

ASIAN DEVELOPMENT BANK

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INVITATION TO BID CISCO SUPPLY FRAMEWORK AGREEMENT

1. The Asian Development Bank (ADB), a multilateral development finance institution headquartered in Manila, Philippines, wishes to receive bids for the Cisco Supply Framework Agreement.
2. The Contractor shall provide ADB with the most reliable and efficient Services with the deployment of skilled personnel, appropriate tools, equipment, transportation, materials and supervision in accordance with the policies, standards and procedures established by ADB.
3. Interested Bidders are advised to send their complete contact details (i.e. name of firm, address, contact person and position, email address, telephone number) to jocampo@adb.org, kjamon@adb.org and ljpaterno@adb.org for future correspondences related to this bidding. Bid bulletins will only be shared to bidders who have shared their contact details.
4. The Instructions to Bidders included in this invitation is available or may be downloaded until 18 August 2017.
5. This invitation is open to firms who meet the following mandatory minimum requirements specified in the bidding documents, including among others:
 - a. Have the nationality of an eligible country in accordance with Appendix 13 (List of ADB Eligible Member Countries) of the Instructions to Bidders;
 - b. Have not been declared ineligible by ADB;
 - c. A certified re-seller of Cisco's enterprise networking, data centers and security products;
 - d. A certified re-seller of Cisco for at least seven years;
 - e. Capable of providing hardware, software and professional services; and
 - f. Have at least one Cisco Certified Internetworking Expert (CCIE) and one Cisco Certified Network Professional (CCNP) in-house.
6. Bids should be submitted in a sealed envelope in accordance with paragraph 16 of the Instruction to Bidders and should reach ADB **not later than 2:00 p.m. (Manila time) on 18 August 2017** by hand carry, courier or airmail to the above address, attention to: Senior Procurement and Contracts Specialist, Procurement and Contracts Administration Unit, Room 4503S. Late bids will be rejected by ADB.
7. ADB reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for ADB's action.
8. This Invitation does not entail any commitment on the part of ADB, either financial or otherwise. All costs associated with the preparation and submission of the Application shall be borne solely by the Applicant.

(original signed)

OLIVIER J. LEONARD
Senior Procurement and Contracts Specialist
Office of Administrative Services

Asian Development Bank
FIGHTING POVERTY IN ASIA AND THE PACIFIC



INSTRUCTIONS TO BIDDERS

Cisco Supply Framework Agreement

August 2017

ASIAN DEVELOPMENT BANK

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The documents comprising this "Instructions To Bidders" including data shall not be disclosed outside the Bidder and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to prepare the bid.



Asian Development Bank

INSTRUCTIONS TO BIDDERS

Cisco Supply Framework Agreement

A. General

1. Scope of Bid

- 1.1 The Asian Development Bank (hereinafter referred to as “ADB”) wishes to receive bids from prospective Bidders for the Cisco Supply Framework Agreement (hereinafter referred to as “Services”).
- 1.2 The Contractor shall provide ADB with the most reliable and efficient Services with the deployment of skilled personnel, appropriate tools, equipment, transportation, materials and supervision in accordance with the policies, standards and procedures established by ADB. ADB will evaluate the performance of the Contractor in carrying out the delivery of the Services against the standards set forth in the Statement of Work (SOW) (see **Appendix 1**).
- 1.3 The Services shall be complete in all respect, and shall include the costs of supplies, materials, labor, tools and equipment, supervision, transportation, and other costs incidental thereto.
- 1.4 The successful Bidder will be contracted based on the requirement, for a period of five (5) years from the commencement date of the Contract, subject to subsequent annual renewal, but subject to re-evaluation at the end of the third (3rd) year. ADB will require the successful Bidder to supply, deliver, install, implement and support the requirements indicated in the SOW (**Appendix 1**).
- 1.5 Bidder’s proposal shall include the discount rate off Cisco global price list for hardware, software, services/subscription and professional services for Cisco’s enterprise, data center and security products with details to be provided in the Financial Bid Form in accordance with *Clause 9.2*.
- 1.6 The sealed bids should be completed and submitted to ADB in accordance with the provisions contained in the "Instructions to Bidders".

2. Qualifications of the Bidder

- 2.1 To be qualified for the bidding, the Bidder must:
 - i. Have the nationality of eligible country in accordance with **Appendix 13**: List of ADB Eligible Member Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen, or is constituted, or incorporated, and operates in

conformity with the provisions of the Laws of that country;

- ii. Not be under a declaration or record of ineligibility for corrupt and/or fraudulent practices issued or kept by ADB in accordance with *Sub-Clause 2.3.iii*;
- iii. Be a Cisco certified reseller for Cisco's enterprise networking, data centers, and security products;
- iv. Be in the Cisco reseller business for at least 7 years;
- v. Be capable of providing hardware, software and Professional Services; and
- vi. Have at least one Cisco Certified Internetworking Expert (CCIE) and one Cisco Certified Network Professional (CCNP) in-house.

2.2 In the case of joint ventures (JV), the qualifications and experience of all firms in the JV will be considered as if the JV was a single Bidder. Each firm in the JV must be a legally registered commercial enterprise established in the business of providing the required Services or a subsidiary of a legally registered company. ADB will require the identification of the JV partners and either a copy of the agreement entered into by the JV partners or the commitment to enter into a JV agreement (see *Clause 9.1.iv*). The Contract with ADB must be signed so as to be legally binding on all partners, while only one of the firms in the JV arrangement shall be authorized by other partner(s) to receive payments and instructions for and on behalf of any and/or all partners of the JV.

2.3 ADB's Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed Contracts, to observe the highest standard of ethics during the procurement and execution of such Contracts. In pursuance of this policy, ADB:

- i. defines, for the purposes of this provision, the terms set forth below as follows:
 - a. "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - b. "fraudulent practice" means 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. "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any

party or the property of the party to influence improperly the actions of a party; and

- d. “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- ii. will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract;
- iii. will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed Contract, the sanction of which will include but not be limited to the forfeiture of the performance security, depending on what stage of the project when collusion was discovered; and
- iv. will have the right to inspect the accounts and records of the Contractor relating to the performance of the Contract and to have them audited by auditors appointed by ADB.

2.4 ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, Contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under ADB’s Anticorruption Policy. In pursuance of ADB’s Anticorruption Policy’s requirement that Borrowers (including beneficiaries of Bank-financed activity), as well as Bidders, Suppliers, and Contractors under Bank-financed Contracts, observe the highest standard of ethics, ADB will take appropriate actions, which include not financing of the Contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:

- i. they have controlling partners in common; or
- ii. they receive or have received any direct or indirect subsidy from any of them; or
- iii. they have the same legal representative for purposes of this bid; or

- iv. they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the ADB regarding this bidding process; or
- v. a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same Bidder, not otherwise participating as a Bidder, in more than one bid; or
- vi. a Bidder participates as a consultant in preparing the design or technical specifications of the goods and related services or works that are the subject of a bid.

2.5 Penalties on Collusion by Bidders

- i. If any Bidder is found to have colluded with other Bidders to fix the bid prices prior to award of Contract, the Bidder shall be disqualified to bid for any future projects of ADB.
- ii. If the collusion with other Bidders to fix the bid prices is discovered after award of Contract, ADB has the right to impose the following penalties on the Successful Bidder:
 - a. The Contract shall be terminated by ADB immediately.
 - b. In addition, the Successful Bidder shall be disqualified to bid for any future projects of ADB.

3. Eligible Goods and Related Services

- 3.1 All goods and related services to be supplied under the Contract and financed by ADB shall have as their country of origin an eligible country of ADB (**Appendix 13**, List of ADB Eligible Member Countries).
- 3.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment and industrial plants, and “related services” includes services such as insurance, installation, implementation, training, and initial maintenance.
- 3.3 The term “country of origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 3.4 The nationality of the firm that produces, assembles, distributes, or sells the goods shall not determine their origin.

4. Bid Procedure

- 4.1 Each Bidder shall submit only one Bid either by itself, or as a partner in a JV. A Bidder who submits or participates in more than one Bid will be disqualified. Bidders are expected to submit their bids in best form.
- 4.2 A **single stage - single envelope** bidding procedure shall be followed wherein Bidders submit one sealed envelope containing the Technical Bid and the Financial Bid (one original, two duplicate copies) enclosed together in an outer single envelope (refer to *Clause 15*).
- 4.3 The Financial Bid will be used by ADB as a reference to determine the appropriate Contract amount for the Services to be supplied/rendered by the successful Bidder.
- 4.4 The Technical Bids are evaluated by ADB to determine technical compliance of the Bidders without reference to price. No amendments or changes to the technical bids are permitted. The Financial Bids are evaluated by ADB, and the Contract/Purchase Order is awarded to the Bidder whose Bid has been determined to be the lowest evaluated, substantially response and complying.
- 4.5 The Technical Bids will be evaluated based on a Pass-Fail Evaluation Framework established by ADB and as defined in *Clause 20.7*.

5. Cost of Bid

The Bidder shall bear all the costs associated with the preparation and delivery of its bid, and ADB will in no case be responsible for such costs.

B. Bid Documents

6. Contents of Bid Documents

- 6.1 In addition to the Instructions to Bidders, the bid documents are composed of the following documents, which should be read in conjunction with any addendum issued in accordance with *Clause 8*:
 - i. Statement of Work (SOW) - Appendix 1
 - ii. Technical Bid Form - Appendix 2
 - iii. Technical Bid Response Template - Appendix 3
 - iv. Financial Bid Form - Appendix 4
 - v. Form of Secretary's Certificate - Appendix 5
 - vi. Bid Securing Declaration Form - Appendix 6
 - vii. Joint Venture Data Form - Appendix 7
 - viii. Letter of Acceptance of Bid - Appendix 8
 - ix. Form of Performance Security - Appendix 9
 - x. Form of Contract - Appendix 10
 - xi. General Conditions of Contract - Appendix 11
 - xii. Special Conditions of Contract - Appendix 12

xiii. List of ADB Eligible Member Countries - Appendix 13

- 6.2 The Bidder is expected to examine carefully the contents of the bid documents. Bids, which are not substantially responsive to the requirements of the bid documents, will be rejected.
- 6.3 The Bidder shall fully disclose whether any of the Bidder's personnel [including the owner, the directors, the manager(s) or any of the employees] has been formerly connected with ADB in any capacity as a regular or Contractual staff or as a consultant. Failure to disclose this information may be grounds for disqualifying the Bidder or for immediate termination of the Contract with the Bidder.
- 6.4 The Bidder shall furnish information as described in the Financial Bid Form on commissions or gratuities, if any, paid or to be paid relating to this bid, and to Contract execution if the Bidder is awarded the Contract.

7. Clarification on Bid Documents

Bidders requiring any clarification on the bid documents may notify ADB in writing by e-mail to jocampo@adb.org, kjamon@adb.org and ljpaterno@adb.org, or by facsimile, at the number indicated in *Clause 15.3.ii*. **ADB will respond to any request for clarification, provided it is received not less than three (3) calendar days prior to the deadline for submission of bids.** Copies of ADB's response will be forwarded to all Bidders, including the description of the inquiry.

8. Amendment to Bid Documents

- 8.1 At any time prior to the deadline for submission of bids, ADB may for any reason modify the bid documents by issuing addenda.
- 8.2 Any addendum issued shall form part of the bid documents and shall be communicated in writing or by e-mail/facsimile to all Bidders. The transmittal of the addendum to the Bidders on the addresses or e-mail addresses/facsimile numbers submitted shall relieve ADB of its obligations to notify the Bidders of the said addendum.
- 8.3 To afford prospective Bidders reasonable time to take an addendum into account in preparing their bids, ADB may extend the deadline for submission of bids.

C. Preparation of Bids

9. Composition of Bid (Bid Proposal)

- 9.1 **TECHNICAL BID –**
It shall consist of and be structured as follows:
- i. Completed and signed Technical Bid Form (**Appendix 2**);

- ii. Completed Technical Bid Response Template (**Appendix 3**);
- iii. Secretary's Certificate or Written Power of Attorney (**Appendix 5**);
Furnish a notarized authorization letter stating the name and official position held by the person authorized to sign the Bid and the formal Contract for the Bidder. The person authorized to sign the bid should also sign the conforme in the certification. In case of a joint venture, each party to the joint venture shall sign the notarized authorization letter (under joint and several liability).
- iv. Joint Venture Commitment (**Appendix 7**);
In case of a joint venture, provide the official joint venture agreement or a written confirmation signed by all joint venture parties (under joint and several liability), duly notarized, stating that in case of award of Contract, the parties will enter into a joint venture agreement and accept joint and several liability for all obligations under the Contract.
- v. Bid Securing Declaration Form (**Appendix 6**)
ADB shall waive the bid security requirement, provided the Bidder submits and signs the Bid Securing Declaration accepting that, if the Bidder withdraws or modifies (unless upon the consent and advice of ADB) its bid during the period of validity, or the Bidder is awarded the Contract, and it fails to sign the Contract or submits a Performance Security in accordance with *Clause 25*, then the Bidder shall be disqualified from bidding in any or all future Contracts with ADB.
- vi. All the documentary proofs as required in *Clause 6.1* (please use the forms provided as applicable).

9.2 **FINANCIAL BID –**

It shall comprise of the **completed and signed Form of Financial Bid (Appendix 4)**.

- 9.3 The bid documents as herein listed shall be duly completed with all entries typed or printed in ink.
- 9.4 The completed Technical and Financial Bid Forms shall be without interlineations or erasures except those required to correct errors made by the Bidder, in which case the erasures and interlineations shall be initialed by the person or persons signing the bid.
- 9.5 It is incumbent on the Bidder that when the documents mentioned above are duly completed, they should be submitted simultaneously by the Bidder in accordance with *Clauses 16 and 17*.
- 9.6 ADB is not bound to accept the lowest or any bid, nor is it obliged to give any reason for the rejection of any bid.

10. Bid Language

The bid and other documents including any correspondence related to the bid shall be in English language.

11. Bid Currency

The rates submitted by the Bidders shall be in US Dollar *or any other easily convertible currency of ADB member countries*. For purposes of evaluation of Financial Bids, all bids shall be converted to US Dollar at the exchange rate set by ADB Treasury at the time and date of the Financial Bid opening.

12. Bid Price

12.1 Unless otherwise specifically stated in the Contract documents, the bid price shall be deemed to include, inter alia, (i) labor costs; (ii) use of facilities, tools and equipment; (iii) supplies and materials including wastage; (iv) transportation; (v) administrative, supervision and overhead expenses; (vi) profit; and (vii) incidental expenses for the provision of the required Services. Since ADB is exempted from paying taxes and duties under the Articles of Agreement Establishing the Asian Development Bank (Charter) and the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters Agreement), the Bidder shall calculate its prices for the service items **exclusive of Contractor's tax, Value-Added Tax (VAT) and Expanded Value-Added Tax (EVAT)**.

12.2 The Bidder will be deemed to have taken account of all the requirements, whether expressed or implied, covered by all parts of the bid documents and other stipulated documents, and to have priced the items in the Bid Form accordingly. The total bid price will be the basis for payments for the Services provided in accordance with the bid documents.

12.3 The bid price under the terms and conditions specified in the Contract/Purchase Order shall be deemed to be firm and fixed. No claim for adjustments in the Contract prices based on the bids shall be considered by ADB for any change in foreign exchange rate, for any increase in wage rates, including those on the basis of the minimum wage requirement in the Philippine labor law or any other relevant legislation, or for any escalation costs of office materials and supplies. Any such change, increase or escalation shall be deemed to have been taken into account and included in the bid price.

13. Bid Validity

13.1 The bid shall remain valid for a period of ninety (90) calendar days from the specified deadline for the submission of bids.

13.2 Prior to the expiry of the bid validity period, ADB may request the Bidder for

a specified extension in the period of bid validity. A Bidder may agree to the request without modifying the original bid. The request from ADB and responses by the Bidder shall be made in writing.

14. Bid Signing

A person or persons (in case of Joint Venture) duly authorized to bind the Bidder to the Contract shall sign the bid. Proof of authorization shall be furnished in the form of a Written Power-of-Attorney or Secretary's Certificate which shall accompany the bid (ref. *Clause 9.1.iii*). **The name and position held by each person signing the authorization and the duly authorized person or persons must be typed or printed below the signature. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the Bid. Failure to do so will be grounds for disqualification of the Bidder.**

D. Bid Submission

15. Sealing and Marking of Bids

15.1 The Bidder shall prepare one original of the Technical Bid and one original of Financial Bid and clearly mark each "ORIGINAL TECHNICAL and FINANCIAL BID". In addition, the Bidder shall submit two (2) duplicate sets each of the Technical Bid and the Financial Bid and clearly mark them "DUPLICATE - TECHNICAL BID and FINANCIAL BID". In the event of discrepancy between the original and the copy, the original shall prevail.

15.2 The Bidder shall enclose the original and two (2) duplicate sets of the Bids in separate sealed envelopes, duly marking the envelopes as "ORIGINAL - TECHNICAL and FINANCIAL BID" AND "DUPLICATE - TECHNICAL and FINANCIAL BID" as appropriate. These envelopes containing the original and the copy shall then be enclosed in one single envelope.

15.3 The inner and outer envelopes shall:

- i. bear the name and address of the Bidder

NAME AND ADDRESS OF BIDDER:

- ii. be addressed and submitted to:

**Senior Procurement and Contracts Specialist
Procurement and Contracts Administration
Office of Administrative Services
Asian Development Bank**

**Room 4503S, 4th Floor
No. 6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Fax No. +63 2 636 2577 / Tel No. +63 2 632 4444**

- iii. bear the following identification:

“Cisco Supply Framework Agreement”

- 15.4 The outer envelopes and the inner envelopes containing the Bids shall bear a warning **“DO NOT OPEN BEFORE 2:00 P.M. of 18 AUGUST 2017”**.
- 15.5 If all envelopes are not sealed and marked as required, ADB will assume no responsibility for the misplacement or premature opening of the Bid.

16. Deadline for Submission of Bids

Sealed bids should reach ADB not later than **2:00 P.M. (Manila time) on 18 August 2017**. The bids should be sent by courier mail or hand-carried to Room 4503S to the attention of Senior Procurement and Contracts Specialist, Procurement and Contracts Administration Unit of ADB Headquarters located at No. 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines (ref. *Clause 15.3.ii*).

17. Late Bids

ADB shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with *Clause 16*. Any bid received by ADB after the deadline for submission of bids will be rejected and returned unopened to the Bidder.

18. Modification and Withdrawal of Bids

- 18.1 The Bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by ADB, prior to the deadline for the submission of bids. The Bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of *Clauses 15 and 16* with the envelope additionally marked “MODIFICATION” or “WITHDRAWAL”, as appropriate.
- 18.2 No Bid may be modified subsequent to the deadline for submission of Bids.
- 18.3 No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form.

E. Bid Opening and Evaluation

19. Bid Opening

- 19.1 ADB will open the Technical and Financial Bids, including modifications made pursuant to *Clause 19*, in the presence of Bidder's representatives who choose to attend, at **3:00 P.M. (Manila time) of 18 August 2017** at the following location: Room G112E, Asian Development Bank Headquarters, No. 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines. The Bidder should check with Procurement and Contracts Administration Unit whether there is any change on the bid opening venue. The Bidder's representatives who are present shall sign a register evidencing their attendance.
- 19.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids, for which an acceptable notice of withdrawal has been submitted, pursuant to *Clause 18*, shall not be opened.
- 19.3 All other envelopes holding the Technical and Financial Bids shall be opened one at a time and the following read out and recorded: name of the Bidder and whether there is modification or substitution; and other details as per *Clause 9*. No Bids shall be rejected at the opening except for late bids, in accordance with *Clause 17*.
- 19.4 ADB shall prepare a record of the opening of Bids that shall include, as a minimum: the name of the Bidder and whether there is withdrawal, substitution, or modification, and other details as per *Clause 9*. The Bidder's representatives who are present shall be requested to sign and record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

20. Bid Evaluation

- 20.1 To assist in the examination, evaluation and comparison of bids, ADB may, at its discretion, ask any Bidder for clarification of its bid. The request for clarification and response shall be in writing or by fax. Clarification on the Bidder's technical capability may also be done by way of inspecting Bidder's company premises and/or visits to one or more of the Bidder's clients by ADB's representatives. The Bidder should provide full cooperation if ADB deems necessary to do so.
- 20.2 Subject to *Clause 20.1*, no Bidder shall contact ADB on any matter relating to its bid from the time of the bid opening to the time the Contract is awarded. If the Bidder wishes to bring additional information to the notice of ADB, it should do so in writing.
- 20.3 Any effort by the Bidder to influence ADB in ADB's bid evaluation, bid comparison or Contract award decisions may result in: (i) the rejection of the Bidder's bid; and (ii) disqualification of the concerned Bidder to bid for future procurement by ADB.
- 20.4 ADB will undertake a **post qualification** review of each Bidder based on

the qualification criteria indicated in *Clause 2*. Bids submitted by the Bidders who meet the qualification criteria will be considered by ADB for further bid evaluation. Bids, which do not meet the qualification criteria, will be rejected.

- 20.5 ADB will determine whether each bid submitted by a qualified Bidder is (i) properly signed; (ii) the same name of company invited to participate in the bidding; (iii) substantially responsive to the requirements of the bid documents; (iv) arithmetic errors in computation were made in the bids; and (v) the bids are otherwise generally in order. ADB may, based on factual justification and in consideration of requirements for competition and transparency, waive minor and/or administrative deficiencies in Bidders' submissions.
- 20.6 A bid that is not substantially responsive to the bidding documents or contains inadmissible reservations will be rejected. A bid will be rejected if it is determined to contain an omission or misrepresentation that is determined by ADB, to amount to an integrity violation of ADB's Anticorruption Policy.
- 20.7 Technical Bids will be evaluated based on a Pass-Fail evaluation framework established by ADB, with the Technical Bid Response Template provided in **Appendix 3** (refer to *Clause 4.5*). A substantially responsive bid is one that conforms to all terms, conditions and specifications of the bid documents without material deviation or reservation. A major deviation would normally occur when (i) the scope, quality of Goods, or performance of the Services offered substantially differ from the bid documents; (ii) the bid offer limits in any substantial way, ADB's rights or the Bidder's obligations under the Contract; or (iii) any rectification would unfairly affect the competitive position of other Bidders with substantially responsive bids. A major deviation will result in the rejection of the Bidder's bid.
- 20.8 The Technical Bids will be evaluated based on the delivery of the following Mandatory requirements:
- Mandatory Requirements:
- i. Be a Cisco certified reseller for Cisco's enterprise networking, data centers, and security products.
 - ii. Be in the Cisco reseller business for at least 7 years.
 - iii. Be capable of providing hardware, software and Professional Services.
 - iv. Have at least one Cisco Certified Internetworking Expert (CCIE) and one Cisco Certified Network Professional (CCNP) in-house.
 - v. Be able to offer highest discount rate off Cisco global price list for hardware, software, and services/subscription for Cisco's enterprise, data center, and security products.
 - vi. Be able to offer lowest rate for Professional Services.
- 20.9 If, after the examination of the terms and conditions and the technical

evaluation, ADB determines that the Bid is not substantially responsive in accordance with the Bidding Documents, it shall reject the Bid.

20.10 Only the Financial Bids of the post-qualified Bidders with technically compliant bids shall be considered in the Financial Bid evaluation. Bidders who do not conform to the specified technical requirements will be rejected as deficient and non-responsive Bids and will not be included in the financial evaluation.

20.11 A Pass-Fail System evaluation framework will be implemented.

21. Non-conformities, Errors, and Omissions

21.1 Provided that a Bid is substantially responsive, ADB may waive any non-conformity or omission in the Bid that does not constitute a material deviation.

21.2 Provided that a Bid is substantially responsive, ADB may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

21.3 In case of discrepancies between price given in words and that given in figure for the same item, the prices given in words shall prevail. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount stated in the Bid Form and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected. If the Bidder does not accept the corrected amount of bid, its bid will be considered as withdrawn, and the Bidder shall be disqualified to bid for any future projects of ADB.

F. Award of Contract

22. Award

Where, during bid evaluation, the price offered by the lowest evaluated, substantially responsive and complying Bidder are significantly higher than market references, ADB reserves its right to negotiate these prices with a view to obtain the best value for money for ADB.

23. ADB's Right to Accept or Reject Any Bid

ADB reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of Contract, without thereby

incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for ADB's action.

24. Notification of Award

- 24.1 ADB will notify the successful Bidders by letter (Letter of Acceptance of Bid) that its bid has been accepted (see **Appendix 8**).
- 24.2 The Letter of Acceptance of Bid, together with the Bid, will form a Contract between ADB and the successful Bidder, until the Contract/Purchase Order has been effected pursuant to *Clause 26*.

25. Performance Security

- 25.1 The successful Bidder shall post a Performance Security in favor of ADB in the amount of 10% of Purchase Order Amount issued to guarantee its faithful performance of the Contract. The Performance Security, payable in US Dollar *or any other easily convertible currency of ADB member countries*, shall be in the pro-forma attached herewith (see **Appendix 9**). The required Performance Security and other stipulated documents shall be furnished within fifteen (15) calendar days from the date the Bidder receives ADB's Purchase Order.
- 25.2 Failure of the successful Bidder to submit to ADB the required Performance Security shall constitute sufficient ground for annulment of the award and the disqualification of the Bidder from bidding in any or all future Contracts with ADB.

26. Execution of the Contract

- 26.1 The Bidder to whom the Contract/Purchase Order is awarded is required to enter into and execute a Contract Agreement (see **Appendices 11 to 12**) in accordance with the form, conditions and requirements in the Bid Documents, and to furnish the required Comprehensive General Liability Insurance (in the amount of ₱2,500,000.00 for each and every occurrence), and other stipulated documents within fifteen (15) calendar days from the date the Bidder receives ADB's Letter of Acceptance of Bid.
- 26.2 If the successful Bidder refuses or fails to enter into Contract Agreement within the stipulated time, the Bidder shall be disqualified to bid for any future projects of ADB.

27. Special Character of ADB

The Bidder's special attention is drawn to the special character of ADB as an international financial institution with status, privileges and immunities as established under the Charter and the Headquarters Agreement. The Bidder is advised to study these documents, copies of which are available from ADB's website, free of charge, in order to assess his or her rights and obligations under

the Contract. Provided is the link to ADB's Charter and Headquarters Agreement: <http://www.adb.org/documents/agreement-establishing-asian-development-bank-adb-charter>.

28. Confidentiality / Non-disclosure

- 28.1 The information contained in this bid documents, or accumulated through other written or verbal communications, is confidential. It is for information purposes only, and is not to be disclosed or used for any other purpose. All information contained herein is private and is protected by law.
- 28.2 Information received in response to this Bid Documents will be held in strict confidence, and will not be disclosed to any party other than ADB without written consent. A non-disclosure agreement can be arranged, if requested.

G. General Conditions of Contract

29. Termination for Default

ADB, without prejudice to any other remedy for breach of the Contract, by Notice of default sent to the successful Bidder, may terminate the Contract in whole or in part, if the successful Bidder, in the judgment of ADB has engaged in corrupt or fraudulent practices in competing for or in being awarded the Contract.

30. Payment

- 30.1 Payment for the Services will be made in accordance with the terms and mode of payment specified in the Contract issued by the ADB to the successful Bidder.
- 30.2 The ADB's standard policy is to pay for the Services by fund/electronic transfer within thirty (30) calendar days upon receipt of original invoice and confirmation by ADB that the Services are complete and accepted.



Asian Development Bank

Statement of Work (SOW)

Cisco Supply Framework Agreement

August 2017



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I. General Information

A. Purpose of the Document & Audience

1. This document describes requirements for Cisco hardware, software and professional services for use in Asian Development Bank's (ADB) information technology infrastructure. The document is intended for eligible resellers of Cisco's products, subscription and services.

B. Background

2. ADB is an international development organization whose mission is to reduce poverty in the region. ADB, established in 1966 and headquartered in Manila, is owned and funded by its 67 member countries of which 48 are from Asia Pacific region and the rest from other parts of the world. It partners with the governments, the private sector, non-government organizations, developing agencies, community-based organizations and foundations and sponsors poverty reduction and development related projects in the region. To further help its developing member countries improve their living conditions and quality of life, ADB has recently developed a long-term strategic framework, Strategy 2020, to target the following complementary strategic agendas: inclusive economic growth, environmentally sustainable growth, and regional integration. ADB's product portfolio comprises of loans, technical assistance, grants, advice and knowledge.

3. ADB maintains a global information technology network for delivering business applications and services to its representative offices (RO) and field offices (FO) serving the developing member countries (DMC). The ultimate objective of these applications and services is to facilitate the processing of ADB's product portfolio for new and existing development projects in the member countries. The communication network infrastructure is also used for voice calls, videoconferencing, collaboration, and all other services required for internal and external communications. The hardware and software of network infrastructure comprises of various routers, switches, firewalls, Wi-Fi access points, proxies, and accelerators from various market leaders. ADB's current standard for the routers, switches, Wi-Fi, network access control, and mobile device management is Cisco.

II. Requirements

A. Current & Desired Situation

4. Cisco is the current standard for network hardware and is therefore procured frequently by ADB's Office of Information Systems and Technology (OIST). At present, ADB procures Cisco related equipment, whether for large or small quantities, through limited sourcing among its accredited Cisco certified partners. ADB is interested to enter into a Supply Framework Agreement with a Cisco certified supplier that can provide all requirements for Cisco related



hardware and software for a period of five (5) years, subject to annual performance review and re-evaluation at the end of third (3rd) year.

B. Eligibility of Suppliers

5. ADB will look for the following qualifications in suppliers during its evaluation process:
 - a. The supplier must be a Cisco certified reseller for Cisco's enterprise networking, data centers, and security products.
 - b. The supplier must be capable of providing hardware, software and Professional Services.

C. Selection Criteria

6. The selection of the reseller would be based on the following criteria:
 - a. Ability to offer highest discount rate off Cisco global price list for hardware, software, and services/subscription for Cisco's enterprise, data center, and security products.
 - b. Ability to offer lowest rate for Professional Services.
 - c. Has at least one Cisco Certified Internetworking Expert (CCIE) and one Cisco Certified Network Professional (CCNP) in-house.
 - d. Years in operation: The firm must be in the Cisco reseller business for at least 7 years.

D. Response Submission

7. The proposal must contain the following:
 - a. Source of information and the link to Global Price List for all equipment
 - b. Discount Rate (less tax, less VAT), excluding freight cost
 - c. Equipment delivery lead time post Purchase Order issuance for each order
 - d. Cisco Channel Partner certification
 - e. Proof of in-house expertise (one CCIE and one CCNP)
 - f. Rate for the Professional Services
 - g. 3-year validity of discount level for Hardware, Software, Service/Subscription and Professional Services



E. Contract Duration

8. This SOW will be valid for five (5) years which may be renewed annually but subject to re-evaluation at the end of third (3rd) year. Discount level and Professional Services rate will be maintained for the 3-year duration.
9. The SOW is subject to change based on ADB's business requirements. In the event that additional requirements (hardware, software or Professional Services) are needed in the future, they will be drawn from the contract with pre-agreed prices.
10. Pre-agreed prices are applicable to current (hardware/software) models as well as newer and/or replacement model/part number.

F. SMARTNET for hardware purchased through the Supply Framework Agreement will be purchased for until September 2019.

**III. Appendices****Appendix A: History and forecast of Cisco equipment purchase****Procurement history:**

Component	2012	2013	2014	2015	2016
Hardware, Software, Support & Maintenance, Professional Services	USD 480,995.30	USD 407,222.22	USD 668,578.16	USD 764,456.34	USD 1,638,422.94

Forecasted Procurement:

Component	2017		2018		2019	
	Model	No. of Units	Model	No. of Units	Model	No. of Units
Routers	ASR 1001-X	2	ISR 4K	100		
Switches	Catalyst 2960-L	180	Cat 6500	2	Cat 3K	100
WLC	2504 WLC	40				
Access Points	Aironet 1800	150				
Cisco Prime Infrastructure Licenses	Virtual Appliance	2				
	Catalyst 6K	4				
	Catalyst 3K	300				
	Nexus 7K	2				
	ISR 2K	100				
	ISR 4K	2				
	Access Points	1000				
Professional Services	Deployment of Cisco Prime Infrastructure					

Appendix B: ADB offices
Headquarters: Manila, Philippines

REPRESENTATIVE OFFICES	ABBREVIATION
Germany	ERO
North America	NARO
Japan	JRO

FIELD OFFICES	ABBREVIATION
Afghanistan	AFRM
Armenia	ARM
Azerbaijan	AZRM
Australia	PLCO
Bangladesh	BRM
Bhutan	BHRM
Cambodia	CARM
China, People's Republic	PRCM
Fiji	SPSO
Georgia	GRM
India	INRM
Indonesia	IRM
Kazakhstan - Astana	KARM - Astana
Kazakhstan - Almaty	KARM - Almaty
Kyrgyz Republic	KYRM
Laos	LRM
Mongolia	MNRM
Myanmar- Nay Pyi Taw	MYRM - Nay Pyi Taw
Myanmar - Yangon	MYRM - Yangon
Nepal	NRM
Pakistan	PRM
Papua New Guinea	PNRM
Sri Lanka	SLRM
Tajikistan	TJRM
Thailand	TRM
Timor-Leste	TLRM
Turkmenistan	TKRM
Uzbekistan	URM
Vietnam	VRM

TECHNICAL BID FORM

CISCO SUPPLY FRAMEWORK AGREEMENT

(Date)

To: Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bid Documents;
- (b) We have examined and have no reservations to the General Conditions of Contract;
- (c) We understand and agree to be bound by ADB's Anticorruption and Integrity Policy;
- (d) We offer to provide the Services in conformity with the Bid Documents;
- (e) Our Bid shall be valid for a period of ninety (90) days from the date fixed for the bid submission deadline in accordance with the Bid Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We confirm that we are financially qualified and compliant to bid for this project in accordance with the minimum requirements for qualification of bidders for this project;
- (g) If our Bid is accepted, we commit to obtain a Performance Security in the amount of ten percent (10%) of the Purchase Order Amount for the due performance of the Contract;
- (h) We are not participating, as Bidders, in more than one Bid in this bidding process in accordance with the Bid Document;
- (i) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB;
- (j) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance of Bid, shall constitute a binding contract between us, until a formal Contract is prepared and executed; and
- (k) We understand that you are not bound to accept the lowest bid or any other bid that you may receive.

Very truly yours,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Bidder/Company)

(Business Address)

(Telephone Number / Facsimile Number)

(Email Address)

**Technical Bid Response Template
Cisco Supply Framework Agreement**

Appendix 3

Name of Bidder: _____

Name and Signature of Authorized Representative: _____

***Any bidder who fails to meet any of the Mandatory requirements will be disqualified.**

Item	Category	Requirements	Type	Can Bidder provide? (Indicate Yes or No) - Bidder should respond with a "Yes" or "No" in this column. A blank response will be deemed non-compliant to the requirement.	Provide a qualifying response with supporting details as needed
1	General Qualifications	The supplier must be a Cisco certified reseller for Cisco's enterprise networking, data centers, and security products.	Mandatory		Provide the Cisco Channel Partner certification.
2	Technical Requirements	The supplier must be capable of providing hardware, software and Professional Services.	Mandatory		(i) For hardware and software, provide the Cisco Channel Partner certification; and (ii) For Professional Services, provide a list of previous professional services engagement, indicating (a) client's name, (b) contact person and telephone number/email address, and (c) type of professional services rendered.
3	Technical Requirements	Has at least one Cisco Certified Internetworking Expert (CCIE) and one Cisco Certified Network Professional (CCNP) in-house.	Mandatory		Provide copies of CCIE and CCNP certification.
4	General Qualifications	The firm must be in the Cisco reseller business for at least 7 years.	Mandatory		Provide certification from Cisco on the number of years as reseller.

FORM OF FINANCIAL BID
CISCO SUPPLY FRAMEWORK AGREEMENT

(Date)

To: Asian Development Bank
 6 ADB Avenue
 Mandaluyong City
 1550 Metro Manila, Philippines

Gentlemen and/or Ladies:

1. Having examined the Bid Documents for the above project, I/We, the undersigned, offer to execute and complete the Services as described in and in conformity with the said Bid Documents at the following Contract Price. This includes the discount rate off Cisco global price list for hardware, software, services/subscription and professional services for Cisco's enterprise, data center and security products.

Description	Discount Rate
Hardware	
Software	
Service/Subscription	
Professional Services	
Equipment Delivery Lead Time post PO issuance	

*The discount rates for hardware, software, service/subscription and professional services are valid for three (3) years.

2. I/We undertake, if my/our Bid is accepted, to commence the Services on (Date) , and to complete and deliver the whole of the Services in accordance with the Contract.
3. If my/our Bid is accepted, I/we commit to obtain a Performance Security in the amount equal to ten percent (10%) of the Purchase Order amount, for the due performance of the requirements in the Contract. This guarantee shall be valid for not less than 60 days after the expiry of the Contract, or until you take it over in accordance with the Contract.
4. I/We agree to abide by this Bid for the period of 90 calendar days from the final date fixed for receiving the same, and it shall remain binding upon myself/us and may be accepted at any time before the expiration of that period.
5. If my/our Bid is accepted, I/we confirm that the rates submitted by myself/us in my/our Bid will be fixed and binding upon myself/us for the whole duration of the Contract in accordance with the said Conditions.

6. Unless and until a formal Contract is prepared and executed, and a satisfactory Performance Security is executed and delivered, this Bid, together with your written acceptance thereof, shall constitute a binding Contract between myself/us.
7. I/We understand that you are not bound to accept this Bid or any other bid, which you may receive.
8. Commissions or gratuities, if any, paid or to be paid by myself/us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, are listed below:

Name and Address of Agent	Amount and Currency	Purpose of Commission or Gratuities
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

Very truly yours,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Bidder/Company)

(Business Address)

(Telephone Number/Facsimile Number)

FORM OF SECRETARY'S CERTIFICATE

SECRETARY'S CERTIFICATE

I, (name of corporate secretary), being the Corporate Secretary of (name of the company of bidder), hereinafter referred to as the "Corporation", a corporation organized under the laws of the _____, with office address at (complete address of the company), do hereby certify, that the following resolution was unanimously approved in a meeting of the Board of Directors of Corporation held on (date of the meeting) at its principal office, to wit:

Board Resolution No. _____ Series of _____

RESOLVED, the (name of company) be, as it hereby is hereby, authorized to participate in the bidding for the Cisco Supply Framework Agreement, and in connection therewith the Corporation hereby appoints (name and designation of authorized person – same person who will sign the conforme below) as the duly authorized and designated representative of (name of company), who is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Corporation in the bidding.

The above resolution is now in full force and effect and that as of this date, no changes or amendments thereon have been made.

IN WITNESS WHEREOF, I have hereunto affixed my signature this (date) at (place).

Signature
(Name of corporate secretary)
Corporate Secretary

CONFORME:

Signature
(Name of authorized person)
Designation:
Company:

SUBSCRIBED AND SWORN to before me this _____, affiant exhibiting to be her/his Community Tax Certificate Number _____ issued on _____ at _____.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of _____.

SEAL AND SIGNATURE
NOTARY PUBLIC

BID SECURING DECLARATION FORM
CISCO SUPPLY FRAMEWORK AGREEMENT

(Date)

To: Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines

I, _____ (*Name of Authorized Officer*), as the duly authorized representative
of _____ (*Name of Company*), hereby declare as follows:

1. That we are submitting a quotation / bid for the Cisco Supply Framework Agreement;
2. That we shall not withdraw or modify our Bid after the closing time for submission of bids and before the end of the period of validity of Bid;
3. That we shall not influence ADB in its evaluation, comparison or Contract award decisions;
4. That within the stipulated number of days from the date ADB notifies us that we are the successful bidder, we shall submit a Performance Security in favor of ADB as indicated in the Letter of Acceptance of Bid (see Appendix 8); and
5. That in the event that we violate the preceding paragraphs 2, 3 and 4, we understand and accept that we shall be disqualified from bidding in any or all future contracts with ADB.

Sincerely,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Bidder/Company)

(Business Address)

Appendix 7 Joint Venture Data

FORM VI FINANCIAL DATA

A copy of the joint venture agreement must be attached to Form VI. In case the joint venture agreement is not acceptable to ADB, the joint venture may be requested to modify the agreement accordingly. Failure to submit a modified joint venture agreement within 21 days upon receipt by the Applicant of the request for modification will disqualify the Applicant for further consideration.

Names of all Partners of a Joint Venture
1. Lead Partner
2. Partner
3. Partner
4. Partner
5. Partner
6. Partner

Total value of annual sales turnover, in terms of items/work billed to clients, in US\$ equivalent, converted at the rate of exchange at the end of the period reported.

Annual Turnover Data for the Last Three Years (US\$ Equivalent)			
Partner	Year 1	Year 2	Year 3
1. Lead Partner			
2. Partner			
3. Partner			
4. Partner			
5. Partner			
6. Partner			
Totals			



Date: _____

Attention: _____

Sirs:

Subject: Letter of Acceptance of Bid
Cisco Supply Framework Agreement
— Contract No. ADB/OAS-20XX/XXX

With reference to the execution of the above Services, this is to inform you that the Asian Development Bank (hereinafter referred to as ADB) hereby accepts your bid as contained in your Bid Form dated _____ in accordance with the terms, provisions and stipulations contained in the documents collectively referred to as the “Bid Documents”.

The commencement date of this Contract shall be on _____. A pre-mobilization meeting will be scheduled by the Office of Information Systems and Technology. The original copies of the contract will be sent by mail. Please counter-sign and return the first set to ADB and retain the second set for your record. Please scan and send us the countersigned Contract immediately by email.

As provided in the Special Conditions of the Contract, please further submit the original copies of commercial requirements, within fifteen (15) calendar days from receipt of the Purchase Order, the performance security in the amount of _____ US Dollars (US\$_____) issued by a recognized bank; and, within fifteen (15) calendar days from receipt of this letter, the liability insurance with proof of payment.

Two sets of Contract Documents are attached for your signature.

Very truly yours,

Principal Director
Office of Administrative Services

PERFORMANCE SECURITY FORM*(from Contractor's Bank)*

To: ASIAN DEVELOPMENT BANK
 6 ADB Avenue
 Mandaluyong City
 Philippines

Dear Sir:

WHEREAS _____ (hereinafter called the "Contractor") and the Asian Development Bank have entered into, or will enter into a Contract (under Contract No. ADB/OAS-201X/XXX) for the Cisco Supply Framework Agreement (hereinafter called the "Contract");

WHEREAS the Contract provides that the Contractor shall furnish you with a Performance Security/Bank Guarantee by a recognized bank for the sum specified therein as security for fulfillment by the Contractor of its obligations under and in accordance with the Contract;

WHEREAS we have agreed to issue such a Performance Security/Bank Guarantee in your favor;

NOW THEREFORE we, *[bank's name]*, hereby irrevocably and absolutely affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total amount of (10% of the Purchase Order Amount _____ US Dollar) (US\$ _____), which we undertake to pay to you, upon your first written demand, without your having to assign any reason for such demand, and irrespective of whether or not there is any dispute between the Contractor and you in respect of any other matter and irrespective of whether or not such dispute, if any, has been settled, resolved, litigated or adjudicated.

This Security/Guarantee is effective from (_____) to five (5) years from the date the Contract is issued. This Security/Guarantee cannot be canceled without your express written approval.

The giving of time to the Contractor, or the neglect or forbearance by you in requiring or enforcing payment of the sum of US Dollar: (10% of the Purchase Order Amount _____ US Dollar) (US\$ _____), or other indulgence whether in relation to the Contract or otherwise, shall not, in any way, prejudice, affect, derogate, release or absolve us from our liability under this Security/Guarantee;

No change in organization or constitutional documents or in that of Asian Development Bank or the Contractor shall affect or impair our absolute liability herein.

Dated this _____ day of _____ 2016.

Signature and Seal of the Guarantor
 Name of Bank
 Address

--

Contract No. ADB/OAS- 20_____
Cisco Supply Framework Agreement

THIS CONTRACT ("Contract") is entered into this ____ day of _____ 20__ between the **ASIAN DEVELOPMENT BANK** ("ADB") and _____ Name _____ of the Contractor _____ ("Contractor").

WHEREAS ADB engaged in the procurement of services known as Cisco Supply Framework Agreement and Contractor has submitted a Bid or Proposal, which ADB has accepted.

ADB and the Contractor agree as follows:

1. Words and expressions shall have the meanings assigned to them in the Contract Documents indicated in Paragraph 2 below.

2. The following documents shall be deemed to form and be read and construed as part of this Contract ("Contract Documents"):

- | | |
|-------------------------------------|--------------|
| (a) Letter of Acceptance of Bid | - Appendix 1 |
| (b) Technical Bid Form | - Appendix 2 |
| (c) Special Conditions of Contract | - Appendix 3 |
| (d) General Conditions of Contract | - Appendix 4 |
| (e) Statement of Work | - Appendix 5 |
| (f) Form of Financial Bid | - Appendix 6 |
| (g) Technical Bid Proposal | - Appendix 7 |
| (h) Technical Bid Response Template | - Appendix 8 |
| (i) Prevention of Harassment | - Appendix 9 |

3. The Contract shall prevail over all other Contract Documents. In the event of any discrepancy or inconsistency among the Contract Documents, the documents shall prevail in the order listed above.

4. In consideration for the payments to be made by ADB to the Contractor, the Contractor agrees to provide the services to ADB, as specified in the Contract Documents.

5. ADB agrees to pay the Contractor for the provision of services the Contract Price or such other sum as may become payable at the times and in the manner prescribed in the Contract Documents.

IN WITNESS whereof the parties hereto have caused this Contract to be executed on the day, month and year indicated above.

Signed by _____

for and on behalf of ADB
in the presence of

Signed by _____

for and on behalf the Contractor
in the presence of

General Conditions of Contract (Contract No. ADB/OAS-201_/_)

The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, is a complete document expressing the rights and obligations of ADB and the CONTRACTOR.

The GCC shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the SCC.

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1. DEFINITIONS

1.1. In these General Conditions of Contract:

- (a) "ADB" refers to the Asian Development Bank, the organization purchasing the Services named in the SCC.
- (b) "ADB Headquarters" or "Headquarters" refers to the Headquarters of ADB in Manila, Philippines.
- (c) "Charter" refers to the Charter signed by member states establishing ADB.
- (d) "Contract" means the agreement that ADB and the CONTRACTOR entered into, as recorded in the Contract Form that the parties signed, including all attachments and appendices and all documents incorporated by reference therein.
- (e) "CONTRACTOR" refers to the party (includes individual and entity, whether public, quasi-public or private) that performs the services or performs the services and supplies the related goods using its own means, methods or manner of accomplishing the desired result pursuant to a contract with ADB and named in the SCC. This includes the contractor's personnel, representatives, successors and permitted assignees.
- (f) "Contracts Administration" or "CA" refers to the cluster in the Procurement and Contracts Administration Unit, Office of the Principal Director, Office of Administrative Services that ensures ADB and the CONTRACTOR comply with their obligations under the Contract.
- (g) "Contract Documents" consists of the Contract and its Appendices, including but not limited to, the Work Performance Statement, Technical Bid Requirements, Technical and Financial Bid Proposals, Fee Schedule, Secretary's Certificate, Certificate of Site Inspection, Letter of Acceptance of Bid and Notice to Proceed, List of Facilities and Equipment to be provided by ADB, List of Equipment to be Provided by the CONTRACTOR, Performance Security, List of CONTRACTOR's Personnel, ADB's Fire, Safety and Security Regulations, relevant Administrative Orders, Good Social Management Certificate, including any amendments thereto.
- (h) "Contract Price" means the price stated in the SCC payable to the CONTRACTOR for the full and proper performance of its contractual obligations.
- (i) "Day" means calendar day.
- (j) "Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
- (k) "Delay" means postponement in the completion of a service/task in accordance with the terms and conditions set forth in the Contract.

- (l) "Effective Date" of the contract will be the date provided in the Notice to Proceed to be issued by ADB. Performance of all obligations shall be reckoned from the Effective Date of the Contract.
- (m) "*Force Majeure*" or "Fortuitous Event" – refers to events, which the CONTRACTOR could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the CONTRACTOR.
- (n) "GCC" means the General Conditions of Contract.
- (o) "Headquarters Agreement" refers to the Agreement between the Asian Development Bank and the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank.
- (p) "IPC" or "Institutional Procurement Committee" – the committee that the Director, Procurement Division 1 of the Operations Services and Financial Management Department chairs and is convened to oversee institutional procurement of Services and delivering Related Goods.
- (q) "Notices" – refers to all written communication required under the Contract to be exchanged between the Parties, including but not limited to, requests, permissions or consent.
- (r) "OAOD-SBG" refers to Security, Business Continuity and Governments Unit of ADB.
- (s) "OAOD" refers to the Office of the Principal Director in OAS.
- (t) "OAPC" refers to the Procurement and Contracts Administration Unit in OAS.
- (u) "OAPC/CA" refers to the Contracts Administration in OAPC.
- (v) "OAS" refers to the Office of Administrative Services of ADB.
- (w) "Party" or "Parties" refer to either or both ADB and the Contractor.
- (x) "Project Site," where applicable, means the place or places named in the SCC.
- (y) "Related Goods" means those goods necessarily required and or resulting from providing the Services, such as transportation and insurance, and any other incidental services, such as installation, commissioning, testing, provision of technical assistance, training, and other such obligations of the CONTRACTOR covered under the Contract.
- (z) "SCC" refers to the Special Conditions of Contract.
- (aa) "Service Level Agreement" or "SLA" – refers to terms agreed between the Parties to determine satisfactory performance under the Contract.
- (bb) "Services" refers to the service specifically described in the SCC.

(cc) “User Unit” refers to the organizational unit in ADB which requested the Services and related goods, and is responsible for receiving and accounting for the Services and related goods and/or administering and monitoring performance of the services in accordance with the work-performance standards stipulated in the Contract.

(dd) “Verified Report” refers to the report submitted by the Head, OAPC in coordination with the User Unit, to the appropriate approving authority reporting the existence of grounds or causes for termination and explicitly recommending the issuance of a Notice to Terminate.

2. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF ADB

- 2.1. The CONTRACTOR acknowledges the special character of ADB as an international financial institution with status, privileges and immunities provided under the Charter and the Headquarters Agreement. None of the provisions of this Contract shall derogate from the provisions of the Charter and the Headquarters Agreement. To better assess its rights and obligations under the Contract, the CONTRACTOR can view copies of the Charter and the Headquarters Agreement from ADB website: www.adb.org.
- 2.2. The CONTRACTOR recognizes that under Article 56(1) of the Charter and Section 34 of the Headquarters Agreement, ADB, its property, operations and transactions are exempt from taxation and any obligation for the payment, withholding or collection of any tax or duty. The CONTRACTOR shall be solely responsible for payment of taxes on its income.
- 2.3. The CONTRACTOR and ADB shall explore alternative arrangements to implement the Contract, if any tax or duty other than taxes on net income is levied or if there is an attempt to levy any such duty or tax in connection with the performance of the Contract.

3. GOVERNING LAW AND LANGUAGE

- 3.1. Unless otherwise specified in the SCC, the Contract shall be governed and interpreted according to Philippine law, subject to the privileges and immunities accorded to ADB under the Charter and the Headquarters Agreement.
- 3.2. The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning and/or interpretation of the Contract, unless otherwise specified in the SCC. Notices and other correspondences pertaining to the Contract that the parties would exchange shall likewise be in English.

4. NOTICES AND COMMUNICATION

- 4.1. Notices and communication required under the Contract, including, but not limited to, requests, permissions or consent, shall be in writing. Notices and communication may be personally exchanged, sent in electronic format or by traditional means of communication such as registered mail, telex, telegram, or facsimile.

- 4.2. Notices shall be effective when sent to the address specified in the SCC and personally received by the addressee or constructively through the addressee's duly authorized representative. Notices sent by registered mail shall be effective on the date of delivery, as shown in the return card for registered mail or the postmaster's certification. Otherwise, notices sent by telex, facsimile or similar means shall be effective upon successful transmission to the Party in accordance with the contact details specified in the SCC or on the notice's effective date, whichever is later.

5. AUTHORIZED REPRESENTATIVE

- 5.1. For purposes of giving Notices or communicating with each other, the contact details and authorized representative of the Parties shall be as indicated in the SCC. A Party may change or update its contact details for Notice purposes by duly notifying the other Party in advance, following the provisions listed in the SCC.
- 5.2. Orders, directives, and instructions given on behalf of ADB to the CONTRACTOR shall be communicated by the Principal Director, OAS, or an officer duly designated under ADB's rules and notified in advance to the CONTRACTOR under the SCC.
- 5.3. The Head of the User Unit is the designated officer in charge of monitoring the CONTRACTOR's performance and shall recommend, among others, proper disposition of technical issues in implementing the Contract. Communications regarding these technical issues shall be addressed to the Head of the User Unit in ADB.
- 5.4. The CONTRACTOR shall not take from unauthorized ADB staff any order beyond those related to the Services specified in the SCC. Questions regarding the authority of orders, directives or instructions given in the name of ADB should be reported to the Head of the User Unit.

6. ADB'S ANTICORRUPTION POLICY

- 6.1. ADB's Anticorruption Policy requires the CONTRACTOR to observe the highest standard of ethics during the procurement and execution of this Contract. The Policy may be obtained at www.adb.org. Any violation of the Anti-Corruption policy will result in termination of the Contract and sanctions being imposed on CONTRACTOR, including being declared ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities.
- 6.2. Pursuant to its Anticorruption policy, ADB:
 - (a) will not award a procurement contract to a winning bidder that has directly or indirectly engaged in any corrupt, fraudulent, collusive or coercive practice in competing for the contract in question;
 - (b) may suspend the procurement process at any stage when there is sufficient evidence to support a finding that an employee, agent or representative of the bidders, service contractors and concessionaires has engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing an ADB-financed contract;

(c) will sanction a bidder, service contractor, concessionaire or its successor, if ADB at any time determines that such bidder, service contractor, concessionaire or its successor has, directly or indirectly, engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing, any contract for the institutional procurement of services. Sanctions include, but are not limited to, declaring such bidder, service contractor, concessionaire or its successor ineligible to participate in ADB-financed activities indefinitely or for a stated period of time except under such conditions as ADB deems appropriate; or reimbursement to ADB of costs associated with investigations and proceedings

(d) will take appropriate actions to manage conflicts of interest including, but not limited to, rejecting a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.

6.3. The CONTRACTOR agrees to be bound by ADB's Anticorruption Policy as outlined above.

6.4. The CONTRACTOR shall permit ADB to inspect the CONTRACTOR's accounts and records relating to the performance of the CONTRACTOR and to have them audited by auditors appointed by ADB, if so required by ADB.

7. CONFLICT OF INTEREST

7.1. The CONTRACTOR shall take appropriate steps to ensure that neither the CONTRACTOR nor its Personnel is placed in a position where, in the reasonable opinion of ADB, there is or may be an actual or potential conflict between the pecuniary or personal interests of the CONTRACTOR and performance of the CONTRACTOR's obligations under the Contract. The CONTRACTOR shall disclose to ADB in the manner and form prescribed in the SCC full particulars of any such conflict of interest which may arise.

7.2. ADB shall undertake measures to manage actual or potential conflicts of interest, including termination of the Contract, as circumstances may warrant. This is without prejudice to other remedies or rights of action which shall have accrued or shall thereafter accrue to ADB under the Contract.

7.3. During and twelve [12] months after the Contract Period, the Parties shall not employ or offer employment to any of the other Party's personnel who have been associated with the procurement and/or management of the Contract without that other Party's prior written consent.

8. SCOPE OF THE CONTRACT

8.1. The Services to be provided are specified in the SCC.

8.2. The Services shall also include Related Goods or items that are not specifically mentioned but are necessarily required to complete performance of the Contract, as if such items were expressly mentioned herein. The Related Goods and additional requirements for complete delivery of this Contract shall be provided in the SCC.

8.3. In case of discrepancy, the provisions of this Contract shall prevail over the Contract Documents enumerated. In interpreting the provisions of this Contract,

ADB and the CONTRACTOR may further refer to the applicable Invitation to Bid and the Bid Documents of ADB.

9. CONTRACT PRICE

- 9.1. For and in consideration of the CONTRACTOR's full and faithful performance of the Services specified in the SCC during the Contract Period in Paragraph 10 below, ADB shall pay the CONTRACTOR the Contract Price stated in the SCC. The Contract Price shall not vary from the price that the CONTRACTOR quoted in its Bid, except for any change resulting from a Change Order issued in accordance with Subparagraph 9.5 below.
- 9.2. The Contract Price is payable on the date and in the manner provided in the SCC.
- 9.3. Unless otherwise specified in the SCC, ADB and the CONTRACTOR agree that the Contract Price is a firm and fixed lump sum. The CONTRACTOR warrants that the Contract Price tendered already covers actual and contingent costs that the CONTRACTOR would incur in performing the Services, including additional compulsory statutory benefits and social contributions that the CONTRACTOR's employees may be legally or officially declared entitled to after execution of this Contract.
- 9.4. The Parties may agree to adjust the Contract Price following the price adjustment provisions specified in the SCC, as applicable. However, the CONTRACTOR shall not demand price adjustments due to fluctuations in the foreign exchange rate, increase in CONTRACTOR'S actual or contingent costs, or such other similar causes.
- 9.5. Should ADB require additional services not covered by the Work Performance Statement referred to in the SCC, ADB shall pay the CONTRACTOR for such contingency services in terms of person-hours and/or materials at the rates/prices that ADB and the CONTRACTOR shall negotiate and agree when the need arises.
- 9.6. When the performance of the CONTRACTOR falls below the satisfactory standards provided in ADB's Contractor's Performance Evaluation Report, Work Performance Standards (WPS), Work Performance Measurement (WPM) or Service Level Agreement (SLA) referred to in the SCC, ADB shall compute the corresponding deduction/s to be applied to the total Contract Price following the Scheduled Rate of Deductions referred to in the SCC. ADB shall deduct the aforementioned amount from the CONTRACTOR's succeeding payments, as applicable.

10. CONTRACT PERIOD

- 10.1. Unless sooner terminated pursuant to Paragraphs 22 to 25 below, the Contract shall remain valid for the period stated in the SCC. The CONTRACTOR shall deliver the Services from the Starting Date until the Completion Date indicated in the SCC.
- 10.2. The CONTRACTOR gives ADB the option to unilaterally renew this Contract for another period of at least one [1] year, provided ADB sends a written notice to the CONTRACTOR at least 30 calendar days before the expiration of the

initial or extended term of the Contract. All the terms and conditions, except the Contract Period and Contract Price when successfully renegotiated before expiration of the initial or extended term, shall apply during the renewed contract period.

- 10.3. The CONTRACTOR may submit to ADB a written proposal to adjust the Contract Price for the renewed contract period at least 30 calendar days before the expiration of the initial or extended term of the Contract or within 10 calendar days from receipt of a notice to renew from ADB. The contract price or rates shall remain unchanged for the renewed contract period, if ADB exercises its option to renew, and the CONTRACTOR does not submit to ADB a proposal to increase the Contract Price within 10 calendar days from receipt of a notice to renew from ADB.
- 10.4. If ADB and the CONTRACTOR fail to agree on a new Contract Price for the renewed contract period before the initial or extended term of this Contract expires, then the Contract shall be deemed extended for a period of up to four [4] months, at the election of ADB, under the same terms and conditions. ADB shall send to the CONTRACTOR three [3] days before expiration of the Contract a written notice of provisional extension indicating the period of provisional extension. During the period of provisional extension, the CONTRACTOR and ADB shall continue to negotiate in good faith and agree on a new Contract Price.

11. CONTRACTOR'S OBLIGATIONS

- 11.1. The CONTRACTOR shall perform the Services according to ADB's requirements specifically described in the SCC and other contract documents [as applicable] during the Contract Period and in consideration for the payment of the Contract Price.
- 11.2. The CONTRACTOR shall further deliver such Related Goods that necessarily result from performing the Services, if there are any.
- 11.3. Timely provision of the Service, including commencing the supply of the Services within the time agreed or on a specified date, shall be of the essence of the Contract. The CONTRACTOR shall perform the CONTRACTOR'S obligations according to the Performance Standards provided in the SCC.

12. SECURITY AND INSURANCE

Performance Security

- 12.1. To secure performance of its obligations under the Contract, the CONTRACTOR shall post sufficient security worth at least 10% of the contract value, as OAPC or the IPC may fix and indicate in the SCC. The proceeds of the Performance Security shall be payable to the ADB as compensation for any loss resulting from the CONTRACTOR's failure to complete its obligations under this Contract.
- 12.2. The Performance Security shall be denominated in Philippine Pesos/US Dollars, or in a freely convertible currency acceptable to ADB. The Performance Security shall be in one of the following forms:

- (a) Cash, cashier's check, manager's check, or bank draft;
 - (b) Bank guarantee or an irrevocable stand-by letter of credit issued by a reputable bank in Manila, Philippines or abroad and acceptable to ADB;
 - (c) Sovereign guarantee in the amount of one hundred percent (100%) of the Contract Price; or
 - (d) Such form as may be specified in the SCC.
- 12.3. The CONTRACTOR shall submit the performance security within fifteen (15) calendar days from receipt of the Notice of Award from ADB, unless otherwise specified in the SCC but in no case later than the signing of the contract by both parties.
- 12.4. Unless otherwise specified in the SCC, ADB shall discharge and return the performance security to the CONTRACTOR not later than thirty (30) days following the date of complete performance of the CONTRACTOR's obligations under the Contract, including warranty obligations, and upon issuance by the ADB of a certification to that effect.
- 12.5. ADB shall have the right to unilaterally call the Performance Security when ADB determines that:
- (a) The CONTRACTOR, in violation of or contrary to its warranties under this Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under this Contract; or
 - (b) The CONTRACTOR breached the Contract and failed to remedy the breach, if ADB deems such breach remediable, within seven [7] calendar days from receipt of notice from ADB.

General Liability Insurance and Indemnity

- 12.6. Before commencing performance, the CONTRACTOR shall be required to acquire Comprehensive General Liability Insurance taking into account such conditions acceptable to ADB, including, but not limited to the following:
- (a) The CONTRACTOR shall be liable for and shall indemnify and hold ADB harmless against the costs of claims against ADB arising out of injury to or death of any person, or any loss of or damage to property, including the property of ADB, due to the negligence of the CONTRACTOR or person's acting for the CONTRACTOR.
 - (b) The face value of the insurance shall not be less than Pesos Two Million Five Hundred Thousand (₱2,500,000.00) for each occurrence, and the insurance shall be automatically renewed after the face value has been expended and/or validity has expired.

Good Social Management (GSMC)

- 12.7. The CONTRACTOR shall perform its obligations under this Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders of competent government agencies or

authorities concerning the employees of the CONTRACTOR engaged in performing the Services.

- 12.8. The CONTRACTOR shall submit to ADB the Good Social Management Certificate [*Ref. to Appendix XX: Form of Good Social Management*] within fifteen calendar days from the effective date of the Contract, which shall remain valid during the effectivity of the Contract, as indicated in the SCC.
- 12.9. The CONTRACTOR shall indemnify and hold ADB free and harmless from any and all claims made by the CONTRACTOR's personnel under Philippine labor laws and other related legislation, including but not limited to, the minimum wage law.

General Conditions for Performance Security, Insurance and GSMC

- 12.10. The CONTRACTOR shall furnish evidence that the securities, insurance and/or GSMC were taken at the time required and continues to be in effect before executing the Contract; during the Contract Period and after termination for a period specified in the SCC. The CONTRACTOR shall deposit with ADB a copy of the required GSMC, securities, insurance policy/ies and receipts for payment of the corresponding premium, as applicable, within the time required above.
- 12.11. The CONTRACTOR shall obtain and maintain such GMSC, insurance and/or performance securities as the Parties may agree, as indicated in the SCC
- 12.12. When the CONTRACTOR fails to submit, validate and/or renew any or all of the following contract requirements, namely: (a) Performance Security, (b) Comprehensive General Liability Insurance and (c) Good Social Management Certificate, ADB reserves the right to withhold payment attributed to the Contract Price until the aforesaid requirement/s is/are provided.
- 12.13. The CONTRACTOR shall not pass on under whatever form the penalty referred to in Subparagraph 12.12 above or any part thereof to its employees.
- 12.14. OAPC/CA, in coordination with the User Units, shall monitor compliance with these requirements.

13. CONTRACTOR'S UNDERTAKING

- 13.1. The CONTRACTOR shall immediately notify ADB in writing when:
- (a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;
 - (b) any person or entity acquires directly or indirectly the beneficial ownership of equity securities and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR, or otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR;
 - (c) the CONTRACTOR is dissolved; applies for insolvency or bankruptcy; or otherwise admits in writing its inability to pay its outstanding obligations;

- (d) the CONTRACTOR is administratively or judicially declared insolvent or bankrupt, placed under receivership, administration, rehabilitation or liquidation;
- (e) the CONTRACTOR's financial condition becomes significantly unstable and threatens to jeopardize the CONTRACTOR's ability to perform its obligations under the Contract;
- (f) the CONTRACTOR loses any license or authorization required to perform its obligations under the Contract; or
- (g) the CONTRACTOR faces any event beyond the control of the CONTRACTOR or a situation that makes it impossible for the CONTRACTOR to carry out its obligations under this Contract.

ADB and the CONTRACTOR shall explore alternative arrangements to ensure full performance of this Contract under any or all of the above circumstances.

- 13.2. Machines or equipment that ADB issues to the CONTRACTOR for free, as indicated in the SCC, shall remain the property of ADB; and ADB may recover them from the CONTRACTOR at any time. The CONTRACTOR shall not, under any circumstances, have a lien or any other interest on such machines or equipment; and the CONTRACTOR shall at all times possess them only as fiduciary agent and bailee of ADB. The CONTRACTOR shall not commingle the machines or equipment with its own, and shall accordingly advise all sub-contractors and other interested third parties of ADB's ownership of such machines or equipment.
- 13.3. The CONTRACTOR shall compensate ADB for the loss of or damage to machines or equipment that ADB has provided to the CONTRACTOR when ADB finds that the loss or damage resulted from the willful act or gross negligence of the CONTRACTOR's personnel. Upon expiration or termination of the Contract, the CONTRACTOR shall immediately return, without need of demand, the machine(s)/equipment that ADB had supplied.
- 13.4. The CONTRACTOR shall, at all times, provide ADB with an adequate number of suitably qualified and experienced managerial, service and support staff, as appropriate, to perform the Services and/or deliver the Related Goods in accordance with the Contract documents. The CONTRACTOR shall supervise and control the CONTRACTOR's personnel at all times, but ADB may recommend re-assignment of CONTRACTOR's personnel when ADB finds their qualifications and training are inconsistent with the personal and professional qualifications agreed with the CONTRACTOR.
- 13.5. The CONTRACTOR shall, at its own expense, provide personnel performing the Services and/or delivering the Related Goods with uniforms acceptable to ADB. Such uniforms shall afford adequate protection from the usual working hazards encountered by the CONTRACTOR's personnel; distinctly identify the CONTRACTOR's personnel so that it is clear that they are not ADB personnel; and be neat and worn properly at all times by the CONTRACTOR's personnel during the performance of the CONTRACTOR's obligations under this Contract.
- 13.6. The CONTRACTOR shall ensure that the CONTRACTOR's personnel behave according to generally acceptable standards in performing the Services and/or delivering the Related Goods under the Contract. The

CONTRACTOR shall further require its personnel to comply with ADB's safety and security regulations and other regulations concerning the movement and conduct of persons on ADB premises, including but not limited to, the requirement to wear appropriate identification cards while on ADB premises.

- 13.7. ADB reserves the right to refuse admittance to or remove from ADB Premises CONTRACTOR's personnel who, in ADB's judgment, are under the influence of alcohol or other drugs or, for any reason, are deemed incapable of safely and reliably performing assigned work or whose behavior does not conform to generally accepted standards.
- 13.8. CONTRACTOR's personnel who commit an offense on ADB Premises shall be removed from ADB Premises and/or surrendered to local law enforcement authorities. For this purpose, the CONTRACTOR recognizes the authority of OAOB-SBG to summon CONTRACTOR's employees for investigation. Such offenses include, but are not limited to, the following:
 - (a) Theft/Pilferage. Removing or attempting to remove from ADB Premises, without Gate Pass or authority to do so, ADB properties, regardless of the condition or value of such property; or stealing personal properties while on ADB Premises.
 - (b) Damage or Disruption. Deliberately or through culpable negligence disrupting ADB operations, and/or otherwise causing damage to or destroying ADB's property.
 - (c) Drunkenness/Alcoholism. Consuming intoxicating beverages on ADB Premises or reporting for work under the influence of alcohol.
 - (d) Using Prohibited Drugs. Includes possessing, pushing, consuming or otherwise using prohibited drugs, hallucinogenic substances or narcotics on ADB Premises.
 - (e) Gambling. Gambling in any form while on ADB Premises.
 - (f) Violence. Using force, physical assault, coercion, threat, intimidation, extortion, bribery, or engaging in other unlawful activities with ADB or non-ADB personnel for any purpose whatsoever.
 - (g) Possessing Firearms and/or other deadly weapons. Carrying firearms, licensed or unlicensed, and/or other deadly weapons while on ADB Premises.
- 13.9. OAOB-SBG shall issue identity cards for the CONTRACTOR's employees. The CONTRACTOR shall ensure that terminated or separated personnel return the identity cards to ADB not later than their last working day.
- 13.10. The CONTRACTOR's personnel are urged to remain within the location(s)/area(s) where they are authorized to be and/or are assigned. However, the CONTRACTOR's personnel may use ADB's cafeteria for their normal breakfast or lunch (12:30PM to 1:30PM only) while on duty. The CONTRACTOR's personnel should leave ADB Premises within a reasonable time after completing their daily functions.

- 13.11. The CONTRACTOR shall not pay any commissions, or fees; grant any rebates or give gifts or favors; or otherwise enter into any financial or business arrangements with ADB personnel or their dependents during the effectivity of the Contract.
- 13.12. In rendering the Service, the CONTRACTOR shall not unlawfully discriminate against ADB personnel either directly or indirectly on the basis of race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.
- 13.13. The CONTRACTOR shall, when working on the Premises, perform its obligations under the Contract according to ADB's environmental policy to, among others, conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 13.14. The CONTRACTOR shall comply with health and safety measures of ADB. The CONTRACTOR shall promptly notify ADB of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. ADB shall promptly notify the CONTRACTOR of any health and safety hazards which may exist or arise on ADB's premises and which may affect the CONTRACTOR in performing its obligations under the Contract.
- 13.15. The CONTRACTOR shall notify ADB immediately of any incident occurring in connection with or as a result of performing its obligations under the Contract on ADB premises, particularly where the incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.16. The CONTRACTOR shall give notices and obtain certificates, permits, and other documents required under applicable laws, regulations and decrees and necessary to perform the Services under the Contract.
- 13.17. The CONTRACTOR is an independent contractor of ADB. The Contract shall not nor be deemed to create the relationship of employer and employee, master and servant, or principal and agent between ADB and the CONTRACTOR or the CONTRACTOR's employees, agents or any other persons engaged by the CONTRACTOR to perform its obligations under this Contract. Accordingly, neither Party shall be authorized to act in the name or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of the Contract.

14. PERFORMANCE STANDARDS

- 14.1. To confirm the continued adequacy of the Service and/or compliance with the required standards, the CONTRACTOR shall allow ADB to test and/or evaluate the Service regularly or randomly during normal business hours on reasonable notice. The CONTRACTOR or its subcontractor(s) shall furnish all reasonable facilities and assistance, including access to drawings and production data and other relevant documents at no cost to ADB. Details of the tests and/or evaluation that ADB requires, if there are any, shall be specified in the SCC.

- 14.2. The ADB may reject the Service when it is evaluated to be inadequate or not conforming to the specifications referred to in the SCC. ADB shall ask the CONTRACTOR to either rectify or modify/improve the Service, as necessary and at no cost to ADB, to meet the required standard.
- 14.3. The CONTRACTOR's consent to the testing and/or evaluation of the Service or inspection of the Related Goods or any part thereof shall not release the CONTRACTOR from its warranties or other obligations under the Contract.

15. SERVICE LEVEL AGREEMENT [SLA]

- 15.1 To achieve and maintain a high level of performance and where applicable, ADB and the CONTRACTOR shall execute an SLA that sets their mutual expectations, specifies the aspects of delivery of the Goods and Related Services under the Contract, and identifies indicators to measure the CONTRACTOR's level of performance.
- 15.2 The SLA between ADB and the CONTRACTOR may include conditions for incurring service level credits or earning incentives. At least 80% of the total service level incentives shall be distributed among deserving personnel of the CONTRACTOR.
- 15.3 The CONTRACTOR shall report to ADB, as necessary, actual use and/or disposition of service level incentives.

16. WARRANTIES AND REPRESENTATIONS

- 16.1. The CONTRACTOR warrants that it has full capacity, authority and consent, including the consent of its parent company, where applicable, and that it possesses the necessary licenses, permits, and power to execute and perform its obligations under the Contract. The CONTRACTOR further warrants that the Contract is executed by a duly authorized representative of the CONTRACTOR.
- 16.2. As of the Commencement Date, all information contained in the CONTRACTOR's Bid remains true, accurate and not misleading, except those that the CONTRACTOR may have specifically disclosed in writing to ADB before executing the Contract;
- 16.3. To the best of the CONTRACTOR's knowledge and belief, no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, pending or being threatened against the CONTRACTOR or any of its assets that could materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract.
- 16.4. The CONTRACTOR is not subject to any contractual obligation that would materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract; nor has the CONTRACTOR done or omitted to do anything that could materially and adversely affect its assets, financial condition or position as a going business concern.
- 16.5. The CONTRACTOR has not filed nor is it facing proceedings for winding up its business or for dissolution, insolvency, bankruptcy, or the appointment of a receiver, liquidator, administrator or similar officer in relation to any of the

CONTRACTOR's assets or revenue. The CONTRACTOR expressly warrants its financial viability and shall permit ADB to inspect the CONTRACTOR's accounts, financial statements and other records relevant to the performance of the CONTRACTOR under the Contract, or otherwise have these accounts and records audited externally, as ADB may deem necessary.

- 16.6. The CONTRACTOR has undertaken all financial accounting and reporting activities required under the generally accepted accounting principles that apply to the CONTRACTOR and in the country where it is registered and has complied with applicable securities and tax laws and regulations.
- 16.7. The CONTRACTOR further warrants that Related Goods supplied under this Contract have no defect/s arising from design, materials, workmanship; or damage resulting from any act or omission of the CONTRACTOR, or those that may develop under normal use of the Related Goods.
- 16.8. To ensure that the CONTRACTOR would correct or cause the correction of all defects, the CONTRACTOR extends the warranty against defects for a minimum period of three (3) months for supplies and/or one (1) year for equipment, counted after complete performance of the Contract or other such period as may be specified in the SCC. When applicable, the extended warranty shall be secured by, at the CONTRACTOR's option, retention of at least ten percent (10%) of every progress payment, or a special bank guarantee of at least ten percent (10%) of the total Contract Price, or such amount as may be specified in the SCC. The security shall be released only after the lapse of the extended warranty period, after the Related Goods provided are confirmed to be free from patent and latent defects, and all the conditions imposed under the Contract have been fully met.
- 16.9. The CONTRACTOR shall further be liable for implied warranties under applicable laws.
- 16.10. ADB shall promptly notify the CONTRACTOR in writing of any claims arising under any or all of the express and implied warranties provided in the Contract. Upon receipt of such notice, the CONTRACTOR shall, within the period specified in Subparagraph 16.8, repair or replace the defective Related Goods or parts thereof, without costs to ADB.
- 16.11. If the CONTRACTOR, after notice, fails to remedy the defect(s) within the period specified in Subparagraph 16.8, ADB may take remedial action, as necessary, at the CONTRACTOR's risk and expense and without prejudice to any other rights which ADB may have against the CONTRACTOR under the Contract and other applicable laws.

17. ADB'S RESPONSIBILITIES

- 17.1. ADB shall pay the Contract Price, according to the agreed terms and manner of payment therein and subject to the following conditions:
 - (a) Unless otherwise specified in the SCC payments shall be made only after the Head of the User Unit certifies that the Services were evaluated and found to have been performed according to the terms of the Contract.
 - (b) Except with the prior approval of Head of the User Unit, no payment shall be made for Services not yet performed under this Contract. At the

election of the CONTRACTOR, ten percent (10%) of the amount of each payment may be retained by ADB to cover the CONTRACTOR's warranty obligations described in Paragraph 15 above.

(c) The CONTRACTOR's request(s) for payment shall be made to ADB in writing; accompanied by an invoice describing the Services performed and/or Related Goods delivered and documents required in the SCC; and upon fulfillment of other obligations stipulated in the Contract.

(d) ADB shall pay promptly and not later than thirty (30) days after the CONTRACTOR submits an invoice or claim. The CONTRACTOR shall accept payments as full satisfaction of the CONTRACTOR's entire claim arising out of or in connection with the Contract.

(e) The CONTRACTOR shall submit such documents supporting the CONTRACTOR's invoice or statement of account, as ADB may reasonably require.

(f) Unless otherwise agreed with the CONTRACTOR, ADB shall remit payment of the Contract Price by electronic transfer. The CONTRACTOR shall provide ADB the CONTRACTOR's bank details such as bank name, bank address/branch, account name, and account number on its invoices or request for payment.

- 17.2. When performance of the obligations in the Contract requires the CONTRACTOR to obtain permits, approvals, or import and other licenses from local public authorities and the CONTRACTOR requests ADB's assistance in this regard, ADB may exert best efforts to assist the CONTRACTOR in completing such requirements in a timely and expeditious manner.

18. DELAY

- 18.1. Performance of the Service and/or delivery of the Related Goods shall be made by the CONTRACTOR according to the time schedule that ADB has provided in the SCC.
- 18.2. If the CONTRACTOR or its Subcontractor(s) encounters conditions impeding timely performance of the Service and/or delivery of the Related Goods, the CONTRACTOR shall notify ADB in writing of the fact of the delay, its likely duration and cause(s) within three (3) days of its occurrence. ADB shall evaluate the situation and advise the CONTRACTOR if the time for performance can be extended.
- 18.3. Delay in performing the obligations under the Contract shall render the CONTRACTOR liable for liquidated damages provided below, unless ADB extends the time of performance or when ADB determines that the delay was due to *Force Majeure*, as defined below and subject further to the conditions in the Contract.

19. LIQUIDATED DAMAGES

- 19.1. If the CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in this Contract, ADB shall deduct from

the Contract Price, Liquidated Damages equivalent to a percentage of the Contract price for every week of delay or part thereof until actual delivery or performance. The actual rate and factor of deduction and the maximum allowable deduction are specified in the SCC.

- 19.2. Liquidated damages shall be imposed without prejudice to other remedies under this Contract and under applicable laws. Once the maximum cumulative amount of Liquidated Damages provided in the SCC is reached, ADB may consider terminating the Contract pursuant to Paragraph 22 below.

20. FORCE MAJEURE

- 20.1. Neither Party shall be liable to the other for any delay in performing, or failure to perform, its obligations under the Contract when the delay or failure is caused by *Force Majeure* or fortuitous event, as defined in Paragraph 1 above. In these cases, ADB shall not call the CONTRACTOR's Performance Security, impose liquidated damages, or terminate this Contract for default.
- 20.2. In cases of *Force Majeure*, the CONTRACTOR shall promptly notify ADB in writing of the relevant circumstances. Unless otherwise directed by ADB in writing, the CONTRACTOR shall continue performing as much of its obligations as reasonably practical, and undertake reasonable alternative means of performance not prevented by the *Force Majeure*.

21. CONTRACT AMENDMENT

- 21.1. ADB and the CONTRACTOR shall not vary or modify the terms of the Contract except by prior written amendment signed duly executed by the parties.
- 21.2. The CONTRACTOR shall submit to the Principal Director, OAS, through OAPC, a written proposal to amend and/or modify this Contract. Proposals to amend may include, but not be limited to, changes in the scope of the Services, payment terms or completion schedule. The proposed amendment and/or modification shall not take effect until endorsed by the Principal Director, OAS and approved by the appropriate approving authority.

22. TERMINATION FOR DEFAULT

- 22.1. ADB shall terminate this Contract for default when:
- (a) The CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in the Contract or extended periods that ADB would grant under Paragraph 18 above and before incurring delay; and the undelivered Services and/or Related Goods amount to at least ten percent (10%) of the Contract Price;
 - (b) The CONTRACTOR fails to continue delivering or performing the Services amounting to at least ten percent (10%) of the Contract Price within sixty (60) calendar days after receipt of written notice from ADB informing the CONTRACTOR that the Force Majeure had ceased; or
 - (c) The CONTRACTOR fails to perform any other obligation under the Contract.

- 22.2. When ADB terminates the Contract in whole or in part, ADB may procure services and/or related goods similar to those to be provided under the Contract, and the CONTRACTOR shall be liable for any excess costs that ADB may incur in procuring similar Services. The CONTRACTOR shall continue performing its obligations provided under parts of the Contract that remain effective.
- 22.3. Delay in performing the Services and/or delivering the Related Goods for a period equivalent to ten percent (10%) of the specified Contract Period including any extensions granted to the CONTRACTOR shall constitute default that may result in terminating the Contract, forfeiting the CONTRACTOR's Performance Security and/or awarding the Contract to another qualified Contractor.

23. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL

- 23.1. ADB may terminate the Contract when:
 - (a) the CONTRACTOR undertakes legal proceedings to dissolve or wind up its business, or be declared bankrupt and/or insolvent.
 - (b) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the CONTRACTOR's assets and such attachment or process is not discharged within fifteen [15] days; or,
 - (c) where applicable, the CONTRACTOR dies or otherwise loses legal capacity to contract.
- 23.2. Termination for insolvency shall not entitle the CONTRACTOR to compensation other than for Services already rendered; it shall be without prejudice to any right of action or remedy that has accrued or will accrue thereafter to ADB and/or the CONTRACTOR.
- 23.3. If a significant change in the ownership and/or control of the CONTRACTOR threatens to disrupt or adversely affect delivery of the Service, ADB may terminate the Contract for change of control when:
 - (a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;
 - (b) any person or entity acquires directly or indirectly the beneficial ownership of the CONTRACTOR and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR; or
 - (c) any person or entity otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR.

24. TERMINATION FOR UNLAWFUL ACTS

- 24.1. ADB may terminate this Contract if ADB determines that the CONTRACTOR has committed unlawful acts during the procurement of the Service or implementation of the Contract. Unlawful acts include, but are not limited to, the following:

- (a) Corrupt, fraudulent, and coercive practices as defined in Paragraph 6 above;
- (b) Forging or using forged documents;
- (c) Using adulterated materials, means or methods; or using production methods contrary to the rules of science or the trade; and
- (d) Any other act analogous to the foregoing.

25. TERMINATION FOR OTHER CAUSES

- 25.1. ADB may terminate the Contract, in whole or in part, at any time and for other causes, as ADB deems fit. These causes include, but are not limited to, the existence of conditions that make performance of the Service economically, financially or technically impractical and/or unnecessary; or unexpected, extraordinary circumstances that do not constitute fortuitous event(s); or changes in the law and national government policies that apply to the CONTRACTOR.
- 25.2. The Services that were already performed and/or otherwise ready for performance within thirty (30) calendar days after the CONTRACTOR's receipt of Notice to Terminate shall be accepted by the ADB under the terms and for the price/s provided in this Contract. For Services not yet performed and/or ready for performance, ADB may elect to:
 - (a) have any portion delivered and/or performed and paid at the existing contract terms and prices; and/or
 - (b) cancel the remainder and pay the CONTRACTOR an agreed amount to cover partially performance and materials, parts or other necessary expenses already incurred by the CONTRACTOR.
- 25.3. The CONTRACTOR shall be allowed to recover partial loss/es incurred as a result of termination under this Paragraph, including but not limited to those resulting from purchase of raw materials for Related Goods specially manufactured for ADB and cannot be sold in open market, on a *quantum meruit* basis, as ADB and the CONTRACTOR may agree. However, the CONTRACTOR must first establish the fact of loss to the satisfaction of the ADB.

26. PROCEDURES FOR TERMINATION

- 26.1. Upon finding ground(s) for termination, OAPC/CA shall issue a written notice to the stating:
 - (a) That the Contract is recommended for termination, with summary statement of the acts/omissions that constitute the ground(s) for termination;
 - (b) The recommended extent of termination, whether in whole or in part;
 - (c) Special instructions of ADB, if there are any; and
 - (d) Effective date of termination.

- 26.2. The CONTRACTOR may immediately submit an answer to OAPC/CA stating why the Contract should not be terminated.
- 26.3. When served with a decision to terminate the Contract, and unless otherwise provided in the notice, the Contract shall be deemed terminated immediately upon the CONTRACTOR's receipt of the notice. ADB may withdraw the Notice to terminate anytime prior to service to the CONTRACTOR if ADB determines that the CONTRACTOR already completed delivery of the Services and Related Goods and delivery is deemed acceptable to ADB.

27. TRANSITION

- 27.1 After the Contract period or when the Contract is pre-terminated for any of the causes provided above, the CONTRACTOR shall participate in ensuring the smooth, well-organized and seamless transition to a new Contractor. ADB and the CONTRACTOR agree to be bound by the following conditions:
 - (a) The CONTRACTOR shall submit a business continuation or transition plan, which ADB must first approve before implementation.
 - (b) The CONTRACTOR shall render all outstanding Service until termination date without further delay or according to a schedule agreed with ADB and the User Unit. The CONTRACTOR shall deploy an adequate staff complement of the appropriate level or seniority to ensure efficient performance of the outstanding Service, including but not limited to, turn-over to the succeeding Contractor.
 - (c) The CONTRACTOR shall account for all equipment, facility or property of ADB, including documents and information in whatever format that the CONTRACTOR possesses or otherwise uses in performing the Services.
 - (d) The CONTRACTOR agrees to transfer or turn-over the technology, knowledge or information required to allow continuation of the function and deploy the required personnel for this purpose at costs chargeable to the new Contractor.
- 27.2 ADB and the CONTRACTOR shall agree on other conditions necessary to ensure smooth transition of the business and uninterrupted delivery of the Service.

28. TRANSFER AND SUBCONTRACTING

- 28.1. The CONTRACTOR shall not assign or transfer the Contract or specific rights or obligations under it without ADB's prior written consent.
- 28.2. When allowed by the nature of the Service or not prohibited in the SCC, and subject to the conditions under applicable labor legislation and provided in the SCC, the CONTRACTOR may engage a Subcontractor or a Consultant to perform the Service and/or deliver the Related Goods. The Performance Standards and other relevant provisions of the Contract shall apply to the Subcontractor, Consultant or their respective employees, as if they were employees of the CONTRACTOR. However, the CONTRACTOR shall be solely liable to ADB for the work of the Subcontractor or Consultant.

- 28.3. Where ADB has consented to subcontracting, copies of each sub-contract shall, at the request of ADB, be sent by the CONTRACTOR to ADB as soon as reasonably practicable.

29. WAIVER

- 29.1. The failure of either Party to insist upon strict performance of any provision of the Contract; or the failure of either Party to exercise, or any delay in exercising, any right or remedy under the Contract shall not constitute a waiver of that right or remedy nor diminish the obligations established by the Contract.
- 29.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing according to Paragraph 30.
- 29.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

30. ENTIRETY AND SEPARABILITY

- 30.1. The Contract supersedes all prior written or verbal agreements between ADB and the CONTRACTOR and contains the reciprocal obligations of the parties pertaining to or arising out of the delivery of the Service. However, this shall not excuse any Party from liability arising from fraud or fraudulent misrepresentation.
- 30.2. Should any Paragraph, Subparagraph or part of the Contract be held by Arbitration Court to be invalid, unenforceable, or void, the decision shall not affect the validity of the entire Contract or of those parts that are not so declared or otherwise remain capable of partial or separable performance.

31. CONFIDENTIALITY OF CONTRACT DOCUMENTS AND INFORMATION

- 31.1. Except with prior consent of ADB as provided in the SCC or where disclosure is expressly permitted under the Contract, the CONTRACTOR shall not communicate or otherwise disclose to a third party the Contract, any of its provisions, or other information mentioned or incorporated in the Contract. The parties shall treat each other's Confidential Information as confidential and exert diligent efforts to safeguard and avoid disclosure of the other party's Confidential Information to third parties without the owner's prior written consent.
- 31.2. Unless otherwise specified in the SCC, the CONTRACTOR and all its personnel for deployment to ADB during the Contract period, including any extension(s), shall submit a signed Non-Disclosure Agreement in accordance with the form as specified in SCC.
- 31.3. Unless ADB states otherwise, disclosures by ADB shall be deemed confidential. The CONTRACTOR may only disclose ADB's Confidential Information to the CONTRACTOR's Personnel who are directly involved and who need to know the information in providing the Service. The CONTRACTOR shall ensure that such CONTRACTOR's Personnel are aware of and shall comply with the CONTRACTOR's obligations as to

confidentiality. When ADB deems fit due to the nature of the Services, ADB may request the CONTRACTOR to require its Personnel to sign a confidentiality undertaking before commencing any work related to the Services covered by the Contract.

- 31.4. The CONTRACTOR shall not make any press announcement; publicize the Contract or any part thereof; or use ADB's name in publicity releases or advertisements during and after the term of this Contract, except with ADB's written consent and subject to the conditions provided in the SCC.
- 31.5. The Contract and Contract Documents are properties of ADB. All copies shall be returned to OAPC/CA upon completion of the CONTRACTOR's obligations and termination of the Contract.
- 31.6. The CONTRACTOR shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by ADB under the Contract. The CONTRACTOR shall extend to ADB or its representatives access to those records that ADB may request in connection with the Contract.

32. SETTLEMENT OF DISPUTES

- 32.1. ADB and the CONTRACTOR shall exert effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of this Contract within thirty [30] days of either Party's notice of the dispute to the other. During this period, the User Unit, in consultation with OAPC/CA, and the CONTRACTOR's personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalation to the Principal Director, OAS and their respective counterpart/s.
- 32.2. After the initial thirty [30] day-period, the Parties shall consider referring unresolved disputes to mediation, unless ADB considers the dispute not suitable for mediation or the CONTRACTOR does not consent. The Parties shall appoint a neutral mediator from a reputable association of accredited mediators or their own short-list of dispute resolution professionals. The mediator shall formulate a simplified procedure for mediation and complete the mediation within fifteen [15] days from his appointment.
- 32.3. Should efforts to resolve disputes under the preceding Subparagraphs fail, either party shall commence arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. The International Chamber of Commerce's [ICC] Rules of Arbitration in force upon commencement of arbitration shall apply. The arbitration shall be in English; it shall take place in Manila and be governed by Philippine law. Each party shall pay its own costs.
- 32.4. Notwithstanding unresolved disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Service.

33. COUNTERPART

- 33.1. This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

ver June 2016

SPECIAL CONDITIONS OF CONTRACT
(Contract No. ADB/OAS-201X/XXX)

Cisco Supply Framework Agreement

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is conflict, the provisions herein shall prevail over those in GCC.

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(e)	The CONTRACTOR is .
3.1	The Governing Law: Philippines
3.2	The language is English.
4.2	<p>The addresses are:</p> <p>Asian Development Bank (ADB): 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines</p> <p>Attention: Olivier J. Leonard Sr. Procurement and Contracts Specialist Office of Administrative Services (OAPC)</p> <p>Telephone: 632 1917</p> <p>Facsimile: 636 2577; 631 6899</p> <p>CONTRACTOR:</p> <p>Attention:</p> <p>Telephone:</p> <p>Facsimile:</p>
5.1	<p>The Authorized Representatives are:</p> <p>For ADB:</p> <p>Contract-related Concerns</p> <p>Olivier J. Leonard Sr. Procurement and Contracts Specialist Office of Administrative Services (OAPC)</p> <p>Operation-related Concerns</p> <p>Shishir Belbase Senior Information Technology Specialist (Communication and Networks) (OIST)</p>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>For the CONTRACTOR:</p> <p>Either Party may designate a new Authorized Representative by serving written notice on the other. The designation shall take effect immediately upon receipt of the Notice.</p>
7.1	<p>Does the CONTRACTOR have actual and/or potential conflict of interest? ___ Yes ___ No (See Appendix 1 to SCC: Conflict of Interest Disclosure Form)</p>
8.1	<p>The CONTRACTOR shall provide the following Services: (See Appendix 5: Statement of Work)</p>
9.1	<p>Contract Price:</p>
10.1	<p>The Contract Period is five years, subject to re-evaluation at the end of the third year.</p> <p>The Starting Date for the commencement of Services is _____.</p> <p>The Intended Completion Date is _____.</p>
12.1	<p>Performance Security: 10% of the total price of the Purchase Order amount</p>
12.2	<p>The Performance Security shall be in the form of a Manager's or Cashier's Check; or a Bank Guarantee</p>
12.3	<p>The Performance Security shall be submitted within fifteen (15) calendar days from the date the CONTRACTOR receives ADB's Purchase Order.</p>
12.4	<p>ADB shall discharge the Performance Security within sixty (60) days from the date of Contract termination.</p>
12.6	<p>The Comprehensive General Liability Insurance is in the amount of Pesos: <i>Two Million Five Hundred Thousand (₱2,500,000)</i> which shall be submitted within fifteen (15) calendar days from the receipt of the Letter of Acceptance of Bid.</p>
12.8	<p>Form of Good Social Management: Not Applicable</p>
13.2	<p>ADB shall provide the following free of charge: Facility (office space), electricity and telephone.</p>
13.12	<p>Prevention of Harassment (See Appendix 9)</p>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
13.14	Safety and Security Procedures for Contractors' Personnel in the Headquarters Building of ADB: Not Applicable
16.8	Warranty period: To be determined
17.1	Conditions for payment: 30 days upon receipt and acceptance of goods and original invoice
19.1	Liquidated damages: If the Contractor fails to perform the services specified in the Contract, ADB will impose liquidated damages at the rate of one-tenth of one percent (1%) of the contract price for every day of delay. The maximum allowable deduction is 10% of the total contract price.
27.1	Other conditions for transition: Not Applicable
28.2	Conditions for sub-contracting, as applicable: Not Applicable
31.2	1. Non-Disclosure Agreement Form for Authorized Contractor Signatory (See Appendix 2 to SCC)
31.4	Conditions for making announcements: written consent from ADB.

LIST OF ADB MEMBER COUNTRIES**As of 2 February 2007**

- | | |
|---------------------------------|-------------------------------------|
| 1. Afghanistan | 35. Micronesia, Federated States of |
| 2. Armenia | 36. Mongolia |
| 3. Australia | 37. Myanmar |
| 4. Austria | 38. Nauru |
| 5. Azerbaijan | 39. Nepal |
| 6. Bangladesh | 40. The Netherlands |
| 7. Belgium | 41. New Zealand |
| 8. Bhutan | 42. Norway |
| 9. Brunei Darussalam | 43. Pakistan |
| 10. Cambodia | 44. Palau |
| 11. Canada | 45. Papua New Guinea |
| 12. China, People's Republic of | 46. Philippines |
| 13. Cook Islands | 47. Portugal |
| 14. Denmark | 48. Samoa |
| 15. Fiji Islands | 49. Singapore |
| 16. Finland | 50. Solomon Islands |
| 17. France | 51. Spain |
| 18. Georgia | 52. Sri Lanka |
| 19. Germany | 53. Sweden |
| 20. Hong Kong, China | 54. Switzerland |
| 21. India | 55. Taipei, China |
| 22. Indonesia | 56. Tajikistan |
| 23. Ireland | 57. Thailand |
| 24. Italy | 58. Timor-Leste |
| 25. Japan | 59. Tonga |
| 26. Kazakhstan | 60. Turkey |
| 27. Kiribati | 61. Turkmenistan |
| 28. Korea, Republic of | 62. Tuvalu |
| 29. Kyrgyz Republic | 63. United Kingdom |
| 30. Lao PDR | 64. United States |
| 31. Luxembourg | 65. Uzbekistan |
| 32. Malaysia | 66. Vanuatu |
| 33. Maldives, Republic of | 67. Viet Nam |
| 34. Marshall Islands | |