

SERVICES AGREEMENT

BETWEEN

The New Development Bank
("Party A")

- AND -

[]
("Party B")

This SERVICES AGREEMENT (the "Agreement") is made as of [DATE] (the "Effective Date") between Party A and Party B.

Recitals

1. Whereas, Party A during the term of this Agreement is desirous of seeking Service (as defined below) from Party B.
2. Whereas, Party B is engaged in the business of providing professional services of [xx] and desires to provide the Services to Party A.
3. NOW THEREFORE, for and in consideration of the mutual agreements and covenants hereafter set forth, the parties hereto agree as follows:

1. DEFINITIONS

- 1.1. "Authorized Persons" shall have the meaning as ascribed in Section 9.2.
- 1.2. "Change Order" shall mean the proposal for a change to the SOW as issued in accordance with Section 2.3.
- 1.3. "Confidential Information" means information that i) is disclosed or made available, whether before or after the date of execution of this Agreement, in any form or medium, including, but not limited to, written form or verbally, in electronic form or through electronic means of communication, directly or indirectly, by the discloser to the recipient; ii) is required to carry out the activities for the Service or is otherwise related to the Service; and iii) is not publicly available or in public domain.

The term "Confidential Information" shall not apply, or shall cease to apply, to information which the Recipient can show to the discloser's reasonable satisfaction (a) that it is, or becomes generally available to the public other than as a direct or indirect result of a disclosure in violation of this Agreement; (b) was or is developed by the recipient independently of, and without reference to, the Confidential Information; or (c) that it is, or becomes available to the recipient from a third party source that is not

connected with the discloser and that such source was not under any obligation of confidentiality in respect of that information.

- 1.4. **“Data”** means all information in hard copy or in electronic form, which is used in the performance of Services under this Agreement.
- 1.5. **“Intellectual Property Rights”** means all right, title and interest in and to any and all intellectual and industrial property, including: (a) any and all patents and applications therefore; (b) any and all inventions, trade secrets, design, methods, processes and know-how; (c) any and all copyrights, copyrights registrations and applications therefore, and all other rights corresponding thereto throughout the world; (d) any and all trade names, corporate names, logos, common law trademarks, trademark registrations and applications therefore; and (e) any and all computer programs, applications or software whether in source, object or executable code and any proprietary rights in such programs, applications or software, including documentation and other materials or documents related thereto.
- 1.6. **“Service”** means a service as specified in the Statement of Work, which Party B provides to Party A under this Agreement.
- 1.7. **“Statement of Work”** or **“SOW”** means the Schedule “A” attached to this Agreement, including but not limited to the quote or fee estimate signed by Party A, as amended or modified between the parties from time to time, which describes the Service to be provided by Party B to Party A, including, among other items, the scope, roles and responsibilities, deliverables, acceptance of deliverables, schedule, assumption and other obligations of the parties, and any additional terms and conditions relating specifically to such Service.
- 1.8. **“Third Party”** means any individual or legal person other than Party A, Party B and the Authorised Persons, to whom the Confidential Agreement has been disclosed prior to written approval of Party A. The term “Third Parties” shall be construed and interpreted accordingly.

2. SCOPE OF SERVICES:

- 2.1. **Agreement to Perform Services:** Party B agrees to provide the Services as specifically described in the SOW during the term of this Agreement.
- 2.2. **Conflict:** In the event of any conflict between this Agreement and the SOW or other agreement or document between the Parties, including a Change Order, this Agreement shall prevail, to the limited extent of the conflict.
- 2.3. **Change Orders:** Any addition or modification to the Service under the SOW shall be accomplished through the use of a “Change Order”. A Change Order must be in writing. Either party can raise a change request. The procedure for creating a Change Order is as follows:
 - 2.3.1. Party A shall submit a written request to Party B specifying the additions or modifications to the Service under the SOW (the “Change Notice”);
 - 2.3.2. Party B shall add or modify the Service as requested by Party A and shall prepare and submit an amendment to the SOW (the “**Change Order**”) to Party A which

shall include a description of the changes to the Service pursuant to the Change Notice and any additional fees (if any); and

2.3.3. Upon execution of the Change Order by an authorized representative of both parties, such Change Order shall be effective and shall become a part of the SOW.

3. TERM, TERMINATION OF SERVICE

- 3.1. **Term:** The term of this Agreement shall commence on the Effective Date and shall continue for a period of [] unless terminated earlier in accordance with the provisions of this Agreement.
- 3.2. **Termination of Agreement by Party A:** Party A may terminate without liability the Agreement, with or without cause, upon thirty (30) days' prior written notice to Party B.
- 3.3. **Termination of Agreement by Party B:** Party B may terminate this Agreement without liability on thirty (30) days' notice to Party A, if any amount due and payable by Party A under this Agreement is not paid on the payment date, except for amounts withheld pursuant to Section 4.6.
- 3.4. **Termination for Insolvency:** Either party may terminate this Agreement, in the event of any proceedings in bankruptcy, insolvency or winding up by or against the other party or for the appointment of an assignee or equivalent for the benefit of creditors or of a receiver or of any similar proceedings.
- 3.6. Following termination of this Agreement by either Party, Party A shall pay to Party B amounts due and payable for Services provided up to the date of termination.

4. FEES, INVOICING AND PAYMENT

- 4.1. **Fees for Services:** Party A shall pay Party B for the Services provided by as specified in the SOW.
- 4.2. **Taxes:** Each party is responsible for its own income taxes, corporate taxes and other applicable taxes to parties.
- 4.3. **Expenses:** Subject to any limitations specified in the SOW and subject to Party A's policies, Party A shall pay or reimburse Party B for all pre-approved, out-of-pocket expenses reasonably incurred by Party B's personnel in performing the Service.
- 4.4. **Invoices:** Party B shall submit invoices to Party A as specified in the SOW detailing the amounts payable by Party A hereunder.
- 4.5. **Payment Term:** Party A shall remit payment to Party B within thirty (30) days following its receipt of each such invoice; provided that Party A may withhold payment of any amounts that are disputed by Party A in good faith pending resolution of the dispute.
- 4.6. **Dispute Notification:** In the event that Party A disputes the invoiced amount, Party A shall notify Party B reasons for disputing any amount within fifteen (15) days after receipt of applicable invoice, where upon Parties shall promptly seek to resolve the

dispute by mutual discussion. Any such dispute shall not relieve Party A from paying when due any undisputed portion of the invoice.

5. Party B'S RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

5.1. Party B agrees, represents, warrants, and undertakes:

- (1) to perform the Services defined within the SOW; I) in accordance with generally accepted industry standards and practices and with the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances in a timely and efficient manner, using appropriately qualified and experienced staff; and ii) in accordance with specific requirements as provided in the SOW;
- (2) that it has all the rights, including Intellectual Property Rights in relation to the Services that are necessary to grant all the rights it purports to grant and perform all the obligations it agrees to perform under, and in accordance with the terms of this Agreement;
- (3) to comply with all applicable laws and regulations, with respect to its activities and Services under this Agreement;
- (4) to liaise with Party A through Party A's coordinator on matters related to the Services;
- (5) to notify Party A, whenever practicable, if expenses beyond the defined charges within the SOW may be incurred;
- (6) to invoice Party A according to the terms of this Agreement and the SOW for the Services performed;
- (7) to, subject to Section 7.3, proceed according to Party A's reasonable instructions for the disposition of Party A's Data and supplies on the termination of this Agreement;
- (8) that it has obtained all necessary corporate approvals to enter into this Agreement and that no consent, approval, or withholding of objection is required from any external authority with respect to the entering into of this Agreement; and
- (9) that it is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or conflict with any obligations under this Agreement.

5.2. **Correction of Errors.** Party B warrants that it will promptly and at its expense correct any errors for which Party B is responsible after it becomes aware of such error or upon written notice from Party A. If the prompt correction of the error is not possible, Party B shall provide a credit to Party A equivalent to the charge that would have been applicable for correcting that portion of the Service that is in error.

6. Party A'S RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

6.1. Party A agrees, represents, warrants, and undertakes to:

- (1) Provide all necessary Data to Party B;
- (2) Ensure the accuracy and completeness of all Data supplied to Party B; and
- (3) identify a coordinator to liaise with Party B on matters related to the Services and authorize that coordinator to make decisions on behalf of Party A in relation to the implementation of this Agreement or any changes thereto;

7. DATA AND PRIVACY

- 7.1. **Ownership, Compatibility and Security:** All Data supplied by Party A related to the performance of Service shall remain Party A's exclusive property. Party B shall be responsible or liable for the security or integrity of Party A's Data during transmission via public telecommunications facilities (including the Internet) or services by Party B.
- 7.2. **Privacy Laws:** The parties are each responsible for complying with any obligations applying respectively to them under the applicable data protection and personal information protection laws ("Privacy Laws") governing Party A's Data.
- 7.3. **Handling of Data after Termination:** Upon termination of this Agreement, Party B shall immediately return or delete any Data provided by Party A pursuant to this Agreement. Upon 10 days of written notice by Party A, Party B shall provide a written certification that the aforesaid actions have been duly carried out or have been caused to be carried out by Party B.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. All Intellectual Property Rights, owned by a party, its licensors or subcontractors as at the Effective Date of this Agreement shall continue to be owned by such party, its licensors or subcontractors and, except as expressly provided in this Agreement, the other party shall not acquire any right, title or interest in or to such Intellectual Property Rights.
- 8.2. Party B shall own all rights, title and interest in and to any materials created or developed by Party B or its subcontractors for its internal use or for assisting Party A in the provision of the Services and Party A shall own all rights, title and interest in and to any Intellectual Property Rights resulting or based on any work product created or developed exclusively for Party A by Party B under this Agreement if paid for by Party A.

9. CONFIDENTIALITY

- 9.1. Party B will, and will cause the Authorised Persons and the Third Parties to, keep the Confidential Information in confidence, safeguarding it as private, and will not, without the prior written consent of Party A or except as expressly provided in this Agreement, disclose or use, in any manner whatsoever, in whole or in part, either directly or indirectly, the Confidential Information for any purpose other than implementing the Service. Party B further agrees that (i) each such person to whom it discloses the

Confidential Information shall comply with the obligations set out in this Agreement as if they were Party B, (ii) in case of disclosure to Third Parties, any such Third Party to whom disclosure is made shall enter into a confidentiality agreement with Party B on terms equivalent to those contained in this Agreement; and iii) Party B will be liable for an unauthorised disclosure, receipt, handling, use, keeping or adjustment of the Confidential Information that may take place as a result of the acts of Authorised Persons and/or Third Parties.

- 9.2. Party B shall only disclose the Confidential Information to those of its employees, agents and subcontractors as permitted in writing by Party A (“Authorised Persons”) and who have a need to know and require access to the Confidential Information as may be necessary in the exercise of the Services under this Agreement.
- 9.3. Party B shall protect the Confidential Information in such a way as to prevent any unauthorised disclosure, receipt, handling, use, keeping or adjustment thereof by the Third Parties and Authorised Persons, as well as to comply with the obligations undertaken under this Agreement, professional standards, business practice and applicable law.
- 9.4. The Confidential Information shall not be transmitted with the use of unsecured telephone, telegraph or facsimile lines, as well as through the internet without taking protective measures satisfactory to Party A.
- 9.5. Party B shall promptly notify Party A of any unauthorized disclosure or threat of unauthorized disclosure of the Confidential Information that took place or may take place as a result of the acts of the Party B/ Authorised Persons/ Third Parties or that Party B became aware of. Party B shall also take all reasonable steps, at its own expense, required to prevent or stop the suspected/ threatened or actual breach of this Agreement.
- 9.6. The secrecy of Confidential Information disclosed pursuant to this Agreement shall be maintained for a period of five (5) years following disclosure thereof.

10. LIMITATION OF LIABILITY AND EXCLUSIONS

- 10.1. Except for any liability set forth in this Agreement and subject to Section 10.3 and Section 10.4, neither party shall be liable to the other for any special, indirect, incidental, consequential, loss for profit, loss of business, exemplary or punitive damages whether in contract, tort or other theories of law, penalties or third party claims even if such party has been advised of the possibility of such damages.
- 10.2. Subject to Section 10.3 and Section 10.4, the total, cumulative liability of either Party A or Party B arising from or relating to this Agreement shall not exceed the total amount paid or payable for the Services under this Agreement that gives rise to such liability during the twelve (12) months preceding the date the claim first arose; provided, however, that this limitation shall not apply to any liability for damages arising from (a) willful misconduct, (b) negligence, or (c) indemnification against third party claims for infringement.
- 10.3. Nothing in this agreement excludes the either party's liability for fraud or fraudulent misrepresentation.

10.4. The limitations of liability in this Article 10 shall not apply:

- a) to Article 11 (Indemnity) of this agreement (whether in respect of performance of the indemnity or its breach);
- b) any breach of any regulatory requirement by Party B which directly or indirectly results in the imposition of any fine or sanction on Party A or Party A otherwise incurring any liability;
- c) any breach by either party of Article 7 (Data and Privacy), Article 8 (Intellectual Property Rights) and Article 9 (Confidentiality).

10.5. Both Parties will in all circumstances use their reasonable endeavors to mitigate any losses which are said to arise by reason of the breach, negligence or other default on the part of the other Party.

11. INDEMNITIES

- 11.1. Subject to Article 10 of this Agreement, Party B will indemnify and hold harmless Party A and its affiliates, and their respective shareholders, directors, officers, agents and employees from and against any costs, losses, claims, actions, proceedings, damages, judgments, penalties, liabilities, expenses and other amounts of any kind or nature whatsoever (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal fees and expenses) suffered or incurred by Party A arising out of or related to or resulting from any claim made against Party A for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Services, their use of otherwise in relation to them, and action taken or permitted to be taken by Party A in reliance on instructions or orders received from Party B as to anything arising in connection with Party A's performance of its obligations under this Agreement.
- 11.2. Promptly after Party A receives notice of any claim for which it will seek indemnification pursuant to the Agreement, Party A will notify Party B of the claim in writing. Within fifteen (15) days after receiving Party A's notice of a claim, but no later than ten (10) days before the date on which any formal response to the claim is due, Party B will notify Party A in writing as to whether Party B acknowledges its indemnification obligation and elects to assume control of the defense and settlement of the claim (a "**Notice of Election**"). In issuing a Notice of Election, Party B waives any right of contribution against Party A unless the Notice of Election expressly states Party B believes in good faith that Party A may be liable for portions of the claim that are not subject to indemnification by Party B, in which case Party A will have the right to participate in the defense and settlement of the claim at its own expense using counsel selected by it.
- 11.3. If Party B timely delivers a Notice of Election, it will be entitled to have sole control over the defense and settlement of the claim except as provided in the immediately preceding paragraph. After delivering a timely Notice of Election, Party B will not be liable to Party A for any attorneys' fees subsequently incurred by Party A in defending or settling the claim. In addition, Party B will not be required to reimburse Party A for any amount paid or payable by Party A in settlement of the claim if the settlement was agreed to without the written consent of Party B.

11.4. If Party B does not deliver a timely Notice of Election for a claim, Party A may defend and/or settle the claim in such manner as it may deem appropriate, and Party B will promptly reimburse Party A upon demand for all losses suffered or incurred by Party A with respect to the claim.

12. NOTICES

12.1. Any notice or demand to be given by either party to the other under this Agreement will be in writing and may be delivered personally, by email, by facsimile or by first class prepaid mail to the following addresses:

If to Party A:

The New Development Bank

Attention: []

Tel: []

Email: []

Address: []

If to Party B:

[]

Attention: []

Tel: []

Email: []

Address: []

Notices delivered in person, email or facsimile will be effective on the date of such delivery. Notices issued by mail will be effective on the third business day following the date that the envelope containing the notice is post-marked unless between the time of mailing and the time the notice is deemed effective there is an interruption in postal service, in which case, the notice will not be effective until actually received. In the event of a postal strike or lockout, notices or demands under this Agreement must be delivered personally or by facsimile.

13. GOVERNING LAW AND DISPUTE RESOLUTION

13.1. This Agreement shall be governed by the laws of Hong Kong, excluding any laws that direct the application of laws of another jurisdiction.

13.2. If any dispute arising out of or relating to this Agreement (including any dispute under Section 4.6), is not resolved through mutual discussion or negotiations in good faith between the parties, the dispute shall be submitted to the Hong Kong International Arbitration Centre (“HKIAC”) in accordance with the Arbitration Rules of the HKIAC (“HKIAC Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Hong Kong, People’s Republic of China. The tribunal shall consist of three (3) arbitrators. The language of the arbitration shall be English. Notwithstanding any provisions of the HKIAC rules, the arbitral tribunal shall not be authorized to take or provide, and Party B shall not be authorized to seek from any judicial authority, any interim measures of protection or pre-award relief against Party A. The Parties acknowledge and agree that no provision of

this Agreement or of the HKIAC rules, nor the submission to arbitration by Party A, in any way constitutes or implies a waiver, termination or modification by Party A of any privilege, immunity or exemption of Party A granted in the Articles of Agreement, international conventions, or applicable law.

14. GENERAL

- 14.1. Neither party will be responsible for any failure to fulfill its respective obligations under this Agreement due to causes beyond its reasonable ability to control (such as due to an event of fire, flood, earthquake, element of nature or act of God, civil disorders or any similar events commonly referred to as “**Force Majeure**”) provided that either party affected by such cause has used and continues to use all reasonable efforts to perform its obligations and makes reasonable attempts to notify the other party in writing within three (3) business days of its inability to fulfill its obligations under this Agreement. Upon receipt of such notice, this Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure, the party who has not been so affected may terminate this Agreement by giving written notice.
- 14.2. This Agreement (including the SOW which is an integral part of this Agreement) constitutes the entire agreement between the parties concerning all the matters herein and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions between the parties, whether oral or written. This Agreement cannot be amended or modified other than by a change made in writing and executed by the parties. No delay or omission by a party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of the other party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.
- 14.3. In the event that any portion of this Agreement is held by a court or an arbitrator of competent jurisdiction to be invalid or unenforceable, in any respect, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision of this Agreement shall be valid and enforceable to the extent granted by law.
- 14.4. Obligations under this Agreement which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive termination, cancellation or expiration of this Agreement.
- 14.5. This Agreement may be executed in one or more counterparts, including by facsimile transmission, each of which when executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.
- 14.6. Party B is bound by the anti-corruption / anti-bribery clauses / principles that are applicable to their entity under the relevant laws / regulations or under their internal code of conduct. Party B is agreeable to provide access to Party A for any investigation at any stage during the course of agreement, if Party A is in receipt of any complaint

relating to fraud /corruption related misconduct by Party B, while performing the Services for Party A.

- 14.7. The headings used in this Agreement are for the convenience of the Parties only and shall not be deemed a part of, or referenced in, construction of this Agreement.
- 14.8. This Agreement will be binding on the Parties hereto and their respective successors and assigns. Neither Party may assign the Agreement without the prior written consent of the other. Any assignment by operation of law, order of any court, or pursuant to any plan of merger, consolidation or liquidation, will be deemed an assignment for which prior consent is required and any assignment made without any such consent will be void and of no effect as between the Parties.
- 14.9. No amendment or change to this Agreement or any waiver or discharge or any rights or obligations under this Agreement will be valid unless in writing and signed by an authorized representative of the Party against which such amendment, change, waiver or discharge is sought to be enforced.
- 14.10. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a competent authority, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remainder of this Agreement will remain in full force and effect.
- 14.11. No person who is not a party to this Agreement shall have any rights to enforce any term of this Agreement.

In acceptance of the above

Party A
(For The New Development Bank)

Name:

Title:

Signature:

Stamp:

Party B
(For [REDACTED])

Name:

Title:

Signature:

Stamp:

Schedule A

Statement of Work (SOW)

[To be inserted by NDB in agreement with the service provider, e.g. fees and expenses, specific standard/requirements of the deliverables etc.]