

مؤسسة الإمارات EMIRATES FOUNDATION

1) **Applicable law and Interpretation**

- a) This Contract is subject to Law Number (6) Year 2008 on Purchases, Tenders, Auctions, and Warehouses and its Manual, and other laws in force in the Emirate of Abu Dhabi and the United Arab Emirates.
- b) The headings in this Contract are meant for easy reference only and shall not form part hereof nor shall they have any effect on its interpretation.
- c) The Vendor has to obtain all the licenses and permits required under the laws applicable to this Contract.
- d) Any contradiction between the provisions hereof and any other documents, provisions hereof shall prevail. In case of any contradiction between the provisions hereof the subsequent provision shall supersede the previous one.
- e) Any dispute, case or controversy arising from or in connection with this Contract or any breach hereof shall be referred to the parties for amicable settlement. If the amicable settlement is not possible, the dispute shall be referred to the court of jurisdiction for settlement.

2) **Entire Contract**

- a) This Contract constitutes the entire agreement between the two parties and shall include all the agreed terms and conditions.
- b) Neither party shall be bound or responsible for any statement, declaration, promise, solicitation or any understanding of any kind or nature, except to the provisions of this Contract.
- c) No alterations, amendments or changes to the terms and conditions hereof shall be valid, unless effected by a "Variation Order" signed by the two parties.

3) **Vendor Independency**

During the Vendor performance of this Contract, it has to act as an independent Vendor and not as an agent for Department. It shall have no right to present any declaration, promise or commitment of any kind on behalf of Department, nor shall it bind EF towards third parties by any mean.

4) **Contract Price, Invoices and Payments**

- a) EF shall pay to the Vendor the Contract price set out in Appendix "B" hereto to settle all the Vendor entitlements under this Contract.
- b) In consideration of EF payment of the Contract price, Vendor undertakes to duly carry out and deliver all the Services set forth in Appendix "A" hereto and carry out all other necessary Services and matters which can be implicitly understood in this Contract at the times, the manner and under the same terms and condition contained herein.
- c) Price of the works provided for in this Contract represents the full compensation payable to the Vendor against the Services, inclusive of all the costs and expenses for the due care, agency, taxes, customs, fees, charges, differences in the foreign exchange rates and any other burdens of any kind solely incurred by the Vendor.
- d) Prices are fixed and may not be increased in any manner.

مؤسسة الإمارات
EMIRATES FOUNDATION

- e) No payment to the Vendor shall be made unless and until it arranges for the submission of the performance bond provided for in Article No. "2", Paragraph "b" hereof in accordance with the terms and conditions hereof.
 - f) The period of time specified for determination of the due payment shall be with reference to the date at which EF receives the correct invoice and any other relevant documents.
 - g) Any payments made by EF should not be construed as a waiver of its right to object to any invoice already paid. EF reserves the right to reject any invoice not raised by the Vendor within six (6) months from the date of completion of a certain Services or from the date of bearing any payable costs, unless the invoice is a "revised invoice". In this case EF shall have the right to reject such invoice if it is presented after six (6) months from the date of objection to the original or revised invoice.
 - h) Vendor has to present the original invoices marked with the Contract number.
- 5) **Vendor Representative**
- a) Before the commencement of Services the Vendor shall, under this Contract, appoint a competent representative acceptable to EF to represent and act on its behalf at all times, in relation to the Contract. Vendor undertakes to notify EF in writing of the address and telephone numbers, through which the said representative can be reached, day and night and its powers.
 - b) After EF approval of the Vendor representative, such ,without approval from Department.
 - c) Vendor representative shall be fully responsible for the Vendor's Services in relation of this Contract, whether such Services were carried out at the Vendor's head office or its branches. If so required, he has to be available at site, at the times specified by Department.
 - d) If Department, at any time considers the contactor representative or equivalent, as incompetent or negligent and for any other reasons, Vendor shall have to remove such person at Vendor's cost, as soon as he receives a written notice from Department, requesting to remove such person and promptly appoints a suitable substitute acceptable to EF representative.
- 6) **Insurance and Indemnities**
- a) Notwithstanding any provision to the contrary in the Contract, the Services shall be at the Vendor's risk until an Acceptance Certificate is issued.
 - b) Vendor shall notify EF of any accident occurrence likely to give rise to a claim under EF insurances as soon as possible in any event within two (2) working days of such occurrence. Vendor shall also submit all the claim documents to the EF as soon as possible and in any event within fifteen (15) days of such occurrence. Whenever applicable, actual settlement of a claim shall be effected by the Insurers directly to EF account. Once the claim amount is settled by the Insurers, EF shall reimburse the Vendor the claim amount due to Vendor as the case may be.

مؤسسة الإمارات EMIRATES FOUNDATION

- c) In no event shall either party have any liability to the other party or its affiliates or sub-Vendors for any special, indirect, exemplary, punitive or consequential loss or damage including damages or claims in the nature of lost revenue, income, profits or investment opportunities.
- d) The Vendor shall release, defend, indemnify and hold harmless Department, its affiliates and its officers, employees, sub-Vendors and agents from and against all claims, liabilities, damages, and expenses including, without limitation, attorneys fees and other costs of defense arising out of or incidental to this Contract for:
- Any and all injuries to or death or illnesses of any Vendor employees, officers, agents, sub-Vendors excluding any claims made by personnel under any workers and/or personnel insurance program maintained by such Vendor, or any third parties and;
- Any and all damage to or loss of property of the Vendor, Vendor employees, officers, agents, sub-Vendors or any third party, except where occasioned by, or as the result of, in whole or in part, the gross negligence or willful misconduct of a EF indemnitee.
- e) Without limitation to its obligations and responsibilities under this Contract, the Vendor during the whole period of the Contract from commencement until the expiry date shall at its own expense either insure or cause to be insured for liability for bodily injury by accident or disease including death resulting therefrom sustained by any agent, servant or employee of Vendor or sub-Vendors arising out of and in the course of employment; and for all plant and equipment brought onto the Services site by the Vendor or sub-Vendors for the use in connection with the Services to their full value against all loss or damage from whatever cause.
- 7) **Variations**
- a) Amendments to any term, condition, or provisions of this Contract can only be effected by executing a Variation Order duly approved by parties thereto. A Variation Order thus executed shall be deemed an integral part of this Contract.
- b) The Vendor shall strictly comply with all terms and conditions of this Contract and shall not carry any amendments to this Contract until formally authorized by executing a Variation Order duly approved by parties thereto.
- 8) **Inspection and Testing**
- a) Services performed by the Vendor shall be available for inspection at all reasonable times by Department. For such purpose Vendor shall allow or procure for EF access to all workshops and other places where Services are being processed including the premises of Vendor's sub-Vendors and EF reserves the right to finally survey quality and place of final acceptance.
- b) EF inspection, failure to inspect or waiver of inspection of any part of the Services shall not constitute acceptance thereof nor relieve Vendor of its

مؤسسة الإمارات EMIRATES FOUNDATION

obligation to comply with the provisions of the Contract.

- c) If, upon inspection, any Services are considered by EF not to be of an acceptable standard, Vendor shall promptly repair or replace the same to EF satisfaction at its own cost. Vendor shall be allowed no extension of time on account of such performance or replacement.
 - d) In the event of the Vendor's failure to repair or replace any Services considered unacceptable by Department, EF may repair (or have repaired) or replace the Services at Vendor's expense and deduct the cost thereof from the Contract Price.
 - e) If in compliance with the provisions of this Contract or by reasons of any applicable law any Services are required to be tested or inspected, Vendor shall give EF timely notice of Vendor's readiness for test/inspection thereof and, if the same is to be witnessed by someone other than EF of the date fixed therefor. Vendor shall be responsible for all costs associated with such tests/inspections.
 - f) All instruments, machines and equipment (including the testing laboratory) shall be subject to examination by or on behalf of EF before they are used for the purpose of any tests contemplated by this Article.
 - g) If EF appoints a third party inspection agency, Vendor shall coordinate with such Third Party Inspection Agency and treat its authorized representatives in the same manner, as EF authorized representatives, for inspection and testing of Services under the provision of this Contract.
- 9) **Performance Bank Guarantee**
- a) If so stipulated under Article "2.b" of this Contract and within fifteen (15) days from the coming into force of this Contract, the Vendor shall provide EF with a Performance Bank Guarantee by a bank and wording approved by EF and payable to it.
 - b) The Performance Bank Guarantee shall be issued and maintained in an amount stipulated in Article "2.b" of this Contract.
 - c) Cost of the Performance Bank Guarantee shall be borne by Vendor, and it shall issued to secure the due performance of Vendor's obligations under this Contract notwithstanding any variations, alterations or extensions of time that may be agreed upon.
- 10) **Liquidated Damages for Late Completion**
- a) If the Vendor fails to perform the Services on or before the Completion Date, then Vendor shall pay to Department, by way of liquidated damages, up to a maximum of 10% of the Contract Price. Where completion is phased, the aforesaid percentage shall be applied to relevant portion of Contract Price.
 - b) The delay penalty shall be calculated by dividing the delay period by the full term of the Contract or the stage, as the case maybe, multiplied by the value of the contract or the stage.
 - c) EF shall not be obligated to answer any query for imposing liquidated

مؤسسة الإمارات EMIRATES FOUNDATION

damages.

- d) EF may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies which are due or may become due to the Vendor and/or may have recourse to the Bank Guarantee established by Vendor. The payment or deduction of such damages shall not relieve the Vendor from its obligation duly to perform all the other provisions of this Contract.

11) **Claims and Liens**

- a) EF shall have a first and paramount lien on all materials and equipment which as appropriated to performance of the Services under this Contract and intended for incorporation or incorporated into the Services, to secure performance of Vendor's obligations under this Contract.
- b) The Vendor undertakes not to create or do any act, deed or thing which would result in the creation of any lien or charge on any materials or equipment forming or intending to form part of the Services.
- c) Vendor shall protect, indemnify and save EF harmless from and against any and all liability for the payment of the amount of any lien or charge claimed against the property of EF and/or Services or any part thereof which lien or charge is alleged to have been created by the Vendor or any of its sub-Vendors or to arise in respect of work done or materials and equipment supplied in connection with Vendor's operations relative to this Contract. The provisions of this Article shall not apply to such liens and charges as are created by Department, which are solely to EF's account.
- d) If at the expiry of 14 days following notice to Vendor from EF to discharge any lien or charge or claim thereof to which the provisions of this Article apply, such lien, charge or claim has not been discharged by Vendor then EF shall be entitled to procure such discharge and to deduct and retain out of any payment due or to become due from EF to Vendor all the costs and expenses incurred by EF in procuring such discharge (including all legal costs and expenses whatsoever on a full indemnity basis) together with the amount of any losses suffered by EF on account of Vendor's failure to discharge the said lien, charge or claim.

12) **Sub-Vendors**

- a) The Vendor agrees to provide a complete list of names and addresses of all the sub-Vendors consultants and any other Vendors of services for the performance of the Contract.
- b) The Vendor shall be fully responsible for all work and services performed and all material and equipment supplied by Sub Vendors and for the acts and omissions of Sub Vendors and persons either employed directly or indirectly.

13) **Termination**

مؤسسة الإمارات EMIRATES FOUNDATION

EF can terminate this Contract upon giving the Vendor one month written notice of its intention so to do and EF shall pay to the Vendor the proportionate price to the extent of the Services performed and accepted by Department.

14) Suspension of Work

EF may at any time, require Vendor to and Vendor shall suspend the performance of all or and portion of Services relative to this Contract.

15) Conflict of Interests

Each party shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with the best interests of the other party.

16) Assignment

Vendor shall not in any manner or degree assign or transfer, directly or indirectly, the Contract or any part thereof or any share or interest therein, without the prior written consent of Department.

17) Force Majeure

- a) If either party is temporarily rendered unable, wholly or in part by an event of Force Majeure to comply with its obligations under this Contract and if notice of such event of Force Majeure is given to the other party in writing and within seven (7) days after the affected party has become aware of occurrence of the event of Force Majeure relied on, then such obligations of the party affected shall be suspended for so long as its inability shall continue by reason of such event of Force Majeure. The party so affected shall give written notice to the other party of the ending of that event within seven (7) days after becoming aware thereof.
- b) Neither party shall be liable for delays caused by Force Majeure, provided notice thereof is given as required above.
- c) The term "Force Majeure" as employed herein shall forces not foreseeable nor within the control of the party affected thereby and which that party is unable to overcome by the exercise of due diligence.
- d) In the event of any dispute, the party claiming to be affected by Force Majeure shall bear the burden of proving that it is so affected.

18) Publicity and Confidentiality

- a) The Vendor shall not publish, or convey, or make public, any reference to or in connection with the Services without the prior written consent of the Department, nor shall he or his employees or his sub-Vendors disclose or enable to access such information to unconcerned or third parties unless according to procedures in place in the Department.
- b) Employees of the Vendor shall be bound, during existence in any of the EF work locations, not to deliberately access or disclose any information or document contents not falling within scope of work of this contract relating to the Department, and shall sign declarations accordingly at start of this contract.

19) Health, Safety, and Environment

مؤسسة الإمارات EMIRATES FOUNDATION

- a) The Vendor shall be committed to comply with Executive Council Resolution Number (42) Year 2009 for Health and Safety and the “Legal Framework for Environment, Health, and Safety Management System”, and so with EF related requirements.

In so doing, the Vendor shall communicate with representatives of the EF to obtain description of the mentioned requirements, and to submit within fifteen days from date of commencement of this contract, a health, safety, and environment plan indicating implementation strategy, allocated resources, and procedures.

- b) Employees of the Vendor shall be bound, during existence in any of the EF work locations to the following:

- Health, safety, and environment requirements applied in the Department.
- Entry and exit procedures of the work locations.
- Knowledge of names and telephone numbers of the emergency team of the Department.
- Knowledge of emergency exits and assembly points, and acceding to emergency evacuation instructions, and abiding to demanded preventive and corrective actions.
- Reporting any accident or injury or cases may cause industrial injury, and changes in their work locations and communication means during emergency situations.

- c) EF through any of its officers, employees, or agents shall have the right, upon reasonable prior notice, from time to time during the Contractor's usual business hours but no more than twice a year (unless an Event of Default has occurred and is continuing), to inspect, check, test, and appraise the Contractor's Occupational Safety and Health (OSH) system aspects in order to verify the contractor's OSH condition or any other matter relating to, OSH.

20) Government Entities Contracting with Private Sector

The Vendor is committed to as below:

- a) Avail health insurance cover to its workforce.
- b) Avail appropriate housing to its workforce in Abu Dhabi.
- c) Avail valid residence permits to its workforce in accordance with legislations in force.
- d) Apply salaries protection system of UAE Ministry of Labor.
- e) Comply with Federal Labor Law of UAE.
- f) Submit within 15 (fifteen) days from start date of this contract approved copies of the following documents:
 - National insurance cover from approved organization of its workforce.

مؤسسة الإمارات EMIRATES FOUNDATION

- Availability of appropriate housing in Abu Dhabi Emirate for its workforce.
 - Availability of valid residence permits for its workforce.
 - Evidence of compliance with salaries protection system of UAE Ministry of Labor,
 - Certificate of no violations to UAE Federal Labor Law.
- and submit a quarterly updated report of amendments to the above information.