

**REPUBLIC OF RWANDA**

**CONTRACT FOR THE**

**SUPPLY AND INSTALLATION OF GOODS**

**AND**

**PROVISION OF MAINTENANCE AND TRAINING SERVICES**

**BETWEEN**

**...................................................................................**

**And**

**...................................................................................**

**Contract number: ………………………...**

**Contract amount and currency: ………………………...**

**Contract duration: ………………………...**

**Contract administrator/Manager: ………………………...**

**Date of contract: ………………………...**

**THIS** **AGREEMENT** is entered into by and between a public institution of the Government of Rwanda being………………………………………….. (the “Client”), with address………………………………………………………………………....... duly represented by Mr/Mrs/Ms……………………………on one part, and

………………………….. Ltd (the “Supplier”), a company duly incorporated under registry number………………….. and existing under the laws of…………………………………………, having its registered office address located at……………..…………………………………………………………………, duly represented by Mr/Mrs/Ms……………………….on the other part.

Parties mean the Client and the Supplier collectively, and party means any one of them as the context indicates.

**PREAMBLE**

**WHEREAS** the Client has launched a public procurement process in accordance with the Public Procurement Law No 62/2018 of 25/08/2018 and supplemental regulations, for the supply and installation of goods and the provision of maintenance and training services;

**WHEREAS** the Supplier has represented and affirmed to the Client it has the required experience, personnel, technical resources and capability to supply and install the required goods and provide the required services, and the Client has selected the Supplier to carry out such works in accordance with the requirements in the Standard Bidding Documents and the terms set out in this Agreement; and

**NOW THERFORE**, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 1**

**Interpretation**

In this Agreement, the following words and expressions shall have the meanings hereby assigned to them:

**“Client”** means the party to this Agreement as identified above, also referred to as the Procuring Entity in the Standard Bidding Documents.

**“Completion**” means receipt of written notification by the Supplier from the Client that the respective Maintenance Services and/or Training Services have been fulfilled in accordance with the terms of the Contract.

**“Completion Date”** means the calendar date on which Completion takes place.

**“Confidential Information”** means any information, whether written or oral, that, under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.

**“Contract”** means this Agreement entered into between the Client and the Supplier, together with the Contract Documents thereto.

**“Contract Documents”** means the documents listed in Article 3 of this Agreement, including any amendments, attachments and appendices thereto.

### “**Contract Price”** means the price payable by the Client to the Supplier as specified in the Contract, subject to any adjustments that may be made in accordance with the terms of the Contract.

### **“Delivery**” means receipt of written notification by the Supplier from the Client that the Goods have been supplied in accordance with the terms of the Contract.

### **“Delivery Date”** means the calendar date on which Delivery takes place.

### **“Effective Date”** means the date on which this Agreement has been duly signed by both the Client and Supplier.

### **“Force Majeure”** means any event or condition which:

1. wholly or partially delays or prevents the affected party from performing any of its obligations under the Contract;
2. is unforeseeable and unavoidable;
3. is beyond the reasonable control of the party invoking force majeure; and
4. occurs without the fault or negligence of such party.

### Such events may include, but are not limited to, wars, revolutions, floods and epidemics.

### **“Goods”** means the quantity and quality of items (including, but not limited to, systems, sub-systems and software if applicable) as set out in Annex A of this Agreement, which are in accordance with the Standard Bidding Requirements.

### **“Installation**” means receipt of written notification by the Supplier from the Client that the Goods have been installed in accordance with the terms of the Contract.

### **“KIAC Rules”** means the Kigali International Arbitration Centre’s rules of arbitration in force as at the Effective Date and as amended from time to time.

### **“Maintenance Services”** means the provision of maintenance services in relation to the Goods as set out in Annex B of this Agreement, which are in accordance with the Standard Bidding Requirements.

### “**Materials**” means in relation to the Goods and Services, all documentation, instructional aides, operating and procedural manuals in any form (including, inter-alia, audio, video, printable and text) generated by the Supplier in fulfilment of its obligations under the terms of the Contract.

### **“Operational Acceptance Test”** means the test specified in the Project Implementation Plan to be carried out following supply and installation of the Goods to ascertain whether the Goods meet the required functional and performance requirements.

**“Operational Acceptance”** means the acceptance by the Client of the Goods as demonstrated by issuance of an operational acceptance certificate.

**“Performance Security”** means a guarantee, irrevocable letter of credit or other form of security agreed between the parties in writing, from a bank or other reputable financial institution.

### **“Phase”** means each of the phases of the (i) supply of Goods, (ii) installation of Goods, (iii) provision of Maintenance Services, and (iv) provision of Training Services, as set out in the Project Implementation Plan.

### “**Project Implementation Plan”** means the detailed project plan developed by the Supplier and approved by the Client in accordance with the Standard Bidding Documents and prior to entering into this Agreement.

**“RPPA”** means Rwanda Public Procurement Authority.

### **“Services”** means the Maintenance Services and Training Services.

### **“Standard Bidding Documents”** means the standard bidding documents prepared by RPPA in accordance with public procurement laws, regulations and procedures for the supply of goods and provision of services.

### **“Subcontractor”** means any person or entity to whom any of the obligations of the Supplier are subcontracted directly or indirectly by the Supplier in accordance with the terms of this Agreement and includes its legal successors or permitted assignees.

### “**Supplier**” means the entity whose bid to perform the Contract has been accepted by the Client and is named as such in this Agreement and includes the legal successors or permitted assignees.

### **“Supplier’s Property”** means all of the Supplier’s products, materials, analysis, know-how and industry perspectives existing before the date on which the Supplier submitted its technical and financial proposal to the Client for the Contract. This includes any copyright, trademark, patent and other intellectual and proprietary rights.

### **“Training Services”** means the provision of training services in relation to the Goods as set out in Annex C of this Agreement, which are in accordance with the Standard Bidding Requirements.

### **“Warranty Period”** means the time period in which the Goods are fit for use as represented by the Supplier and the Supplier warrants to repair, replace or otherwise compensate the Client for any deficiencies in accordance with the terms of the Contract.

**“Working Day”** means any calendar day other than a Saturday, Sunday or public holiday in Rwanda.

All references to the singular herein shall also mean to the plural and vice versa.

**ARTICLE 2**

**Subject Matter**

(2.1) The Contract is for the supply and installation of Goods and the provision of Maintenance Services and Training Services that are set out in the Annexes of this Agreement and are in accordance with the Standard Bidding Requirements.

**ARTICLE 3**

**Contract Documents and Order of Precedence**

(3.1) The following documents shall constitute the Contract Documents between the Client and the Supplier, and each shall be read and construed as an integral part of the Contract:

1. This Agreement, including the annexes and notifications hereunder;
2. Project Implementation Plan, including maintenance and training service details and the payment schedule;
3. The Supplier’s submitted technical and financial proposals and negotiation report with annexes (if applicable) as accepted by the Client; and
4. Bid documents, including the terms of reference and request for proposals.

(3.2) In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed above.

**ARTICLE 4**

**Duration of the Contract**

(4.1) The Contract is effective from and including the Effective Date and shall remain in force until ………………………………………. or prior termination in accordance with Article 38 of this Agreement.

**ARTICLE 5**

**Phased Implementation**

(5.1) The supply and installation of Goods and provision of the Services under this Contract shall be performed in Phases in accordance with the terms of the Contract.

(5.2) The implementation of each Phase shall be contingent upon the written notification by the Client to the Supplier of successful Delivery, Installation or Completion of the preceding Phase, save that Phase 3 (maintenance) and 4 (training) can be conducted in parallel with the written agreement of both parties.

**ARTICLE 6**

**Contract Price**

(6.1) Without prejudice to Article 34 of this Agreement, the Client hereby undertakes to pay to the Supplier as consideration for the performance of the Contract the total net amount of……………………. Rwandan Francs (inclusive of all taxes and duties).

(6.2) Payments will be made in tranches following the successful completion of Phases in accordance with the Project Implementation Plan and payment schedule, which is summarized for indicative purposes below:

1. Phase 1: The payment for the supply of the Goods is ……………………………. Rwandan Francs
2. Phase 2: The payment for the installation of the Goods is ……………………………. Rwandan Francs
3. Phase 3: The payment for the provision of Maintenance Services is ……………………………. Rwandan Francs
4. Phase 4: The payment for the provision of Training Services is ……………………………. Rwandan Francs

**ARTICLE 7**

**Payment Modalities**

(7.1) For each Phase, payment for the Goods and Services shall be effected by the Client within thirty (30) Working Days following submission by the Supplier of:

1. An invoice for the respective Phase; and
2. A copy of the written confirmation from the Client of Delivery, Installation or Completion of the respective Phase.

(7.2) In the event of a disputed invoice, the Client shall notify the Supplier in writing of the disputed amount within ten (10) Working Days of receipt of the invoice, specifically identifying the reason for the dispute, and pay all undisputed amounts owed while the dispute is under negotiation. Upon resolution of a disputed invoice, the Client shall pay the remaining portions, if any, of such invoice.

(7.3) All payments shall be made in Rwandan Francs and directly transferred into the Supplier’s bank account as follows and any bank fees shall be borne by the Supplier:

Bank: …………………………………………..

Branch: …………………………………………..

Account name: …………………………………………..

Account number: …………………………………………..

**ARTICLE 8**

**Duties of the Supplier**

(8.1) The Supplier shall act in good faith and conduct all contracted activities with due care and diligence, in accordance with the terms of the Contract and with the skill and care expected of a competent supplier of goods and provider of training and maintenance services, and in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

(8.2) The Supplier confirms that it has been given access to and inspected the Client’s site to its satisfaction, and fully examined the data set out in Annex D of this Agreement, and is confident in being able to supply the Goods and provide the Services to the Client.

(8.3) The Supplier acknowledges that any failure to acquaint itself with any required data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.

(8.4) The Supplier shall be responsible for supplying, installing and maintaining the Goods and providing the Training Services within the time schedule specified in the Project Implementation Plan. Failure to do so may constitute grounds for termination of the Contract.

(8.5) The Supplier shall acquire, at its own cost, all permits, approvals and/or licenses including, without limitation, visas for the Supplier’s and subcontractor’s personnel and entry permits for all imported equipment that may be necessary for the performance of the Contract.

(8.6) The Supplier shall comply with all the laws in force in the Republic of Rwanda. The Supplier shall indemnify and hold harmless the Client from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of any laws or regulations by the Supplier or its personnel, including the subcontractors and their personnel.

(8.7) The Supplier shall, in all dealing with its labour and the labour of its subcontractors connected with the Contract, pay due regard to all recognised official holidays and all laws pertaining to the employment of labour.

(8.8) The Supplier represents and warrants that it has full power and authority to grant the rights granted by the Supplier to the Client in the Contract.

(8.9) The Supplier represents and warrants that neither the supply or installation of the Goods or provision of the Services by the Supplier or use by the Client under the Contract will in any way constitute an infringement or violation of any copyright, trademark, patent, or other intellectual or proprietary or other rights of any third party.

(8.10) The Supplier warrants to take due care and diligence when supplying, installing and maintaining the Goods and providing the Training Services to ensure that no unauthorized personnel are given access to the Client’s site and the Supplier will indemnify the Client for any loss that results from the Supplier failing to do so.

**ARTICLE 9**

**Duties of the Client**

(9.1) The Client shall permit an inspection of its site by the Supplier and take reasonable efforts to ensure the accuracy of the data supplied by the Client to the Supplier as set out in Annex D of this Agreement.

(9.2) The Client shall act reasonably, and in good faith, in allowing the Supplier to supply and install the Goods and provide the Services within the time schedule specified in the Project Implementation Plan.

(9.3) The Client will designate appropriate staff to learn from the Maintenance Services and receive the Training Services provided by the Supplier and shall make appropriate logistical arrangements for such services in accordance with the Contract Documents.

**ARTICLE 10**

**Supply and Installation of Goods**

(10.1) The Supplier agrees to supply the Goods specified in Annex A of this Agreement in good working order and the Supplier shall use such packaging for the Goods as is required to prevent their damage or deterioration during transit to their destination. Unless otherwise stated in the Contract, all packaging supplied by the Supplier shall be considered as non-returnable, and their cost having been included in the Contract Price.

(10.2) The Goods shall be delivered by the Supplier to the Client at the Client’s registered office unless otherwise agreed by both parties in writing. The parties shall agree a specific Delivery Date and time for delivery prior to the Supplier delivering the Goods.

(10.3) Upon receipt of the Goods and on the same day, the Client shall provide the Supplier with written receipt acknowledging successful delivery of the Goods. For the avoidance of doubt, Delivery shall not be deemed to have taken place without such written receipt from the Client.

(10.4) If the Supplier fail to supply the Goods as required, the Supplier shall be liable to make good to the Client all loss and damage occasioned by such failure.

(10.5) The Supplier shall install the Goods at the site approved by the Client, in accordance with the Project Implementation Plan. Following successful installation of the Goods, the Client shall provide the Supplier with written receipt acknowledging successful installation within ten (10) Working Days.

**ARTICLE 11**

**Operational Acceptance of Goods**

(11.1) Following issuance of an installation certificate in accordance with clause (10.5) above, the parties shall agree a mutually convenient time to conduct an Operational Acceptance Test, in accordance with the terms of the Project Implementation Plan.

(11.2) If any defect or deficiencies be identified in an Operational Acceptance Test, the Client shall notify the Supplier in writing within ten (10) Working Days.

(11.3) Upon receipt of a written notification pursuant to clause (11.2) the Supplier shall use all reasonable endeavours to promptly remedy such defects and/or deficiencies, at its own cost. Once such remedies have been made by the Supplier, the Supplier shall notify the Client, and the Client, with full cooperation of the Supplier, shall use all reasonable endeavours to promptly carry out a subsequent Operational Acceptance Test. The Client may reject and not be liable to pay for any Goods or any part thereof that fail to pass an Operational Acceptance Test.

(11.4) If an Operational Acceptance Test is successful, the Client shall provide the Supplier with an Operational Acceptance certificate within ten (10) Working Days from the date of the Operational Acceptance Test.

(11.5) Any reasonable costs or expenses incurred by the Client or Supplier in undertaking an Operational Acceptance Test shall be borne by the Supplier and, if necessary, deducted by the Client from any invoice received in relation to the Goods and Services.

**ARTICLE 12**

**Warranty and Maintenance Services for Goods**

**(12.1) Warranty for Goods**

(12.1.1) The Supplier warrants that the Goods supplied under this Contract shall be free from any defects that will limit in any material way the performance, quality and reliability of the Goods.

(12.1.2) The Supplier agrees to provide a Warranty Period that shall commence from and including the date of Operational Acceptance for a period of twenty four (24) months.

(12.1.3) If during the Warranty Period any of the Goods are non-performing or sub-standard, as a result of the design or development of the Goods or any material defect, the Client shall promptly notify the Supplier in writing. For the avoidance of doubt, the Warranty does not cover any damage to the Goods resulting from wear and tear which is covered under the Maintenance Service in clause (12.2).

(12.1.4) Following receipt of written notification pursuant to clause (12.1.3), the Supplier shall promptly, in consultation and agreement with the Client and at the Supplier’s sole cost, repair, replace or otherwise make good the Goods as well as any damage incurred by the Client as a result.

(12.1.5) The Warranty Period does not limit any statutory or other rights of the Client.

**(12.2) Maintenance Services for Goods**

(12.2.1) The parties hereby agree for the Supplier to provide the Maintenance Services in relation to the Goods in accordance with the Project Implementation Plan and during the provision of such services, the Supplier shall keep the Client informed on a regular basis of any maintenance issues that arise and progress in resolving the problems.

(12.2.3) If the Maintenance Services are not being performed to the Client’s satisfaction, the Client will use reasonable endeavours to inform the Supplier as soon as is practicable so that the Supplier can remedy any deficiencies in the Maintenance Service provision.

(12.2.4) Pursuant to clause (12.2.3) should the Supplier fail to remedy any unsatisfactory Maintenance Services, the Supplier shall be liable to make good to the Client all loss and damage occasioned by such failure.

(12.2.5) The Supplier shall provide the Client with two (2) weeks’ notice before the last day of Maintenance Services. On the last day of Maintenance Services, the Client shall provide the Supplier with written receipt acknowledging successful Completion of the provision of Maintenance Services. For the avoidance of doubt, Completion shall not be deemed to have taken place without such written receipt from the Client.

(12.2.6) To the extent possible, and having regard to levels of expertize and the terms of the Project Implementation Plan, the Supplier shall aim to develop the Client’s understanding and know-how related to the ongoing maintenance of the Goods.

**ARTICLE 13**

**Provision of Training Services**

(13.1) The Supplier agrees to provide the Training Services as specified in Annex B of this Agreement to the Client at the Client’s registered office unless otherwise agreed by both parties in writing.

(13.2) The Parties have set out the specific dates, times and duration for the Training Services in the Project Implementation Plan.

(13.3) During provision of the training services, the Supplier shall provide Materials to the participants, including a user manual for guidance purposes, in accordance with the Project Implementation Plan. The Supplier shall keep the Client informed on a regular basis of the training progress.

(13.4) If any part of the Training Services are not performed to a satisfactory standard, the Client shall use reasonable endeavours to inform the Supplier as soon as is practicable so that the Supplier can remedy any deficiencies in the Training Service provision.

(13.5) Pursuant to clause (13.4) should the Supplier fail to remedy any unsatisfactory Training Services, the Supplier shall be liable to make good to the Client all loss and damage occasioned by such failure.

(13.6) The Supplier shall provide the Client with two (2) weeks’ notice before the last day of training. On the last day of training, the Supplier shall issue a training certificate to the trained personnel, and the Client shall provide the Supplier with written receipt acknowledging successful Completion of the provision of Training Services. For the avoidance of doubt, Completion shall not be deemed to have taken place without such written receipt from the Client.

**ARTICLE 14**

**Reporting**

(14.1) The Supplier shall keep accurate and systematic accounts and records in respect of the supply and installation of the Goods and provision of the Services, in accordance with internationally accepted accounting systems and in such form and detail as will clearly identify all relevant time charges and costs and the basis thereof.

(14.2) The Supplier shall, on reasonable request, provide to the Client or its designated representative the accounting information of the Supplier in relation to the Contract for a period of up to one (1) year from the expiration or termination of the Contract.

**ARTICLE 15**

**Intellectual Property and Ownership of Materials**

(15.1) The Supplier shall generate and submit Materials to the Client in accordance with the terms of the Contract and in the language(s), number of copies and within the time agreed in the Project Implementation Plan.

(15.2) The Supplier shall retain copies of all documents and reports referred to in clause (15.1) above, solely for reporting obligations under the Contract and not to be used by the Supplier for purposes unrelated to this Contract without the prior written authorisation of the Client.

(15.3) All documents and reports with respect to the supply of Goods and provision of Services created for or given to the Client by the Supplier shall be the property of the Client.

(15.4) Notwithstanding clause (15.3) above, the Supplier shall retain ownership of all its its Supplier’s Property, it being understood that none of the Supplier’s Property shall contain the Client’s Confidential Information.

(15.5) In the event that any of the Goods, Services or Materials include any of the Supplier’s Property, the Supplier hereby grants the Client a non-exclusive worldwide royalty-free licence to use and copy the Supplier’s Property solely as part of the Goods, Services and Materials in accordance with the terms of the Contract.

**ARTICLE 16**

**Third Party Claim**

(16.1) If a third party asserts a claim against the Client that any Goods, Services or Materials under the Contract infringes that third party’s patent, trade mark, copyright or other intellectual property rights, the Supplier shall defend the Client against that claim at the Supplier’s expense and pay all costs, damages, and attorney’s fees awarded against the Client or that are included in a settlement approved in advance by the Supplier, provided that the Client:

1. promptly notifies the Supplier in writing of the claim, and
2. allows the Supplier to control the defence of the claim, and the Client reasonably cooperates with the Supplier in the process.

(16.2) Promptly following the written notification in clause (16.1(i)) above, the Supplier shall either:

1. obtain a license to enable the Client to continue to use the Goods, Services and/or Materials concerned, in accordance with the terms of the Contract, or
2. modify the infringing Goods, Services and/or Materials to substantially similar Goods, Services and/or Materials that avoid infringement, or
3. replace the Goods, Services and/or Materials, with no additional charges to the Client, with one that is compatible, functionally equivalent and non-infringing.

(16.3) If the Supplier determines that none of the foregoing alternatives in clause (16.2) are reasonably available, then on the Supplier’s written request, the Client shall return the Goods, Services and/or Materials to the Supplier and discontinue its use. The Supplier shall then give the Client a full refund of the cost of the Goods, Services and/or Materials concerned.

(16.4) The Supplier shall indemnify the Client for any loss and harm incurred in relation to sub-clauses (16.1) and (16.2) above.

**ARTICLE 17**

**Confidentiality**

(17.1) Neither party shall at any time without written authorisation from the other party, communicate to any third party any Confidential Information disclosed to it for the purpose, or obtained in the course, of performing its obligations under the Contract.

(17.2) The obligations in clause (17.1) will not be deemed to have been breached to the extent that Confidential Information is:

1. disclosed solely in order to comply with obligations, or exercise rights, under the Contract; or
2. in the public domain; or
3. independently and legally developed or acquired without the obligation of confidentiality; or
4. legally required to be disclosed by operation of law or judicial process, provided that the party required to make such disclosure has given prior written notice of such request for disclosure to the other party to allow them a reasonable opportunity to obtain a protective order.

(17.3) Where a party discloses Confidential Information to another person or entity, the disclosing party will:

1. notify the receiving person that the information is Confidential Information; and
2. not provide the Confidential Information unless the receiving person agrees to comply with the terms and conditions set forth in the aforementioned paragraph.

(17.4) In every instance, the disclosing party shall notify the other party:

1. prior to making any disclosure and
2. promptly of any breach of its confidentiality obligations when it has learnt of such a breach.

(17.5) The parties agree that during the term of this Contract and for …………… years thereafter each party and any entity affiliated with such party, as well as any personnel or affiliate of such party, shall not disclose or use any Confidential Information of the other party on behalf, or for the benefit, of any third party.

**ARTICLE 18**

**Assignment**

(18.1) Neither party may assign the Contract without prior written agreement of the other party, which consent shall not be unreasonably withheld. Any unauthorized assignment shall be null and void.

(18.2) Notwithstanding clause (18.1), upon written notice to the other party, either party may assign or otherwise transfer their rights and obligations under the Contract to:

1. its affiliate; or
2. the surviving entity as a result of a merger, acquisition or other consolidation, asset purchase of all or substantially all of the assets of such party, or in connection with any other transaction resulting in more than fifty percent (50%) of such party’s voting securities being held by the surviving entity,

provided that such acquiring entity agrees in writing that it will be bound by the terms and conditions of the Contract.

**ARTICLE 19**

**Subcontracting**

(19.1) The Supplier shall not enter into any subcontracts with any third parties for the supply or installation of the Goods or the provision of Services under the Contract except with the prior written agreement of the Client.

(19.2) Any subcontracts shall not relieve the Supplier from any of its obligations, duties, responsibilities or liability under the Contract. No subcontract value shall exceed twenty percent (20%) of the of the value of the Contract, and the terms of any subcontract shall be subject to and in conformity with the provisions of the Contract.

**ARTICLE 20**

**Insurance**

(20.1) The Supplier shall take out and maintain full coverage insurance against loss of or damage to Goods purchased under this Contract until title of the Goods has been transferred to the Client.

(20.2) The Supplier shall take out and maintain full coverage insurance against loss of or damage to their property, including papers and documents necessary for fulfilling obligations under the Contract.

(20.3) The Supplier shall take out and maintain full coverage insurance against claims by third parties resulting from acts performed in carrying out the obligations under the Contract, including workers’ compensation insurance covering all of the Suppliers’ personnel employed to perform services pursuant to this contract in accordance with any applicable workers’ compensation statutes including employers’ liability coverage.

**ARTICLE 21**

**Tax**

(21.1) The Supplier shall not claim from the Client any taxes, levies, license fees or any other such charges which are payable to any responsible authority in relation to this contract and/or the goods or services provided under this contract.

(21.2) If the Supplier improperly charges the Client and the Client inadvertently pays for any such taxes, the Supplier hereby authorises the Client to deduct such amount from any subsequent invoice presented by the Supplier to the Client in connection with the Contract.

**ARTICLE 22**

**Indemnification of the Client**

(22.1) Nothing contained in this Contract shall be construed as establishing or creating any relationship between the Client and the Supplier other than that of independent contractor. Accordingly, each party shall accept no liability in contract or in tort or any responsibility for the acts, omissions, errors or negligence of the other party. Neither party shall be liable to the other party for any lost profits, indirect, consequential, incidental, punitive and special damages.

(22.2) The Supplier undertakes to indemnify and hold harmless the Client from and against any action and all losses, liabilities, costs, claims, damages and expenses which the Client may incur in relation to, arising out of, or otherwise in respect of any act, omission, error or negligence of the Supplier arising from the Supplier’s performance of its obligations under the Contract, including third party claims. The Supplier shall reimburse the Client for all costs, charges and expenses which the Client may pay or incur in connection with investigating, disputing or defending against any such action or losses.

**ARTICLE 23**

**Limitation liability**

(23.1) Except in cases of criminal negligence or wilful misconduct or any damage arising out of breach of the Contract, the aggregate liability of the Supplier to the Client, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective Goods, or to any obligation of the Supplier in indemnifying the Client.

**ARTICLE 24**

**Language of the Contract**

(24.1) All Contract Documents shall be drawn up in English and the English language shall govern all documents, notices, communications and meetings relating to the Contract, unless otherwise agreed in writing by the parties.

(24.2) The Supplier may, if desirable and in accordance with the terms of the Contract, provide any Contract Documents in another language, in addition to English. In such case the Supplier shall bear any costs of translation and any risks as to the accuracy of such translations.

**ARTICLE 25**

**Performance Security**

(25.1) Prior to the Effective Date, the Supplier shall provide the Client with a Performance Security equal to ten percent (10%) of the Contract Price.

(25.2) If the Supplier does not perform any of its obligations under the Contract, including but not limited to meeting all technical requirements and milestones, the Client, in its entire discretion, is entitled to take full or partial payment of the Performance Security as compensation for such failure.

(25.3) Any deduction made to the Performance Security in accordance with clause (25.2) shall be replenished by the Supplier within twenty (20) Working Days up to the full Performance Security amount.

(25.4) The Performance Security shall be discharged by the Client and returned to the Supplier in two equal payments as follows:

1. the first half (50%) shall be returned within thirty (30) Working Days following the Operational Acceptance of the Goods; and
2. the second half (50%) shall be returned within fifteen (15) Working Days following the date of full and satisfactory completion of the Supplier’s obligations under the Contract.

**ARTICLE 26**

**Advance Payment**

(26.1) Prior to payment for Phase 1 under this Contract, an advance payment of not more than twenty percent (20%) of the Contract Price may be paid by the Client to the Supplier upon submission by the Supplier to the Client of:

1. a written request;
2. evidence of an advance payment security held by the Supplier at a bank or authorized financial institution equivalent to the amount of the advance.

(26.2) An advance payment made under clause (26.1) may only be used by the Supplier for the performance of its obligations under the Contract and shall be re-paid by the Supplier to the Client by the Client deducting half of the advance payment from each of the Phase 1 and Phase 2 invoices, or as otherwise agreed by the parties in writing.

(26.3) Following full re-payment of the advance payment in accordance with clause (26.2), the advance payment security shall be returned by the Client to the Supplier within twenty five (25) Working Days.

**ARTICLE 27**

**Damages and Suspension of Funds**

(27.1) If the Supplier fails to supply or install Goods or provide the Services by the dates specified in the Project Implementation Plan, the Client shall without any prejudice, deduct from the Contract Price, as liquidated damages, a sum equivalent to one thousandth (1/1000) of the total Contract Price for each day of delay until actual delivery or performance, up to a maximum deduction of five percent (5%) of the Contract Price. Once the maximum is reached, the Contract shall automatically be terminated.

(27.2) The Client shall, in its reasonable judgment, be entitled by written notice to the Supplier to suspend the disbursement of funds if the Supplier fails to carry out any material obligation of the Supplier under the Contract.

**ARTICLE 28**

**Severability**

(28.1) If any term or partial term of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of the Contract or any other term or partial term of the Contract.

(28.2) If the Supplier or any of its assignees is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Client for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. In such a circumstance, the composition or constitution of the joint venture, consortium, or association shall not be altered without the prior written agreement of the Client.

**ARTICLE 29**

**Force Majeure**

(29.1) Neither party to the Contract shall be responsible for any delay or failure to perform its obligations under this Contract if the delay or failure is attributable to Force Majeure.

(29.2) The party claiming Force Majeure shall give prompt written notice to the other party within five (5) Working Days specifying the nature and probable duration of the Force Majeure, the extent of its effects on such party’s performance of its obligations under the Contract and all reasonable measures taken to minimise the loss. The party claiming Force Majeure shall use its persistent, good faith and commercially reasonable efforts to overcome the event of Force Majeure.

(29.3) During the continuance of such Force Majeure, the obligations of the affected party shall be suspended only to the extent necessitated by such Force Majeure.

(29.4) In the event of a Force Majeure which delays or prevents performance of the whole or any part of this Contract for more than six (6) months, the contract shall automatically terminate unless the parties agree otherwise in writing.

**ARTICLE 30**

**Authorised Representatives**

(30.1) Any action required or permitted to be taken and any document required to be taken or permitted to be executed under this Contract may be taken or executed on behalf of the Supplier by the Supplier’s duly designated representative and on behalf of the Client by the Client’s duly designated representative.

**ARTICLE 31**

**Management of the Contract**

(31.1) To ensure efficient coordination and performance of the Contract, each party shall appoint a professionally competent person to be responsible for the day-to-day management and implementation of the Contract. Each party shall notify the other party of the contact details of such person.

**ARTICLE 32**

**Notices and Requests**

(32.1) Any notice or request required or permitted to be given or made in this Contract shall be in writing.

(32.2) Notices or requests shall be deemed to be duly given or made when delivered by hand, registered mail or facsimile to the party to which it is required to be given or made, at such party’s address specified below or at such other address as the party shall have specified in writing to the party giving such notice or making such request.

For the Client: (Full address if different to registered address)

…………………………………………………………………………………………..

For the Supplier: (Full address if different to registered address)

 …………………………………………………………………………………………..

(32.3) Change of address by either party shall take effect five (5) Working Days after delivery of a respective notice to the other party.

**ARTICLE 33**

**Extension of Time**

(33.1) If at any time during performance of the Contract, the Supplier should encounter conditions impeding timely supply or installation of the Goods or provision of the Services, the Supplier shall promptly notify the Client in writing of the delay, its likely duration, and its cause.

(33.2) As soon as practicable after receipt of the Supplier’s notice of delay, the Client shall evaluate the situation and may at its discretion extend the Supplier’s time for performance, in which case the extension shall be ratified by the parties in writing constituting an amendment of the Contract.

(33.3) Except in the case of Force Majeure, a delay by the Supplier in the performance of its obligations under the Contract shall render the Supplier liable to the imposition of liquidated damages unless an extension of time is agreed upon.

**ARTICLE 34**

**Change Orders and Contract Amendments**

(34.1) Except by mutual agreement in writing between the parties, no change, modification or amendment shall be made to the Contract.

(34.2)Notwithstanding clause (34.1), the Client may at any time request the Supplier through a written notice, to make changes within the general scope of the Contract in any one or more of the following:

1. drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Client;
2. the method of shipment or packing;
3. the place of delivery; and
4. tailoring of the Services to be provided by the Supplier to the Client.

(34.3) If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be agreed between the parties to the Contract Price and the Contract shall be accordingly amended. Any claims by the Supplier for adjustment under this clause must be asserted within twenty (20) Working Days from the date of the Supplier’s receipt of the Client’s change order.

(34.4) Prices adjustments for any change orders pursuant to clause (34.2) shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services, nor in total, exceed twenty percent (20%) of the Contract Price.

**ARTICLE 35**

**Change in Laws and Regulations**

(35.1) Unless otherwise specified in the Contract, if within twenty (20) Working Days after the Effective Date, any law, regulation order or bylaw having the force of law is enacted, promulgated or changed in Rwanda (which shall be deemed to include any change in interpretation or application by the competent authorities) that affects the agreed Delivery Date, Completion Date and/or the Contract Price, then those shall be correspondingly amended to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract.

(35.2) Notwithstanding clause (35.1), such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

**ARTICLE 36**

**No waiver**

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

### (36.2) Without prejudice to clause (36.1), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

**ARTICLE 37**

**Inspections and Audit by RPPA**

(37.1) The Supplier shall permit the Client, RPPA and/or persons appointed by either such party to inspect the Supplier’s offices and/or the accounts and records of the Supplier and its subcontractors in order to evaluate the performance of the Contract, and to have such accounts and records audited by auditors appointed by RPPA if required by RPPA.

**ARTICLE 38**

**Termination**

**(38.1) Termination for Default**

(38.1.1) The Client, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part if the:

1. Supplier fails to perform any or all of its obligations within the Contract.
2. Goods fail to pass an Operational Acceptance Test more than once; or
3. Supplier or subcontractors or any of their employees, in the judgment of the Client has engaged in fraudulent, collusive, coercive, corrupt or obstructive practices.

(38.1.2) In the event the Client terminates the Contract in whole or in part, the Client may procure, upon such terms and in such manner as it deems appropriate, goods or services similar to those undelivered or not performed, and the Supplier shall be liable to the Client for any additional costs for such similar goods or services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

(38.1.3) Should any employee of the Supplier be determined to have engaged in fraudulent, collusive, coercive, corrupt or obstructive practices, then that employee shall no longer be allowed to be involved in the Contract and shall be reported to the authorities.

**(38.2) Termination for Insolvency**

(38.2.1) The Client may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Client.

**(38.3) Termination for Convenience**

(38.3.1) The Client, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Client’s convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

(38.3.2) The Goods, Services or Materials that are complete and/or substantially ready shall be accepted by the Client at the Contract terms and prices. For the remaining Goods, Services or Materials, the Client may elect to:

1. have any portion completed in accordance with the Contract terms and prices; and/or
2. cancel the remainder and pay to the Supplier an agreed amount for partially supplied, installed and/or maintained Goods and/or partially provided Training Services and Materials.

**ARTICLE 39**

**Dispute Settlement**

(39.1) In the event that any dispute or claim arises among the parties in connection with the Contract or the interpretation of any of its provisions or upon the occurrence of default, the parties will use their best efforts to settle promptly such dispute through amicable and direct negotiations.

(39.2) If the dispute persists, the matter will finally be settled by arbitration at the Kigali International Arbitration Centre in accordance with the KIAC Rules.

**(39.3) Arbitration using KIAC Rules**

(39.3.1) Any dispute or difference between the Parties as to the interpretation or implementation of the Contract or in respect of any matter arising in connection with the Contract that cannot be settled by amicable settlement shall be settled by arbitration in accordance with the KIAC Rules.

(39.3.2) The number of arbitrators to the proceedings shall be three (3) appointed in accordance with the KIAC Rules. Each party shall choose one arbitrator and the appointed arbitrators shall choose a third arbitrator who will chair the panel.

(39.3.3) The seat for arbitration shall be Kigali and the language for arbitration proceedings shall be English.

(39.3.4) The award rendered by the arbitrators shall be final and binding. The party seeking enforcement shall be entitled to an award of all costs including legal fees to be paid by the party against whom enforcement is ordered.

**ARTICLE 40**

**Counterparts**

(40.1) This Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same agreement.

**ARTICLE 41**

**Entire Agreement**

(41.1) The Contract constitutes the entire agreement between the Client and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the Effective Date.

**ARTICLE 42**

**Governing Law**

(42.1) This Agreement shall be governed by and construed in accordance with the laws of the Republic of Rwanda.

**IN WITNESS WHEREOF** the parties hereto, each acting through its authorised representative, have caused this Contract to be duly executed on the respective dates specified bellow.

**FOR AND ON BEHALF OF THE CLIENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Position**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date**

**FOR AND ON BEHALF OF THE SUPPLIER**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Position**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date**

**Annex A: Goods**

**(Please specify description, quantity and quality)**

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**Confirmed by Client signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Confirmed by Supplier signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annex B: Maintenance Services**

**(Please specify description, quantity and quality)**

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**Confirmed by Client signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Confirmed by Supplier signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annex C: Training Services**

**(Please specify description, quantity and quality)**

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**Confirmed by Client signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Confirmed by Supplier signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annex D: Data Examined by the Supplier**

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**Confirmed by Client signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Confirmed by Supplier signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**