

## **General Conditions of Contract** (Contract No. ADB/OAS-20\_\_/\_\_)

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 SUPPLIER.

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

### **TABLE OF CONTENTS**

<b>GENERAL CONDITIONS OF CONTRACT [GOODS]</b>	<b>1</b>
1. DEFINITIONS	2
2. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF ADB	4
3. GOVERNING LAW AND LANGUAGE	4
4. NOTICES AND COMMUNICATION	5
5. AUTHORIZED REPRESENTATIVE	5
6. CORRUPT, FRAUDULENT, COERCIVE AND COLLUSIVE PRACTICES	5
7. CONFLICT OF INTEREST	7
8. SCOPE OF THE CONTRACT	7
9. CONTRACT PRICE	7
10. CONTRACT PERIOD & DELIVERY DATE	8
11. SUPPLIER'S OBLIGATIONS	8
12. SECURITY AND INSURANCE	8
13. SUPPLIER'S UNDERTAKING	10
14. TECHNICAL SPECIFICATIONS	12
15. PRE-TESTING AND/OR EVALUATION	13
16. SERVICE LEVEL AGREEMENT [SLA]	13
17. WARRANTIES AND REPRESENTATIONS	14
18. ADB'S RESPONSIBILITIES	15
19. DELAY	16
20. LIQUIDATED DAMAGES	16
21. FORCE MAJEURE	16
22. CONTRACT AMENDMENT	17
23. TERMINATION FOR DEFAULT	17
24. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL	17
25. TERMINATION FOR UNLAWFUL ACTS	18
26. TERMINATION FOR OTHER CAUSES	18
27. PROCEDURES FOR TERMINATION	19
28. TRANSITION	20
29. TRANSFER AND SUBCONTRACTING	20
30. WAIVER	21
31. ENTIRETY AND SEPARABILITY	21
32. USE OF CONTRACT DOCUMENTS AND INFORMATION	21
33. SETTLEMENT OF DISPUTES	22
34. COUNTERPART	23

## 1. DEFINITIONS

### 1.1. In these General Conditions of Contract:

- (a) "ADB" – refers to the Asian Development Bank, the organization purchasing the Goods and Related Services named in the Special Conditions of Contract (SCC).
- (b) "ADB Headquarters" or "Headquarters" – refers to the Headquarters of ADB in Manila, Philippines.
- (c) "Authorized Representatives" – are the persons named in Paragraph 5 below and authorized to represent the Parties in sending and/or receiving Notices and Communications related to the Contract.
- (d) "Charter" – refers to the Charter signed by the member states establishing ADB.
- (e) "Contract" – means the agreement that ADB and the SUPPLIER entered into, as recorded in the Contract Form that the parties signed, including all attachments and appendices and all documents incorporated by reference therein.
- (f) "Contracts Administration Unit" or "CAU" – refers to the sub-unit in the Procurement and Contracting Unit, Institutional Services Division, Office of Administrative Services that ensures ADB and the SUPPLIER comply with their obligations under the Contract.
- (g) "Contract Documents" – consists of the Contract and its Appendices, including but not limited to, the Technical Specifications, Technical and Financial Bid Proposals, Fee Schedule, Secretary's Certificate, Letter of Acceptance of Bid, ADB's Fire, Safety and Security Regulations, relevant Administrative Orders, Good Social Management Certificate and amendments thereto.
- (h) "Contract Price" – means the price stated in the SCC payable to the SUPPLIER for the full and proper performance of its contractual obligations.
- (i) "Corrupt, Fraudulent, Coercive and Collusive Practices" – refers to acts or omissions prohibited under ADB's Anti-Corruption Policy, as discussed in Paragraph 6 below.
- (j) "Day" – means calendar day.
- (k) "Default" – means any breach of the obligations of a Party (including but not limited to breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of a Party 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.
- (l) "Delay" – means delivery beyond the Delivery Date or Dates specified in the Contract.

- (m) "Delivery" – includes physical delivery of the manufactured Goods and Related Services at the place agreed between the Parties, Installation of the Goods and Related Services and acceptance by ADB.
- (n) "Final Acceptance" – refers to acceptance after the Goods and Related Services are delivered, initially inspected and found to comply with the Technical Specifications provided in the SCC.
- (o) "*Force Majeure*" or "Fortuitous Event" – refers to events, which the SUPPLIER could not have foreseen, or which though foreseen, were 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 SUPPLIER.
- (p) "Goods" include routine and non-routine supplies and equipment and related services which the SUPPLIER has undertaken to provide to ADB.
- (q) "GCC" means the General Conditions of Contract.
- (r) "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.
- (s) "Installation" – refers to procedures required to be undertaken to render the Goods usable and/or functional.
- (t) "IPC" or "Institutional Procurement Committee" – the committee that the Director, OAS chairs and is convened to oversee institutional procurement of Goods and Related Services.
- (u) "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.
- (v) "OAS" – refers to the Institutional Services Division of OAS.
- (w) "OAS-PC" – refers to the Procurement and Contracting Unit in OAS
- (x) "OAS-PC/CAU" – refers to the Contracts Administration Unit in OAS-PC
- (y) "OAS" – refers to the Office of Administrative Services of ADB.
- (z) "Party" or "Parties" – refer to either or both ADB and the SUPPLIER.
- (aa) "Related Services" – refers to services necessary to make the Goods operational or usable, including but not limited to installation, calibration and the like.
- (bb) "SCC" – means the Special Conditions of Contract.
- (cc) "Service Level Agreement" or "SLA" – refers to terms agreed between the Parties to determine satisfactory performance under the Contract.

- (dd) "Spare Parts" refers to the items, parts or implements required to operate and make full use of the Goods.
- (ee) "SUPPLIER" – refers to the party (includes individual and entity, whether public, quasi-public or private) that delivers the Goods and Related Services pursuant to a contract with ADB and named in the SCC. This includes the SUPPLIER's personnel, representatives, successors and permitted assignees.
- (ff) "User Unit" refers to the organizational unit in ADB which requested procurement of the Goods and related services and is responsible for receiving and accounting for the Goods and related services subject to the provisions of the Contract.
- (gg) "Verified Report" refers to the report submitted by the Head, OAIS-PC/CAU 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 SUPPLIER 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 the Contract shall derogate from the provisions of the Charter and the Headquarters Agreement. The Charter and the Headquarters Agreement are available in [www.adb.org](http://www.adb.org).
- 2.2. The SUPPLIER 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 SUPPLIER shall be solely responsible for payment of taxes on its income.
- 2.3. The SUPPLIER 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 tax or duty 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 SUPPLIER shall be communicated by the Director, OAIS, or an officer duly designated under ADB's rules and notified in advance to the SUPPLIER under the SCC.
- 5.3. The Head of the User Unit shall monitor the SUPPLIER's performance and 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 SUPPLIER shall not take from unauthorized ADB staff orders related to the delivery of the Goods and Related Services as referred to in Subparagraph 8.1. Questions regarding the authority of orders, directives or instructions given in the name of ADB should be addressed to the Head of the User Unit.

#### **6. CORRUPT, FRAUDULENT, COERCIVE AND COLLUSIVE PRACTICES**

- 6.1. ADB, bidders, manufacturers, suppliers, or distributors, and the SUPPLIER shall observe the highest standard of ethics during the institutional procurement exercises of ADB and implementation of the Contract.
- 6.2. ADB's Anticorruption Policy requires that bidders, suppliers, and contractors under ADB-financed contracts, as well as their staff observe the highest ethical standards. Firms, entities and individuals bidding for or participating in ADB's institutional procurement of goods and related services, including but not limited to, suppliers, service contractors and concessionaires, and their respective officers, employees and agents should report to the Integrity Division of the Office of Anticorruption and Integrity (OAI) suspected acts of

fraud or corruption that they come to know during the bidding process and throughout negotiation or execution of a contract.

6.3. For the purposes of this section, the terms below shall have the following meaning:

- (a) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- (b) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (c) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- (d) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

6.4. 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, suppliers, 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, supplier, service contractor, concessionaire or its successor, if ADB at any time determines that such bidder, supplier, 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 goods and related services. Sanctions include, but are not limited to, declaring such bidder, supplier, 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.

6.5. The SUPPLIER agrees to be bound by ADB's Anticorruption Policy as outlined above.

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

## **7. CONFLICT OF INTEREST**

- 7.1. The SUPPLIER shall take appropriate steps to ensure that neither the SUPPLIER 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 SUPPLIER and performance of the SUPPLIER's obligations under the Contract. The SUPPLIER 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, consistent with ADB's Anti-Corruption Policy re-stated above. 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 Goods and Related Services to be delivered are specified in the SCC.
- 8.2. Unless the Parties agree otherwise, the Goods and Related Services shall also include Installation and/or Spare Parts or items that are not specifically mentioned but are necessarily required to make full use of the Goods, as if such items were expressly mentioned herein. The Installation, Spare Parts and additional requirements for complete delivery of the Contract shall be provided in the SCC.
- 8.3. In case of discrepancy, the provisions of the Contract shall prevail over the Contract Documents enumerated in the Contract Agreement. In interpreting the provisions of the Contract, ADB and the SUPPLIER 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 SUPPLIER's delivery and/or supply of the Goods and Related Services specified in the SCC during the Contract Period in Paragraph 10 below, ADB shall pay the SUPPLIER the Contract Price stated in the SCC. The Contract Price shall not vary from the price that the SUPPLIER quoted in its Bid, except for any change resulting from a Change Order issued in accordance with Subparagraph 9.4 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 SUPPLIER agree that the Contract Price is a firm and fixed lump sum. The SUPPLIER warrants that

the Contract Price tendered already covers actual and contingent costs that the SUPPLIER would incur in delivering the Goods.

- 9.4. The Parties may agree to adjust the Contract Price following the price adjustment provisions specified in the SCC, as applicable. However, the SUPPLIER shall not demand price adjustments due to fluctuations in the foreign exchange rate, and/or increase in SUPPLIER's actual or contingent costs.

## **10. CONTRACT PERIOD & DELIVERY DATE**

- 10.1. Unless sooner terminated pursuant to the termination provisions below, the Contract shall remain valid for the period stated in the SCC. The SUPPLIER shall deliver the Goods and Related Services on the Delivery Date or Dates indicated in the SCC.

## **11. SUPPLIER'S OBLIGATIONS**

- 11.1. In consideration for the payment of the Contract Price, the SUPPLIER shall deliver on the Delivery Date or Dates the Goods and Related Services according to ADB's Technical Specifications and other requirements described in the SCC. Prompt delivery of the Goods and Related Services, within the time agreed or on a specified date, shall be of the essence of the Contract.

- 11.2. The SUPPLIER shall further deliver such Spare Parts required for the operation and full use of the Goods, if there are any.

## **12. SECURITY AND INSURANCE**

### Performance Security

- 12.1. To secure performance of its obligations under the Contract, the SUPPLIER shall post sufficient security worth at least 10% of the contract value, as OAI-PC 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 SUPPLIER's failure to complete its obligations under the 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 SUPPLIER shall submit the performance security within ten (10) calendar days from receipt of the Letter of Acceptance of Bid or 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 SUPPLIER not later than thirty (30) days following the date of complete performance of the SUPPLIER's obligations under the Contract, including warranty obligations, and upon issuance by the ADB of a Certificate of Completion/Acceptance to that effect.
- 12.5. ADB shall have the right to unilaterally call the Performance Security when ADB determines that:
- (a) The SUPPLIER, in violation of or contrary to its warranties under the Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under the Contract;
  - (b) The SUPPLIER failed to submit to ADB the Good Social Management Certificate included among the Contract Documents; misrepresented or made false statements in the Certificate; or failed to fulfill any of its warranties and obligations under the Contract; or,
  - (c) The SUPPLIER 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 & Indemnity

- 12.6. Before commencing performance, the SUPPLIER may be required to acquire a Comprehensive General Liability Insurance taking into account such conditions acceptable to ADB, including, but not limited to the following:
- (a) The SUPPLIER 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 SUPPLIER or person's acting for the SUPPLIER.
  - (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.
- 12.7. The SUPPLIER shall indemnify and hold ADB free and harmless from any and all claims made by the SUPPLIER's personnel under Philippine labor laws and other related legislation, including but not limited to, the minimum wage law.

#### General Conditions for Securities and Insurance

- 12.8. The SUPPLIER shall furnish evidence that the securities and/or insurance were taken at the time required and continue to be in effect before executing the Contract, during the Contract Period, and after termination for a period

specified in the SCC. The SUPPLIER shall deposit with ADB a copy of the required securities and/or insurance policy/ies and receipts for payment of the corresponding premium, as applicable, within the time required above.

- 12.9. If the SUPPLIER fails to take the required insurance or fails to maintain the same, ADB may make alternative arrangements to protect ADB's interest, including but not limited to, taking out and maintaining the required insurance itself and recovering the cost from the SUPPLIER.
- 12.10. The SUPPLIER shall obtain and maintain such other insurance or securities as the Parties may agree, as indicated in the SCC.
- 12.11. OAIS-PC/CAU, in coordination with the User Units, shall monitor compliance with these requirements.

### **13. SUPPLIER'S UNDERTAKING**

- 13.1. The SUPPLIER shall immediately notify ADB in writing when:
  - (a) the SUPPLIER 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 SUPPLIER, or otherwise acquires directly or indirectly the power to control the policy making decisions of the SUPPLIER;
  - (c) the SUPPLIER is dissolved; applies for insolvency or bankruptcy; or otherwise admits in writing its inability to pay its outstanding obligations;
  - (d) the SUPPLIER is administratively or judicially declared insolvent or bankrupt, placed under receivership, administration, rehabilitation or liquidation;
  - (e) the SUPPLIER's financial condition becomes significantly unstable and threatens to jeopardize the SUPPLIER's ability to perform its obligations under the Contract;
  - (f) the SUPPLIER loses any license or authorization required to perform its obligations under the Contract; or
  - (g) the SUPPLIER faces any event beyond the control of the SUPPLIER or a situation that makes it impossible for the SUPPLIER to carry out its obligations under the Contract.

ADB and the SUPPLIER shall explore alternative arrangements to implement the Contract under any or all of the above circumstances.

- 13.2. Machines or equipment that ADB issues to the SUPPLIER for free, as indicated in the SCC, shall remain the property of ADB; and ADB may recover them from the SUPPLIER at any time. The SUPPLIER shall not, under any circumstances, have a lien or any other interest on such machines or equipment; and the SUPPLIER shall at all times possess them only as fiduciary agent and bailee of ADB. The SUPPLIER 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 SUPPLIER shall compensate ADB for the loss of or damage to machines or equipment that ADB has provided to the SUPPLIER when ADB finds that the loss or damage resulted from the willful act or gross negligence of the SUPPLIER's personnel. Upon expiration or termination of the Contract, the SUPPLIER shall immediately return, without need of demand, the machine(s)/equipment that ADB had supplied.
- 13.4. The SUPPLIER shall ensure that the SUPPLIER's personnel behave according to generally acceptable standards in delivering the Goods and Related Services under the Contract. The SUPPLIER 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 inside ADB premises (Ref to Appendix xx: ADB Safety and Security Procedures).
- 13.5. ADB reserves the right to refuse entry into or remove from ADB Premises SUPPLIER'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.
- 13.6. SUPPLIER'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 SUPPLIER recognizes the authority of Oafa-SE to summon SUPPLIER'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 other deadly weapons. Carrying firearms, licensed or unlicensed, and/or other deadly weapons while on ADB premises.
- 13.7. The SUPPLIER's personnel are urged to remain within the location(s)/area(s) where they are authorized to be and/or are assigned. However, the SUPPLIER's personnel may use ADB's cafeteria for their normal breakfast or lunch (12:30PM to 1:30PM only) while on duty. The SUPPLIER's personnel should leave ADB Premises within a reasonable time after completing Delivery.
- 13.8. The SUPPLIER 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.
- 13.9. The SUPPLIER 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 SUPPLIER or the SUPPLIER's employees, agents or any other persons engaged by the SUPPLIER to perform its obligations under the 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. TECHNICAL SPECIFICATIONS**

- 14.1. The Goods and Related Services shall conform to the technical specifications provided in the SCC. When no applicable standard is specified, the latest, authoritative standards customarily applicable to the Goods and Related Services in the place where the Goods and Related Services would be used shall apply. ADB and the SUPPLIER shall agree on which customary standards to apply.
- 14.2. The SUPPLIER shall perform its obligations under the Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders of competent government agencies or authorities. The SUPPLIER 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, and subsequently during the effectivity of the Contract, as indicated in the SCC. Otherwise, ADB shall either deduct from any or all invoices payable to the SUPPLIER a sum of up to 30% of the invoice value or Contract Price as a non-refundable penalty. This is without prejudice to other remedies or measures that ADB may avail of under the Contract. The SUPPLIER undertakes that it shall not directly or indirectly pass the penalty above, entirely or in part, to its employees.
- 14.3. The SUPPLIER shall deliver Goods and Related Services that conform 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. ADB shall indicate in the SCC specific sustainability and environmental requirements, including applicable eco-labels, if there are any.

- 14.4. The SUPPLIER shall comply with health and safety measures of ADB. The SUPPLIER 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 SUPPLIER of any health and safety hazards which may exist or arise in ADB's premises and which may affect the SUPPLIER in performing its obligations under the Contract.
- 14.5. The SUPPLIER 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.
- 14.6. As evidence of compliance with Philippine labor, social welfare and environment laws and regulations, the SUPPLIER shall submit to OAIS-PC/CAU a certification that the Goods and Related Services subject of the Contract were not manufactured in violation of such local and/or international labor, occupational safety and environmental standards.

## **15. PRE-TESTING AND/OR EVALUATION**

- 15.1. To confirm that the Goods and Related Services comply with the Technical Specifications, the SUPPLIER shall allow ADB to test and/or evaluate the Goods and Related Services on or within a reasonable time after Delivery but before Final Acceptance. The SUPPLIER 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 pre-testing and/or evaluation that ADB requires, if there are any, shall be specified in the SCC.
- 15.2. The ADB may reject the Goods and Related Services when they are evaluated to be inadequate or not conforming to the Technical Specifications provided in the SCC. ADB shall ask the SUPPLIER to either rectify or modify/improve or replace the Goods and Related Services, as necessary, and at no cost to ADB, to meet the required specifications.
- 15.3. The SUPPLIER's consent to the pre-testing and/or evaluation of the Goods and Related Services or inspection of the Spare Parts shall not release the SUPPLIER from its warranties or other obligations under the Contract.

## **16. SERVICE LEVEL AGREEMENT [SLA]**

- 16.1. To achieve and maintain a high level of performance and where applicable, ADB and the SUPPLIER 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 SUPPLIER's level of performance.
- 16.2. The SLA between ADB and the SUPPLIER shall 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 SUPPLIER.
- 16.3. The SUPPLIER shall report to ADB, as necessary, actual use and/or disposition of service level incentives.

## 17. WARRANTIES AND REPRESENTATIONS

- 17.1. The SUPPLIER 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 SUPPLIER further warrants that the Contract is executed by the Authorized Representative of the SUPPLIER.
- 17.2. All information contained in the SUPPLIER's Bid are true, accurate and not misleading, except those that the SUPPLIER may have specifically disclosed in writing to ADB before executing the Contract;
- 17.3. To the best of the SUPPLIER'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 SUPPLIER or any of its assets that could materially and adversely affect the SUPPLIER's ability to deliver the Goods and Related Services under the Contract.
- 17.4. The SUPPLIER is not subject to any contractual obligation that would materially and adversely affect the SUPPLIER's ability to deliver the Goods and Related Services under the Contract; nor has the SUPPLIER done or omitted to do anything that could materially and adversely affect its assets, financial condition or position as a going business concern.
- 17.5. The SUPPLIER 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 SUPPLIER's assets or revenue. The SUPPLIER expressly warrants its financial viability and shall permit ADB to inspect the SUPPLIER's accounts, financial statements and other records relevant to the performance of the SUPPLIER under the Contract, or otherwise have these accounts and records audited externally, as ADB may deem necessary.
- 17.6. The SUPPLIER has undertaken all financial accounting and reporting activities required under the generally accepted accounting principles that apply to the SUPPLIER and in the country where it is registered and has complied with applicable securities and tax laws and regulations.
- 17.7. The SUPPLIER further warrants that Goods and Related Services and Spare Parts, if any, supplied under the Contract have no defect/s arising from design, materials, workmanship; or damage resulting from any act or omission of the SUPPLIER, or those that may develop under normal use of the Goods and Related Services and Spare Parts.
- 17.8. To ensure that the SUPPLIER would correct or cause the correction of all defects, the SUPPLIER 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 SUPPLIER'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 Goods and Related Services provided are

confirmed to be free from patent and latent defects, and all the conditions imposed under the Contract have been fully met.

- 17.9. The SUPPLIER shall further be liable for implied warranties under applicable laws.
- 17.10. ADB shall promptly notify the SUPPLIER 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 SUPPLIER shall, within the period specified in the Subparagraph 17.8, repair or replace the defective Related Goods or parts thereof, without costs to ADB.
- 17.11. If the SUPPLIER, after notice, fails to remedy the defect(s) within the period specified in the Subparagraph 17.8, ADB may take remedial action, as necessary, at the SUPPLIER's risk and expense and without prejudice to any other rights which ADB may have against the SUPPLIER under the Contract and other applicable laws.
- 17.12. The copyright for all drawings, documents, and other materials containing data and information furnished to ADB by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to ADB directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

## **18. ADB'S RESPONSIBILITIES**

- 18.1. ADB shall pay the Contract Price, according to the agreed terms and manner of payment therein and subject to the following conditions:
  - (a) The SUPPLIER's request(s) for payment shall be made to ADB in writing; accompanied by an invoice describing the Goods and Related Services delivered; and upon fulfillment of other obligations stipulated in the Contract.
  - (b) The SUPPLIER shall submit such documents supporting the SUPPLIER's invoice, as ADB may reasonably require.
  - (c) Unless otherwise specified in the SCC, payments shall be made only after the Head of the User Unit certifies that the Goods and Related Services were evaluated and found to be delivered according to the terms of the Contract.
  - (d) ADB shall pay promptly and not later than thirty (30) days after the SUPPLIER submits an invoice. The SUPPLIER shall accept payments as full satisfaction of the SUPPLIER's entire claim arising out of or in connection with the Contract.
  - (e) Except with the prior approval of the Head of the User Unit, no payment shall be made for Goods and Related Services not yet delivered under the Contract.
  - (f) Unless otherwise agreed with the SUPPLIER, ADB shall remit payment of the Contract Price by electronic transfer. The SUPPLIER shall provide ADB the SUPPLIER's bank details such as bank name, bank

address/branch, account name, and account number on its invoices or request for payment.

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

## **19. DELAY**

- 19.1. Delivery of the Goods and Related Services shall be made by the SUPPLIER on the Delivery Date or Dates that ADB has provided in Paragraph 10 above.
- 19.2. If the SUPPLIER or its Subcontractor(s) encounters conditions impeding timely delivery of the Goods, the SUPPLIER shall notify ADB in writing and at the soonest opportunity of the fact of the delay, its likely duration and cause(s). ADB shall evaluate the situation and advise the SUPPLIER if the Delivery Date or Dates can be extended.
- 19.3. Delay in delivery shall render the SUPPLIER 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.
- 19.4. Delay may constitute default that may result in terminating the Contract, forfeiting the SUPPLIER's Performance Security and/or awarding the Contract to another qualified Supplier.

## **20. LIQUIDATED DAMAGES**

- 20.1. If the SUPPLIER fails to deliver the Goods and Related Services on Delivery Date or Dates, 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, factor of deduction and the maximum allowable deduction are specified in the SCC.
- 20.2. Liquidated damages shall be imposed without prejudice to other remedies under the Contract and under applicable laws. Once the maximum allowable deduction for Liquidated Damages provided above is reached, ADB may consider terminating the Contract based on the grounds provided below.

## **21. FORCE MAJEURE**

- 21.1. 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 SUPPLIER's Performance Security, impose liquidated damages, or terminate the Contract for default.
- 21.2. In cases of *Force Majeure*, the SUPPLIER shall promptly notify ADB in writing of the relevant circumstances. Unless otherwise directed by ADB in writing, the SUPPLIER shall continue performing as much of its obligations as



reasonably practical, and undertake reasonable alternative means of performance not prevented by the *Force Majeure*.

## **22. CONTRACT AMENDMENT**

- 22.1. ADB and the SUPPLIER shall not vary or modify the terms of the Contract except by prior written amendment duly signed by the Parties.
- 22.2. The SUPPLIER shall submit to the Director, OASIS, through OASIS-PC/CAU, a written proposal to amend and/or modify the Contract. Proposals to amend may include, but not be limited to, changes in the kind of Goods, payment terms or completion schedule. The proposed amendment and/or modification shall not take effect until endorsed by the Director, OASIS and approved by the appropriate approving authority.

## **23. TERMINATION FOR DEFAULT**

- 23.1. ADB shall terminate the Contract for default when:
- (a) The SUPPLIER fails and/or Delays to deliver the Goods and Related Services on the Delivery Date or Dates or within the extended warranty periods that ADB would grant under Paragraph 17 above;
  - (b) the undelivered Goods and Related Services amount to at least ten percent (10%) of the Contract Price;
  - (c) The SUPPLIER fails to continue delivering the Goods and Related Services amounting to at least ten percent (10%) of the Contract Price within sixty (60) calendar days from receipt of written notice from ADB informing the SUPPLIER that the *Force Majeure* had ceased; or
  - (d) The SUPPLIER fails to perform any other obligation under the Contract.
- 23.2. When ADB terminates the Contract in whole or in part, ADB may procure similar Goods and Related Services, and the SUPPLIER shall be liable for any excess costs that ADB may incur as a result. The SUPPLIER shall continue performing its obligations provided under parts of the Contract that remain effective.

## **24. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL**

- 24.1. ADB may terminate the Contract when:
- (a) the SUPPLIER 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 SUPPLIER's assets and such attachment or process is not discharged within fifteen [15] days; or,
- 24.2. Termination for insolvency shall not entitle the SUPPLIER to compensation other than for Goods and Related Services already delivered; it shall be

without prejudice to any right of action or remedy that has accrued or will accrue thereafter to ADB and/or the SUPPLIER.

- 24.3. If a significant change in the ownership and/or control of the SUPPLIER threatens to disrupt or adversely affect delivery of the Goods, ADB may terminate the Contract for change of control when:
- (a) the SUPPLIER 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 SUPPLIER and, consequently, the power to elect a majority of the board of directors of the SUPPLIER;
  - (c) any person or entity otherwise acquires directly or indirectly the power to control the policy making decisions of the SUPPLIER; or
  - (d) where applicable, the SUPPLIER dies or otherwise loses legal capacity to contract.

## **25. TERMINATION FOR UNLAWFUL ACTS**

- 25.1. ADB may terminate the Contract if ADB determines that the SUPPLIER has committed unlawful acts during the procurement of the Goods and Related Services or implementation of the Contract. Unlawful acts include, but are not limited to, the following:
- (a) Corrupt, fraudulent, or coercive practices 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;
  - (d) Any of the offenses enumerated in Subparagraph 13.6 above; or
  - (e) Other acts analogous to the foregoing.

## **26. TERMINATION FOR OTHER CAUSES**

- 26.1. 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 delivery of the Goods and Related Services economically, financially or technically impractical and/or unnecessary; unexpected, extraordinary circumstances that do not constitute fortuitous event(s); or changes in the law and national government policies that apply to the SUPPLIER.
- 26.2. The Goods and Related Services that were already delivered and/or otherwise ready for delivery within thirty (30) calendar days after the SUPPLIER's receipt of Notice to Terminate shall be accepted by the ADB under the terms and for the price/s provided in the Contract. For Goods and Related Services not yet delivered and/or ready for delivery, 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 SUPPLIER an agreed amount to cover partial performance and materials, parts or other necessary expenses already incurred by the SUPPLIER.
- 26.3. As a result of termination under this Paragraph, the SUPPLIER shall be allowed to recover, on a *quantum meruit* basis and as ADB and the SUPPLIER may agree, partial loss/es including, but not limited to, the cost of raw materials for the Goods and Related Services that cannot be sold in the open market. However, the CONTACTOR must first establish the fact of loss to the satisfaction of the ADB.

## **27. PROCEDURES FOR TERMINATION**

- 27.1. OAIS-PC/CAU, on its own or, within seven [7] days upon receipt of a written report from the Head of the User Unit alleging acts or causes that may constitute ground(s) for termination, shall verify the existence of ground(s) for termination.
- 27.2. OAIS-PC/CAU shall submit to the Director, OAIS a Verified Report with supporting documents or evidence and a corresponding recommendation to commence termination. Upon approval of the Director, OAIS, OAIS-PC/CAU shall send to the SUPPLIER a copy of the Verified Report and a written notice stating:
- (a) that the Contract is being terminated for the ground(s) mentioned above, with summary statement of the acts/omissions that constitute the ground(s) for terminating;
  - (b) the extent of termination, whether in whole or in part;
  - (c) that the SUPPLIER must show cause why the Contract should not be terminated; and
  - (d) special instructions of ADB, if there are any.
- 27.3. Within seven (7) calendar days from receipt of the notice, the SUPPLIER shall submit to OAIS-PC/CAU an answer stating why the Contract should not be terminated. If the SUPPLIER fails to answer, or OAIS-PC/CAU, in consultation with the user Unit, deems the answer unacceptable, OAIS-PC/CAU shall recommend termination to Director, OAIS.
- 27.4. ADB may, at anytime before receipt of the SUPPLIER's answer, decide to withdraw the Notice to Terminate if ADB determines that the SUPPLIER had already completed delivery of the Goods and Related Services before receiving the Notice.
- 27.5. After evaluating the SUPPLIER's answer and the Verified Report, the Director, OAIS shall endorse termination, as appropriate, to the Contract's approving Authority. Within a non-extendable period of ten (10) calendar days from receipt of the endorsement, the approving authority of the Contract shall decide to terminate the Contract or not. ADB shall serve a written notice to the SUPPLIER of the decision and, unless otherwise provided in the notice,

the Contract shall be deemed terminated immediately upon the SUPPLIER's receipt of the notice.

- 27.6. PD, OAS or the IPC, as appropriate, may create a Contract Termination Review Committee (CTRC) to assist in evaluating cases for termination. Decisions recommended by the CTRC shall be subject to the approval of the applicable approving authority.

## **28. TRANSITION**

- 28.1. After the Contract period or when the Contract is pre-terminated for any of the causes provided above, the SUPPLIER shall participate in ensuring the smooth, well-organized and seamless transition to a new Supplier. ADB and the SUPPLIER agree to be bound by the following conditions:
- (a) The SUPPLIER shall submit a business continuation or transition plan, which ADB must first approve before implementation.
  - (b) The SUPPLIER shall deliver the Goods until termination date without further delay or according to a schedule agreed with ADB and the User Unit. The SUPPLIER shall deploy an adequate staff complement of the appropriate level or seniority to ensure efficient delivery of the Goods, including but not limited to, turn-over to the succeeding SUPPLIER.
  - (c) The SUPPLIER shall account for all equipment, facility or property of ADB, including documents and information in whatever format that the SUPPLIER possesses or otherwise uses in delivering the Goods.
  - (d) The SUPPLIER 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 SUPPLIER.
- 28.2. ADB and the SUPPLIER shall agree on other conditions necessary to ensure smooth transition of the business and uninterrupted delivery of the Goods.

## **29. TRANSFER AND SUBCONTRACTING**

- 29.1. The SUPPLIER shall not assign or transfer the Contract or specific rights or obligations under it without ADB's prior written consent.
- 29.2. When allowed by the nature of the Goods and Related Services or not prohibited in the SCC, and subject to the conditions under applicable labor legislations and provided in the SCC, the SUPPLIER may engage a Subcontractor or a Consultant to deliver the Goods and Related Services. The relevant provisions of the Contract shall apply to the Subcontractor, Consultant or their respective employees, as if they were employees of the SUPPLIER. However, the SUPPLIER shall be solely liable to ADB for the Goods and Related Services delivered by the Subcontractor or Consultant.
- 29.3. ADB may require the SUPPLIER to submit copies of such sub-contracting and/or consultancy agreements.

### **30. WAIVER**

- 30.1. The failure or Delay of either Party to insist upon strict performance of any provision of, or exercise 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.
- 30.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing according to this Paragraph.
- 30.3. 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.

### **31. ENTIRETY AND SEPARABILITY**

- 31.1. The Contract supersedes all prior written or verbal agreement between ADB and the SUPPLIER and contains the reciprocal obligations of the parties pertaining to or arising out of the delivery of the Goods. However, this shall not excuse any Party from liability arising from fraud or fraudulent misrepresentation.
- 31.2. Should any Paragraph, Subparagraph or part of the Contract be held by a competent court or tribunal 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.

### **32. USE OF CONTRACT DOCUMENTS AND INFORMATION**

- 32.1. ADB and the SUPPLIER shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party to the Contract, any of its provisions, documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the SUPPLIER may furnish to its Personnel and/or Subcontractor such documents, data, and other information it receives from ADB to the extent required for the Personnel and/or Subcontractor to perform its work under the Contract, in which event the SUPPLIER shall obtain from such Personnel and/or Subcontractor an undertaking of confidentiality similar to that imposed on the SUPPLIER under GCC Paragraph 32.
- 32.2. ADB shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from ADB for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
- 32.3. The obligation of a party under GCC Subparagraphs 32.1 and 32.2 above, however, shall not apply to information that:
  - (a) now or hereafter enters the public domain through no fault of that party;

- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 32.4. The above provision of GCC Paragraph 32 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 32.5. The SUPPLIER 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 the Contract, except with ADB's written consent and subject to the conditions provided in the SCC.
- 32.6. The Contract and Contract Documents are properties of ADB. All copies shall be returned to OAS-PC/CAU upon completion of the SUPPLIER's obligations and termination of the Contract.
- 32.7. The SUPPLIER 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 Goods and Related Services supplied and all payments made under the Contract. The SUPPLIER shall extend to ADB or its representatives access to those records that ADB may request in connection with the Contract.
- 32.8. The provisions of GCC Paragraph 32 shall survive completion or termination, for whatever reason, of the Contract

### **33. SETTLEMENT OF DISPUTES**

- 33.1. ADB and the SUPPLIER shall exert efforts to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of the 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 OAS-PC/CAU, and the SUPPLIER's personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalating it to the Director, OAS and PD, OAS and their respective counterpart/s.
- 33.2. 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 SUPPLIER 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.
- 33.3. 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.

33.4. 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 Goods.

**34. COUNTERPART**

34.1. 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.

*verApr2010*