (v) entry into and performance of this Contract shall not result in the breach of the relevant laws and its other agreements made

with third persons; and (vi) upon the entry into the Contract it is not aware of any infringement of any rights of third parties caused by entering into this Contract.

- 22.2 The Contractor hereby represents and warrants to the Bank that the Services:- (i) conform in all respects to the description, design, technical specifications, requirements or standards contained/or referred to in the Contract and in particular with the Specifications; (ii) conform to any representations made by the Contractor or on behalf of the Contractor in its Proposal or during the process of contract negotiations; (iii) conform to all relevant Quality Standards and Good Industry Practice; (iv) shall be provided in a way that the Contractor shall comply with all rules, regulations, requirements and policies (including the policies of the Bank) applicable to and affecting the Site; and (v) shall be provided to the Bank and the Contractor shall not use the Site to provide any services to any third person without the Bank's prior written consent.
- 22.3 The Contractor hereby represents and warrants to the Bank concerning the Materials that:- (i) it has and will continue to have the right to comply with [Section 9](#) and to grant all the rights it grants or purports to grant to Bank pursuant to and in accordance with the terms of this Contract; (ii) there is no third party whose consent is necessary in order for the Bank to exercise the rights granted or purported to be granted to it by the Contractor pursuant to and in the terms of this Contract; and (iii) the rights granted or purported to be granted to the Bank by the Contractor pursuant to and in the terms of [Section 9](#) do not infringe or violate any Intellectual Property Right of any third party.

23. The Bank's Obligations

- 23.1 The Bank shall co-operate with the Contractor under this Contract. This obligation includes that:-
- (i) upon the written request of the Contractor, indicating the persons and dates and/or intervals of the requested entry, the Bank permits the entrance to the Site in its normal working hours provided that and to the extent it is necessary for the performance hereunder. However, should the Bank have a reason to do so, it may either postpone the permission to enter or exclude certain persons from entrance into the Site, and in the latter case the Contractor shall appoint another person for the job and submit a new request for entrance without any unreasonable delay;
 - (ii) the Bank shall provide for conditions required for the inspection and testing as specified in this Contract;
 - (iii) the Bank shall provide data and information, subject to the privileges and immunities of the Bank, if and when and to the extent it is reasonably necessary and required by the Contractor to perform the Services under this Contract;
 - (iv) the Bank shall appoint one or more Project Manager(s) responsible for the administration of this Contract; and
 - (v) *insert additional obligations, if any.*
- 23.2 The Bank shall pay the Contract Price and the Additional Fee in accordance with the provisions of this Contract and the relevant Variation Order(s).

24. Non-Conforming Services

24.1 Special Remedies for Non-conforming Services

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

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

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

24.2 Delay in Contractor's Performance

24.2.1 Performance of the Services shall be made by the Contractor in accordance with the Project Timeline specified in [Schedule 3](#).

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

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

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

24.3 Liquidated Damages

Subject to [Section 19](#) and [Section 24.2](#), if the Contractor fails to perform the Services within the time period specified in the Contract, the Bank may without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to five percent (5%) of the Contract Price for each week or part thereof of delay until actual delivery or performance or until the Contract is terminated.

25. Termination by the Bank

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

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

- (ii) the Contractor fails to meet the level of performance expected from it pursuant to the Service Level Agreement for a period of *three (3) consecutive months*, where the Bank has given to the Contractor notice of the Contractor's failure to meet the Service Level Agreement after a period of *thirty (30)* consecutive days or if the Bank has delivered *two (2)* such notices in any *twelve (12) months* period during the Term; or
- (iii) the Contractor has engaged in Prohibited Practices as provided for in *Section 14.2*; or
- (iv) there is any Change of Control Event which is unacceptable to the Bank for any reason in accordance with *Section 13.3*; or
- (v) if Contractor is unable to comply with *Section 30.3* within the deadline provided therein; or
- (vi) the Contractor makes any voluntary arrangement with its creditors or becomes subject to an administration order or Contractor becomes insolvent or goes into liquidation or convenes a meeting to consider a resolution that it be placed in liquidation or suffers a petition to be presented that it be placed in liquidation or has an administrative receiver, receiver or company appointed in respect of all or any of its assets, makes an assignment for the benefit of, or any composition with, its creditors or takes advantages of any insolvency act (or in each case the equivalent in any jurisdiction); or
- (vii) the Contractor ceases to function as a going concern or ceases to conduct its operation in the normal course of business; or
- (viii) the Contractor is affected by an Event of Force Majeure, which prevails for a continuous period in excess of *thirty (30)* days.

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

26. Termination by the Contractor

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

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

27. Effects of Termination

27.1 If this Contract is terminated for convenience by the Bank pursuant to Section 25.2, the Bank shall:- (i) pay the Contractor for all Services satisfactorily completed as at the Termination Date; and (ii) reimburse the Contractor for reasonable and documented expenditure which represent an unavoidable and uninsured direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. The Contractor will be responsible for producing written evidence of the Services completed up to the Termination Date. Payment will become due to the Contractor thirty (30) days from the date of submission of the evidence by the Contractor to the Bank, unless the Bank disputes the amount payable. The amount in dispute will become payable within thirty (30) days of resolving the dispute in accordance with the Escalation Procedure or by arbitration in accordance with the terms set out in Section 33.2 below.

- 27.2 For the avoidance of doubt, the Bank shall not be liable or reimburse to the Contractor under [Section 27.1](#) and [Section 27.3](#) any sum which:- (i) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the relevant insurance policy; (ii) when added to any sums paid or due to the Contractor under the Contract, exceeds the total Contract Price that would have been payable to the Contractor if the Contract had not been terminated by the Bank; or (iii) claims by the Contractor for loss of profit or consequential losses due to early termination of the Contract by the Bank.
- 27.3 If this Contract is terminated pursuant to [Section 25.1 \(viii\)](#) by the Bank or by the Contractor pursuant to [Section 26 \(iii\)](#) due to an Event of Force Majeure, the Bank shall pay the Contractor for all Services satisfactorily completed as at the Termination Date. Payment will become due to the Contractor [thirty \(30\) days](#) from the date of submission of the evidence of the completion of the Services by the Contractor to the Bank, unless the Bank disputes the amount payable. The amount in dispute will become payable within [thirty \(30\) days](#) of resolving the dispute in accordance with the Escalation Procedure or by arbitration in accordance with [Section 33.2](#).
- 27.4 If this Contract is terminated by the Bank pursuant to [Section 25.1](#), except for [Section 25.1 \(viii\)](#), the Contractor shall be liable to and indemnify the Bank for all losses suffered by the Bank as the consequence of termination of the Contract in accordance with the terms and conditions set out in [Section 28](#) below. The Bank shall have the right to recover from the Contractor the amount of any loss suffered by the Bank resulting from the termination, including the cost reasonably incurred by the Bank of making other arrangements for the supply of the Services and any additional costs and expenses incurred by the Bank in connection with the breach of the Contractor taken into account any limitation of liability of the Contractor as set out in [Section 28](#) below and the obligations of the Contractor in connection with an Intellectual Property Infringement, as set out in [Section 30](#).
- 27.5 If this Contract is terminated by the Contractor pursuant to [Section 26](#), except [Section 26 \(iii\)](#), the Bank shall remain liable to pay to the Contractor all sums which have accrued due and owing to the Contractor under this Contract, taken into account any limitation of liability of the Bank as set out in [Section 29](#) below.
- 27.6 The Contractor will at its own cost and expense assists the Bank in orderly termination of this Contract and provides the Termination Assistance as may be necessary for the orderly, non-disrupted business continuation at the Bank. The termination or expiry of the Contract shall not affect the accrued rights or liabilities of either Party.
- 28. Liability of the Contractor**
- 28.1 Subject to the terms and conditions of [Section 28.2](#) and [Section 28.3](#) described below, the Contractor shall be liable and indemnify the Bank and keep the Bank indemnified for all actions, suits, claims, demands, losses, charges, damages, costs and expenses, taxes, penalties, and other liabilities incurred and/or suffered by the Bank arising from, out of or in connection with:- (i) any act or omission, whether negligent, tortious or otherwise of the Contractor, its directors, officers, Personnel, employees, subcontractors or agents relating to matters contemplated in this Contract; and (ii) any breach by the Contractor, its directors, officers, employees, subcontractors or agents of any of the Contractor's obligation under this Contract.
- 28.2 The liability of the Contractor to the Bank shall not exceed the following sums:- (i) in respect of damage to Bank's property, £1,000,000.00 (one million pound sterling) for any one act or default; and (ii) in respect of non-performance, delay or other breach of the Contract, £1,000,000.00 (one million pound sterling).

- 28.3 Subject to [Section 28.4](#) below, the Contractor shall not be liable to the Bank under or in connection with this Contract for any indirect or consequential loss or damage including, loss of profit, loss of goodwill or loss of contracts or opportunity.
- 28.4 The limitation of liability set out in [Section 28.2](#) shall not apply actions, suits, claims, demands, losses, charges, damages, costs and expenses, taxes, penalties, and other liabilities caused by:- (i) the fraudulent behaviour or misrepresentation of the Contractor, its directors, officers, Personnel, employees, subcontractors or agents; or (ii) any death or injury to a person resulting from the Contractor's, its directors', officers', Personnel' employees', sub-contractors' or agents' negligence; or (iii) any failure of the Contractor, its directors, officers, Personnel employees, sub-contractors or agents to comply with any applicable law, rule or regulation; or (iv) any event where liability which cannot be limited under applicable law; or (v) an Intellectual Property Rights Infringement in connection with the Services or the Materials; or (vi) for misuse or disclosure of Confidential Information .

29. Liability of the Bank

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

30. Intellectual Property Rights Indemnity

- 30.1 In addition to the Contractor's liability set out in [Section 28](#), the Contractor shall fully indemnify, hold harmless and, subject to the Bank's privileges and immunities, defend the Bank, against all actions, suits, claims, demands, losses, charges, damages, costs and expenses, taxes, penalties, and other liabilities arising from, out of or in connection with an Intellectual Property Infringement or an alleged Intellectual Property Right Infringement. The Bank shall give notice to the Contractor of any alleged infringement or any actual or threatened Intellectual Property Infringement to which this [Section 30.1](#) may apply.
- 30.2 If any claim or allegation is made or appears likely to be made pursuant to [Section 30.1](#), the Contractor may (at its own cost) and with the consent of the Bank (such agreement not to be unreasonably withheld) procure the right for the Bank to continue to use the infringing Material or software product on terms which are acceptable tot the Bank or alternatively provide a modification or replacement to the same, provided such remedial action does not cause any material loss of functionality or performance than that originally contracted for.
- 30.3 In the event that the Contractor is unable to comply with [Section 30.2](#) within *thirty (30)* days of receipt of the claim, the Bank may terminate the Contract with immediate effect by notice in writing pursuant to the terms set out in [Section 25.1 \(v\)](#).

31. Notices

- 31.1 Any notice or other communication given by one Party to the other pursuant to this Contract shall be in writing, sent by:- (i) first class mail; or (ii) by facsimile. Any notice given by facsimile shall be immediately confirmed by the sending of a copy of the notice or communication by ordinary first class mail.
- 31.2 Communications shall be sent to the address of the relevant Party referred to in this Contract or the facsimile number set out below or to such other address or facsimile number as may previously have been communicated to the other Party in accordance with this [Section 31.2](#). Each communication shall be marked for the attention of the relevant person. The initial addresses and fax numbers of the Parties are:-

for the Bank:

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

for the Contractor:

full name of the Contractor

address

Attention: *name*
Tel: *phone number*
Fax: *fax number*

Attention: *name*
Tel: *phone number*
Fax: *fax number*

With a copy to:
Corporate Procurement Unit
Fax: 44 (0) 20 7338 7451

- 31.3 A notice or communication shall be effective when:- (i) if sent by first class mail, the time when delivered to the recipient or at the expiration of *five (5) clear days* after the time of posting, whichever is earlier, or the date when transmitted in the case of facsimile; or (ii) on the notice's effective date, whichever is later.
- 31.4 The Bank and the Contractor shall be entitled to change their respective addresses set out in [Section 31.2](#) by providing a written notice to the other Party. A Party may notify the other Party to this Contract of a change to its name, relevant person, address or facsimile number for the purposes of [Section 31.2](#) such notification shall only be effective on:- (i) the date specified in the notification as the date on which the change is to take place; or (ii) if no date is specified or the date specified is less than three (3) clear days after the date on which notice is deemed to have been served.

32. The Escalation Procedure

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

- (i) upon the written request of either Party, the Bank's Representative and the Contractor's Representative shall meet for the purpose of endeavouring to resolve such dispute within *ten (10)* days from the request of such meeting by a Party;
- (ii) the Bank's Representative and the Contractor's Representative will meet as often as necessary to gather and furnish to the other all information with respect to the matter in issue which is appropriate in connection with its resolution;

- (iii) the Bank's Representative and the Contractor's Representative will discuss the problem and negotiate in good faith in an effort to resolve the dispute and to try to avoid arbitration. The format for such discussions will be agreed by the Bank's Representative and the Contractor's Representative having regard to the nature and importance of the subject matter in dispute;
- (iv) if the Bank's Representative and the Contractor's Representative cannot resolve the dispute in *thirty (30) days* since the commencement of the Escalation Procedure, then the dispute will be escalated to the Bank's *insert position* and *insert position* of the Contractor for their review and resolution; and
- (v) if the dispute cannot be resolved in accordance with the above, the Parties may, without prejudice to any other remedy permitted under this Contract, refer the dispute to arbitration in accordance with the provisions of *Section 33.2* below, however, such arbitration may not be commenced until *forty-five (45) days* after the initial request to negotiate such dispute is made pursuant to *Section 32 (i)* above.

33. Governing Law and Dispute Resolution

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

34. Survival

Termination or expiration of all or part of this Contract shall not affect either of the Party's accrued rights or liabilities or affect the coming into force or the continuance in force of [Sections 9-11, 17.2, 18 and 27-33](#) which shall continue to be in force on or after the termination or expiration of the Contract.

35. Miscellaneous

- 35.1 This Contract supersedes any previous conditions, understandings, commitments, agreements or representations (except fraudulent misrepresentations) whatsoever whether oral or written, and represents the entire understanding between the Parties, in relation to the subject matter of this Contract.
- 35.2 Each Party acknowledges and agrees that the provisions of this Contract have been the subject of discussion and negotiation and, with particular reference to any exclusion clauses set out herein, are fair and reasonable having regard to the circumstances as at the date of this Contract.
- 35.3 Neither Party shall be entitled to assign or transfer its rights or obligations under this Contract to any third party without the prior consent of the other Party. This Contract shall be binding upon the successors and permitted assigns of the Contractor.
- 35.4 No omission to exercise or delay in exercising on the part of any Party to this Contract any right, power or remedy provided by law or under this Contract shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Contract. Any waiver of any right, power or remedy under this Contract must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated any waiver shall be effective only in the instance and only for the purpose for which it is given.
- 35.5 All expenses incurred by or on behalf of the Parties (including all fees of agents, solicitors and accountants employed by either of the Parties) in connection with the negotiation, preparation and execution of this Contract shall be borne solely by the Party which incurred them.
- 35.6 Notwithstanding that the whole or any part of any provision of this Contract may prove to be illegal or unenforceable the other provisions of this Contract and the remainder of the provision in question shall remain in full force and effect.
- 35.7 The Bank may at any time, without notice to the Contractor, set off any liability of the Contractor to the Bank against any liability of the Bank to the Contractor, whether any such liability is present or future, liquidated or unliquidated, under this Contract or not and irrespective of the currency of its denomination. If the liabilities to be set off are expressed in different currencies, the Bank may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Bank of its rights under this [Section 35.7](#) shall be without prejudice to any other rights or remedies available to it under this Contract or otherwise.
- 35.8 No variation to this Contract shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.
- 35.9 Each Party shall at all times act as independent parties and nothing contained in this Contract shall be construed or implied to create an agency or partnership. Neither Party shall have the

authority to agree to or incur expenses on behalf of the other except as may be expressly authorised by this Contract.

- 35.10 Provided that the terms and conditions of this Contract do not prescribe otherwise, nothing in this Contract is intended to confer on any person any right to enforce any term of this Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorised representatives, have caused this Contract to be signed as of the date first above written.

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

SIGNED by for and on behalf of
full name of the Contractor

Name: *name*
Position: *position*

Name: *name*
Position: *position*

Schedule 1

Services, Specifications and Acceptance

Schedule 2
Service Level Agreement

Schedule 3
Project Timeline

Schedule 4
Contract Price

Schedule 5

Payment Schedule and Rules for the Preparation of Invoices

The following points shall be observed when submitting invoices for payment:-

- (i) all invoices shall be addressed and sent to Accounts Control, the European Bank for Reconstruction and Development, One Exchange Square, London EC2A 2JN, UK;
- (ii) the correct purchase order number and the name of the Bank's Representative must be quoted on the invoice;
- (iii) invoices shall be marked to show the Contractor's business address, invoice number and date. The name and telephone number of a person who may be contacted in case of need to raise queries shall be quoted on the invoice;
- (iv) the Bank will only make payments after the original signed copy of the Contract has been returned to the Bank's Corporate Procurement Unit and only on submission of original/PDF invoices (stating the correct purchase order number) and original supporting receipts (no faxes or copies shall be acceptable) ;
- (v) full details of the bank account, where payment shall be made must be supplied on the invoices, including currency of the account;
- (vi) period during which Services were performed must be stated;
- (vii) invoices shall be itemised in the order set out in Schedule 4 and Schedule 5 of the Contract;
- (viii) any change to the Contract necessitating an amendment to the Contract should be completed prior to submission of an invoice;
- (ix) The last of the invoices (or, as the case may be, the only invoice) issued by the Contractor for the Services shall be called the 'Final Invoice' and shall be indicated as such. The final invoice shall not be issued until all the Contractor's obligations for performing the Services have been satisfactorily fulfilled. The final invoice must be submitted within three (3) months of the completion of the Services;
- (x) prior to issuing the first invoice, in accordance with the Contract, the Contractor should confirm with the Bank whether VAT can be charged or whether the invoice(s) should be zero rated for VAT purposes due to the Bank's privileges and immunities.
- (xi) any applicable VAT charged by Contractor shall be separately itemised on the invoices.

Schedule 6

The Contractor's Personnel and Subcontractors

Schedule 7
Project Management

Schedule 8
Policies of the Bank

Schedule 9

Termination Assistance

Schedule 10

The Contractor's Proposal