



VOLUME 3: DRAFT AGREEMENT

RFP Number:	O-16832.1
Title:	Procurement secondment

PREPARED BY:

ABU DHABI SUSTAINABLE WATER SOLUTIONS COMPANY PJSC

P.O. Box 108801, Abu Dhabi, United Arab Emirates

Table of Contents

FORM OF AGREEMENT	4
Notices to ADSWS:.....	7
Email: xx	7
Notices to the CONTRACTOR:.....	7
ANNEXURE I: GENERAL TERMS & CONDITIONS.....	9
1. General Definitions and Interpretations	9
2. Term of the AGREEMENT	14
3. <i>Not Used</i>	14
4. Key Personnel.....	14
5. <i>Not Used</i>	15
6. <i>Not Used</i>	15
7. Whistleblowing, Fraud and Corruption.....	15
8. Performance Guarantee.....	15
9. Insurance	16
10. Liability and Indemnity	17
11. Price Indexation.....	18
12. Invoicing.....	18
13. Payment Terms	19
14. Advance Payment	19
15. <i>Not Used</i>	20
16. Taxes and Duties	20
17. <i>Not Used</i>	20
18. Liquidated Damages.....	20
19. Claims and Liens.....	21
20. <i>Not Used</i>	21
21. Variation Orders	21
22. Suspension and Termination.....	23
23. Right of Audit.....	26
24. Consortium (and Joint Venture)	26

25. ADSWS's Working Hours.....	27
26. Notices	27
27. Force Majeure.....	27
28. Independent Contractor.....	29
29. Subcontracting.....	29
30. Compliance, Waiver and Remedies	29
31. Assignment.....	29
32. Proprietary rights of ADSWS in reports and records	30
33. Confidentiality	30
34. Data Protection.....	31
35. Applicable Law.....	33
36. Dispute Resolution.....	33
37. <i>Not Used</i>	33
38. No Third Party Rights	33
39. Entire Agreement	33
40. Costs	34
41. Severability.....	34
42. Counterparts	34
ANNEXURE II: SCOPE OF SERVICES	35
ANNEXURE III: PRICING AND PAYMENTS	36
ANNEXURE IV: POLICIES	37
ANNEXURE V: CONTRACTOR GUARANTEES	38
ANNEXURE VI: INSURANCE	39
ANNEXURE VII: CONTRACTOR'S TECHNICAL AND COMMERCIAL PROPOSAL AND POST TENDER CLARIFICATIONS	40
ANNEXURE VIII: HSE REQUIREMENTS	41
<i>As attached</i>	41

FORM OF AGREEMENT

This Consultancy Services Agreement ("**AGREEMENT**") is entered into on the last date of signatures of the PARTIES ("**EFFECTIVE DATE**"), by and between:

- 1) **ABU DHABI SUSTAINABLE WATER SOLUTIONS COMPANY PJSC**, a company incorporated and registered under the laws of the Emirate of Abu Dhabi, having its postal address at P.O. Box 108801, Abu Dhabi, U.A.E.

(hereinafter referred to as "**ADSWS**");

AND

- 2) xxxxxxxxxxxxxxxxxxxxxxxxx, a company duly organized under the laws of [the Emirate of xx], with Commercial License No. xx and having its office address at xxxxxxxxxxxxxxxxx, and postal address at P.O. Box xx, xx.

(hereinafter referred to as the "**CONTRACTOR**").

(Each of ADSWS and the CONTRACTOR may hereinafter be individually referred to as a "**PARTY**" and together as the "**PARTIES**")

RECITALS:

1. WHEREAS ADSWS desires to have certain specialized SERVICES performed as hereinafter specified.
2. WHEREAS the CONTRACTOR represents that it has the necessary experience, capability and resources to carry out such SERVICES, and is willing to do so on the terms and conditions herein contained.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is hereby agreed and declared by and between the PARTIES, as follows:

1. The AGREEMENT sets out the terms and conditions upon which the CONTRACTOR shall provide the SERVICES to ADSWS, and the terms, conditions, prices and AGREEMENT PRICE that will apply to the performance of such SERVICES.
2. In the AGREEMENT, unless otherwise defined, capitalized words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS OF CONTRACT.
3. The following documents and Annexures including their attachments (each a "**AGREEMENT DOCUMENT**") shall together form the CONTRACT and shall be read and construed as one agreement:

[Note: Documents and order of priority listed below to be checked by ADSWS legal prior to issue of Final Agreement.]

- (i) This FORM OF AGREEMENT.
- (ii) ANNEXURE I: GENERAL TERMS AND CONDITIONS.
- (iii) ANNEXURE II: SCOPE OF SERVICES
- (iv) ANNEXURE III: PRICING AND PAYMENTS
- (v) ANNEXURE IV: POLICIES
- (vi) ANNEXURE V: CONTRACTOR GUARANTEES
- (vii) ANNEXURE VI: INSURANCE
- (viii) ANNEXURE VII: CONTRACTOR'S TECHNICAL PROPOSAL AND COMMERCIAL PROPOSAL, AND POST TENDER CLARIFICATIONS
- (ix) ANNEXURE VIII: HSE REQUIREMENTS.

In the event of any inconsistency, ambiguity or conflict between any provisions in the AGREEMENT, the inconsistency ambiguity or conflict shall be resolved in accordance with the descending order of precedence of the AGREEMENT DOCUMENTS stated above.

4. In consideration of the payments to be made by ADSWS to the CONTRACTOR as hereinafter mentioned, the CONTRACTOR hereby covenants with ADSWS to provide the SERVICES in conformity with the provisions of the AGREEMENT.
5. The SERVICES shall be provided by the CONTRACTOR on an on-demand basis, based on ADSWS's requirements in writing. The CONTRACTOR acknowledges and agrees that ADSWS does not guarantee, and is not obliged, to procure from the CONTRACTOR any minimum quantity/value of SERVICES during the TERM.
6. The maximum aggregate sum payable by ADSWS to the CONTRACTOR under this AGREEMENT shall be AED xxxxxxx/- (Arab Emirati Dirhams xxxxxxxxxxxxxxxxxxxxxxxx only) plus VAT as prescribed by the APPLICABLE LAW (the "AGREEMENT PRICE") at the times and in the manner prescribed by the AGREEMENT. [Note: Details to be filled prior to issuance of final agreement]
7. The PARTIES have agreed that the key provisions set out below shall apply to the AGREEMENT: [Note: Details to be filled prior to issuance of final agreement]

S. No.	Clause	Description
1.	COMMENCEMENT DATE	As per the final agreement

2.	Agreed timeline for completion of SCOPE OF WORK	Twenty-Four (24) calendar months from the COMMENCEMENT DATE (excluding DEFECTS LIABILITY PERIOD).
3.	Payment Terms	Payment shall be progressive and be made within thirty (30) calendar days of ADSWS's receipt of the CONTRACTOR's correctly issued the monthly invoice, in accordance with the requirements for invoicing and payment set out in the General Terms and Conditions.
4.	ADVANCE PAYMENT	Not Applicable.
5.	ADVANCE PAYMENT GUARANTEE	Not Required.
6.	PERFORMANCE BANK GUARANTEE	Required. The Performance Bank Guarantee shall be in an amount equivalent to five percent (5%) of the AGREEMENT PRICE, which shall be an unconditional, irrevocable bank guarantee in the form provided by ADSWS under this AGREEMENT and valid for Twelve (12) calendar months.
7.	RETENTION AMOUNT	Not Applicable.
8.	DEFECTS LIABILITY PERIOD	Not Applicable.
9.	LIQUIDATED DAMAGES	<p>Applicable. The LIQUIDATED DAMAGES shall be calculated as follows:</p> <p>One percent (1%) of the AGREEMENT PRICE per calendar week; provided that, if six (6) or less days of delay occurs in a week, then [1%] of the AGREEMENT PRICE shall be levied on the CONTRACTOR as if one (1) complete calendar week of delay had occurred.]</p> <p>The maximum aggregate LIQUIDATED DAMAGES shall be capped at ten percent (10%) of the AGREEMENT PRICE.</p>
10.	Insurance	The CONTRACTOR shall maintain the insurance policies during the TERM of the AGREEMENT, and for any extended period as set out below and as per the coverage and conditions set out under ANNEXURE VI: INSURANCE of the Agreement

11.	Limitation of Liability	<p>To the extent permitted under the APPLICABLE LAW, the CONTRACTOR's total liability under the AGREEMENT, shall be limited to the AGREEMENT PRICE.</p> <p>Neither PARTY shall be liable for any indirect or consequential damages.</p>
12.	Training and Training Materials	Not Applicable
13.	CONTRACTOR REPRESENTATIVE	<p>Name: xx</p> <p>Title: xx</p> <p>Address: xx</p> <p>Tel: xx</p> <p>Mob: xx</p> <p>Email: xx</p>
14.	Addresses for Notice:	<p><u>Notices to ADSWS:</u></p> <p>Name: xx</p> <p>Title: xx</p> <p>Address: xx</p> <p>Tel: xx</p> <p>Mob: xx</p> <p>Email: xx</p> <p><u>Notices to the CONTRACTOR:</u></p> <p>Name: xx</p> <p>Title: xx</p> <p>Address: xx</p> <p>Tel: xx</p> <p>Mob: xx</p> <p>Email: xx</p>

(Signature page to follow)

IN WITNESS HEREOF, each of the PARTIES hereto have executed this AGREEMENT as of the day and year written below, to be effective from the EFFECTIVE DATE.

Signed for and on behalf of: ABU DHABI SUSTAINABLE WATER SOLUTIONS COMPANY PJSC (ADSWS) By: ENG. AHMED AL SHAMSI Title: MANAGING DIRECTOR & CHIEF EXECUTIVE OFFICER Date:	Signed for and on behalf of: xx By: xx Title: xx Date:
duly authorized in that behalf in the presence of: By: Title: ACTING PROCUREMENT DIRECTOR Date:	duly authorized in that behalf in the presence of: By: xx Title: xx Date:

ANNEXURE I: GENERAL TERMS & CONDITIONS

1. General Definitions and Interpretations

(1) Definitions

The following terms and expressions used in the AGREEMENT shall have the meaning set out below:

S. No.	TERMS	Description
1.	ACCEPTANCE CERTIFICATE	means the acceptance certificate signed and issued by ADSWS confirming completion of SERVICE(S).
2.	ADVANCE PAYMENT	has the meaning set out in Clause 1414.
3.	ADVANCE PAYMENT GUARANTEE	has the meaning set out in Clause 14(3).
4.	AGREEMENT	means this AGREEMENT between ADSWS and the CONTRACTOR, comprising of the AGREEMENT DOCUMENTS as set out in the FORM OF AGREEMENT.
5.	APPLICABLE LAW	means the laws of the Emirate of Abu Dhabi and the federal laws of the UAE as applicable therein. Such laws include, without limitation, any law, ordinance, rule, decree, regulation, resolution or order of an AUTHORITY.
6.	AUTHORITYIES	means any federal, local, or other governmental, regulatory or administrative agency, department, ministry or authority of the Emirate of Abu Dhabi or the UAE.
7.	BIDDING PROCESS	means the competitive bidding process related to the PROJECT in which the CONTRACTOR had participated.

S. No.	TERMS	Description
8.	BUSINESS DAY	means a day, other than a Saturday, Sunday or public/declared holiday in the Emirate of Abu Dhabi, UAE.
9.	COMMERCIAL PROPOSAL	means the final commercial price offered by a CONTRACTOR to deliver the defined SCOPE OF SERVICES as comprised within a document prepared and submitted by the CONTRACTOR to ADSWS during the BIDDING PROCESS.
10.	COMMENCEMENT DATE	means the date of commencement of this AGREEMENT.
11.	CONTRACTOR	means the PARTY appointed by ADSWS to carry out the SCOPE OF SERVICES, as identified in the description of the PARTIES in the FORM OF AGREEMENT.
12.	CONTRACTOR REPRESENTATIVE	means the individual appointed by the CONTRACTOR to act as the point of contact and to act on behalf of CONTRACTOR in relation to the AGREEMENT.
13.	DEFECT	means shall mean any defect, error, failure, non-conformity, shrinkage omission, fault and/or deficiency in the SERVICES, not being in accordance with the SCOPE OF SERVICES, SPECIFICATIONS and/or or terms and conditions of the AGREEMENT, and any damage, or loss of/to the SERVICES which is attributable, in part or in full, to any such defect, non-conformity, shrinkage, fault or omission.
14.	DISPUTE	means a dispute or difference of any kind whatsoever between ADSWS and the CONTRACTOR arising under, out of, or in connection with the AGREEMENT (including any question regarding its existence, validity or termination and whether based on breach of contract, tort or any other legal doctrine) or the execution of the PARTIES' obligations under the AGREEMENT.

S. No.	TERMS	Description
15.	FORCE MAJEURE	means any circumstance or event which is beyond the reasonable control of a PARTY, as a result of which such PARTY is unable to perform its obligations, in whole or in part, under this AGREEMENT. Such circumstances include, but are not limited to, natural disasters, acts by a public enemy, fires, floods, nuclear contamination/ radioactivity, declared pandemics, wars, or any other similar event.
16.	GENERAL TERMS AND CONDITIONS	means the terms and conditions applicable to the performance of the SERVICES by the CONTRACTOR, forming part of this AGREEMENT under ANNEXURE I: GENERAL TERMS AND CONDITIONS.
17.	ICV	means the National In-Country Value Program implemented in the UAE.
18.	JV	means the commercial arrangement between two parties to form a new entity, as evidenced by a signed joint venture agreement between such parties.
19.	KEY PERSONNEL	has the meaning set out in Clause Error! Reference source not found..
20.	KPI	means the key performance indicators against which the CONTRACTOR's performance shall be measured under this AGREEMENT, which shall be as set forth in the SCOPE OF SERVICES.
21.	LETTER OF AWARD	means the letter of award issued by ADSWS for the SERVICES.
22.	LIQUIDATED DAMAGES	means the liquidated damages payable in accordance with Clause 17(2).
23.	PARTY/ PARTIES	means ADSWS or/and the CONTRACTOR.

S. No.	TERMS	Description
24.	POLICIES	means the policies and procedures applicable to ADSWS's contractors, as may be amended from time to time, including but not limited to: 1) Business Partner Code of Conduct.
25.	SCOPE OF SERVICES	means the scope of the SERVICES to be performed/delivered under this AGREEMENT, including the KPIs.
26.	SERVICES	The services to be provided by the CONTRACTOR based on the SCOPE OF SERVICES defined in this AGREEMENT.
27.	SPECIFICATIONS	The requirements of ADSWS to be adhered to by the CONTRACTOR in order to ensure satisfactory delivery of the SERVICES.
28.	SUBCONTRACTOR	A company or person whom the CONTRACTOR hires and pays to perform a specific task, works/services or supplies forming part of the SERVICES.
29.	ADSWS	means ABU DHABI SUSTAINABLE WATER SOLUTIONS COMPANY PJSC

S. No.	TERMS	Description
30.		2)
31.	ADWS PROCUREMENT SYSTEM	means the IBM Maximo system used by ADWS.
32.	TECHNICAL PROPOSAL	means the final technical proposal by a CONTRACTOR to deliver the defined SCOPE OF SERVICES as comprised within a document prepared and submitted by the CONTRACTOR to ADWS during the BIDDING PROCESS.
33.	THIRD PARTY	An entity or person who is not a PARTY to this AGREEMENT.
34.	VARIATIONS	Any aspect of the SCOPE OF SERVICES that constitutes a change or addition to or a substitution, reduction, or omission of any part of the SCOPE OF SERVICES, which is agreed and approved by ADWS, and which may be of a financial nature (impacting budget) or non-financial nature (time extensions), or a combination thereof.

(2) Interpretations

1. The headings and sub-headings in this AGREEMENT are inserted for convenience only and shall not affect the meaning of this AGREEMENT.
2. Any reference to a “person” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same shall include a reference to the others.
3. References to Clauses, Annexures, Addendums, Amendments and Schedules are references to the same of and to this AGREEMENT, unless otherwise stated.
4. References to any PARTY include its successors and permitted assigns.
5. Any phrase introduced by the words “including”, “include”, “in particular”, “for example”, “such as” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.
6. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
7. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
8. No rule of construction applies to the disadvantage of a PARTY because that PARTY was responsible for the preparation of this AGREEMENT or any part of it
9. References to “hereof”, “herein”, “hereunder”, “hereinafter” and “hereto” shall mean the same in the context of and with reference to this AGREEMENT.
10. Wherever provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any PARTY, such notice, consent, approval, certificate or determination, unless otherwise specified, shall be in writing and the words “notify”, “consent”, “approve”, “certify”, “determine” and their cognates shall be construed accordingly.

2. Term of the AGREEMENT

- (1) This AGREEMENT shall be effective from the COMMENCEMENT DATE and it shall remain in force until the issuance by ADSWS of the FINAL ACCEPTANCE CERTIFICATE, unless terminated earlier in accordance with the terms of this AGREEMENT (“TERM”).
- (2) The SERVICES shall be performed/provided by the CONTRACTOR as per the timelines stipulated by ADSWS and in accordance with the relevant provisions as set out in the AGREEMENT.

3. Not Used

4. Key Personnel

- (1) The title, agreed job description, minimum qualification, and time-inputs for carrying out the SERVICES by each of the CONTRACTOR's key personnel (the "**Key Personnel**") shall be provided as described in the SCOPE OF SERVICES.
- (2) *Not Used.*
- (3) If additional services are required beyond the SERVICES specified in the SCOPE OF SERVICES, the scope may be increased by agreement in writing between ADSWS and the CONTRACTOR. In case that any payments to be made under this AGREEMENT exceed the ceilings set out herein, the authorized representatives of the PARTIES shall execute an amendment to the AGREEMENT.
- (4) Except as ADSWS may otherwise agree in writing, no changes shall be made in the Key Personnel. Notwithstanding the foregoing, the substitution of Key Personnel during the term of the AGREEMENT may be considered only based on the CONTRACTOR's written request and due to circumstances outside the reasonable control of the CONTRACTOR, including but not limited to death or medical incapacity. In such case, the CONTRACTOR shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

5. *Not Used*

6. *Not Used*

7. *Whistleblowing, Fraud and Corruption*

- (1) ADSWS implements a policy of zero tolerance towards fraud and corrupt practices and the CONTRACTOR shall ensure that the POLICIES as may be amended from time to time, are followed and complied with by the CONTRACTOR and its SUBCONTRACTORS throughout the Term of this AGREEMENT.
- (2) The CONTRACTOR shall permit, and shall cause their agents, any SUBCONTRACTORS, service providers, suppliers, and their respective personnel, to permit ADSWS to inspect all accounts, records and other documents relating to the BIDDING PROCESS (bid submission, bid evaluation etc.) their registration and prequalification activities, as well as overall CONTRACTOR performance pursuant to this AGREEMENT, and to have them audited by internal/external auditors appointed by ADSWS, if required.
- (3) It is the CONTRACTOR'S obligation to declare or report to ADSWS on what is considered a potential conflict of interest or any matter that requires reporting as part of any whistleblowing investigation, and the CONTRACTOR is expected to align with ADSWS on the processes and channels of reporting with respect to the same (subject any confidentiality obligations that may exist as required to protect the identity of any whistleblower).

8. *Performance Guarantee*

- (1) The CONTRACTOR shall provide ADSWS with an unconditional and irrevocable performance bond/bank guarantee issued in accordance with the AGREEMENT by a bank in the Emirate of Abu Dhabi, UAE acceptable to ADSWS, payable to ADSWS on first demand (the "**PERFORMANCE GUARANTEE**").
- (2) The PERFORMANCE GUARANTEE shall be valid for the duration and the amount stated in the FORM OF AGREEMENT. This amount shall be increased proportionally should the initially anticipated AGREEMENT PRICE under the AGREEMENT be increased.
- (3) The PERFORMANCE GUARANTEE, the cost of which shall be borne by the CONTRACTOR, shall be to secure its obligations under the AGREEMENT, notwithstanding any VARIATIONS, alterations or extensions of time that may be given or agreed upon.

9. [Insurance](#)

- (1) The CONTRACTOR is responsible for procuring the provision of appropriate insurance coverage for the entire TERM with the conditions as set out under ANNEXURE VII of the AGREEMENT.
- (2) The insurance coverage will meet all requirements of the APPLICABLE LAW and the AGREEMENT, and shall otherwise be put in place so as to align with good industry practice with respect to insurances typically procured for projects that are similar to the SERVICES.
- (3) Insurance coverage shall be effected through national and/or international insurance company(ies) holding a valid operating licence under the APPLICABLE LAW and acceptable to ADSWS.
- (4) Unless otherwise stated in the FORM OF AGREEMENT, the CONTRACTOR shall effect at its own expense, and in the joint names of ADSWS, the CONTRACTOR and any SUBCONTRACTORS, Contractor's All Risks (CAR), Third Party Liability (TPL), Workmen's Compensation/Employer's Liability (WC/EL), Professional Indemnity Insurance, and Transit and Motor insurances. Such policies shall protect and insure ADSWS against any financial loss/claims incurred by ADSWS or which may be brought against ADSWS as a result of or in connection with the CONTRACTOR'S performance of the SERVICES, and against any obligations or liabilities arising due to any changes, modifications, re-design, remanufacture and/or upgrade to meet the Specifications which arise or are incurred as result of incorrect data, specifications or instructions which are given by the CONTRACTOR in any written document, and upon which it proceeds with the design, purchase and/or manufacture or installation of any of the plant equipment. All insurance policies shall be effected shall be valid for the entire TERM of the AGREEMENT.
- (5) The CONTRACTOR shall, prior to the commencement of any SERVICES, submit all original insurance policies to ADSWS for examination and approval, together with the evidence that the policy premium has been paid to the insurers and shall ensure that such insurance remains in force throughout the TERM of the

AGREEMENT. Approval by ADSWS of any insurer or terms and conditions of insurance policies submitted by the CONTRACTOR shall not relieve it from any its obligations or liabilities under or arising from the AGREEMENT or the law in general. Obtaining approval from ADSWS on the policies and any delays associated therewith shall be the sole responsibility of the CONTRACTOR.

- (6) All deductibles or liabilities in excess of the indemnities provided under the insurances arranged by the CONTRACTOR or any SUBCONTRACTORS and/or ADSWS shall be for at the account of and paid by the CONTRACTOR and/or its SUBCONTRACTOR(s).
- (7) All insurance policies required shall contain the full details of the AGREEMENT, including the agreement number and title, agreement period, and any other relevant details.

10. Liability and Indemnity

- (1) The CONTRACTOR shall indemnify, hold harmless and defend at its own expense, the Client, its officers, agents and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses, directly or indirectly arising out of act or omissions of the CONTRACTOR, its employees, directors, agents or SUBCONTRACTORS in the performance of this AGREEMENT. For the avoidance of doubt, such indemnity shall cover risks and liabilities assumed by the CONTRACTOR or any SUBCONTRACTORS under this AGREEMENT, whether or not such claims, demands, costs, charges, and expenses are covered under insurances effected by the CONTRACTOR or any SUBCONTRACTORS.
- (2) The CONTRACTOR shall indemnify ADSWS against any liability for any accident of whatsoever nature or kind, death or injury to ADSWS's personnel or agents or against any loss of or damage to any property belonging to ADSWS or its agents that arise out of the performance of the SCOPE OF SERVICES pursuant to the AGREEMENT and against all costs, claims, demands and damages related thereto.
- (3) ADSWS shall have no responsibility whatsoever for any loss of or damage to any property or personal effects belonging to the CONTRACTOR, any SUBCONTRACTOR or their agents/employees.
- (4) The CONTRACTOR shall keep ADSWS indemnified against claims, actions or proceedings of whatsoever nature brought or instituted against ADSWS or its agents by any of the CONTRACTOR's employees or any other THIRD PARTY in connection with, relating to, or arising out of the performance of the SCOPE OF SERVICES under the AGREEMENT.
- (5) The CONTRACTOR and/ or any SUBCONTRACTORS shall notify their insurers and ADSWS immediately, but in any event within a maximum period of three (3)

calendar days, of any occurrence likely to give rise to a claim under ADSWS's insurances and shall handle all claims negotiations and submit relevant supporting documents to the insurers directly, in co-ordination with ADSWS, for final settlement to be affected to ADSWS's account. Subsequently the CONTRACTOR and/or any SUBCONTRACTORS shall be reimbursed by ADSWS for the claim amount due to each of them, as the case may be.

11. Price Indexation

- (1) THE AGREEMENT PRICE and any other fixed prices payable under the AGREEMENT shall not be adjusted for inflation in any circumstance. For the avoidance of doubt, the AGREEMENT PRICE payable under the AGREEMENT shall not be adjusted in view of changes to any exchange rate in the event of any currencies other than AED.
- (2) All costs which the CONTRACTOR may incur to the implementation of the Agreement hereof (including but not limited to any labor, transportation costs etc.) shall be deemed as included in the prices set out in this AGREEMENT and ADSWS shall not be held liable to reimburse any such costs, unless specifically stated in ANNEXURE III: PRICING AND PAYMENTS.

12. Invoicing

- (1) The CONTRACTOR shall submit to ADSWS detailed invoices in respect of the portion of the SCOPE OF SERVICES completed to ADSWS's satisfaction in accordance with this AGREEMENT, as evidenced by the relevant ACCEPTANCE CERTIFICATE issued by ADSWS. Invoices should be submitted through the ADSWS PROCUREMENT SYSTEM and via the e-mail address fin.invoices@sws.ae.
- (2) The invoices shall:
 - (i) bear the reference to the AGREEMENT;
 - (ii) clearly state the reason for which payments or stage payments are required; and
 - (iii) be supported by all the necessary documents to enable ADSWS to review and accept them;
 - (iv) the reason for which payment or stage payments are required;
 - (v) the necessary supporting documents to enable the ADSWS to determine the accuracy of the INVOICE, including the relevant ACCEPTANCE CERTIFICATE;
 - (vi) amounts equivalent to the SERVICES not completed, to be deducted on that invoice;
 - (vii) the bank details where payments are to be made; and

(viii) the official company stamp of the CONTRACTOR.

13. Payment Terms

- (1) Payments to the CONTRACTOR of the AGREEMENT PRICE (or relevant part thereof, as applicable) shall be made as set out in ANNEXURE III: PRICING AND PAYMENTS.
- (2) Upon receipt of each invoice issued by the CONTRACTOR as set out in this AGREEMENT, ADSWS shall review the invoice and should the payment be deemed to be due under the AGREEMENT, ADSWS shall approve the said invoice and payment shall be made to the CONTRACTOR within the timelines stipulated, taking into consideration any advances already issued by ADSWS.
- (3) Should an invoice be objected to wholly or in part by ADSWS, ADSWS shall within the timelines agreed in the AGREEMENT, return the invoice to the CONTRACTOR for revision, specifying the item or items to which ADSWS objects and the reasons for such objection. If the original invoice is objected to in part, the CONTRACTOR shall promptly prepare and return to ADSWS two invoices, one invoice being in respect of the unobjected part of the original invoice and the other being in respect of the objected part of the original invoice.
- (4) If the revised invoice in respect of the originally objected part is objected to wholly or in part, then the above procedure shall be repeated for the last time.
- (5) If the CONTRACTOR disagrees with ADSWS's proposed payment, the CONTRACTOR shall notify ADSWS of the DISPUTE, and the DISPUTE resolution provisions of Clause 36 (Dispute Resolution) shall apply.
- (4) No payments shall be made to the CONTRACTOR by ADSWS until receipt of the PERFORMANCE GUARANTEE and of the copies of insurance policies required as per the AGREEMENT, and risk with respect to the carrying out of such SERVICES shall be with the CONTRACTOR.
- (6) Without waiver or limitation of any of its rights under the AGREEMENT or under the law, ADSWS shall be entitled to deduct from any amount due to the CONTRACTOR under the AGREEMENT all amounts of any debt due from the CONTRACTOR to ADSWS in accordance with the timelines as agreed in the AGREEMENT.

14. Advance Payment

ADSWS will make an interest-free advance payment to the CONTRACTOR in respect of the SCOPE OF SERVICES for the amount stated in the FORM OF AGREEMENT, if any ("**ADVANCE PAYMENT**"). Payment of such ADVANCE PAYMENT will be due under a separate invoice to be submitted by the CONTRACTOR to ADSWS after each of the below conditions have been met:

- (i) Submission of an original copy of the AGREEMENT signed by both ADSWS and the CONTRACTOR.
- (ii) Provision by the CONTRACTOR of the PERFORMANCE GUARANTEE in accordance with AGREEMENT.
- (iii) Provision by the CONTRACTOR of an unconditional ADVANCE PAYMENT bond/bank guarantee issued in accordance with the AGREEMENT by a bank in Abu Dhabi acceptable to ADSWS in the amount and currency corresponding to the ADVANCE PAYMENT and in the format provided by ADSWS ("**ADVANCE PAYMENT GUARANTEE**"). Such ADVANCE PAYMENT GUARANTEE shall be made payable to ADSWS as beneficiary and shall remain effective until the ADVANCE PAYMENT has been repaid pursuant to the paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the CONTRACTOR as indicated in interim payment invoices issued in accordance with the AGREEMENT. The cost of the ADVANCE PAYMENT GUARANTEE shall be borne by the CONTRACTOR.
- (iv) No advance payments shall be made or be applicable for an unincorporated JV, unless otherwise agreed by ADSWS in case a specific request is made by a JV and each request will be dealt with on a case-by-case basis subject to the approval of ADSWS and, to the extent appropriate, the relevant body of the Abu Dhabi Government.

15. *Not Used*

16. *Taxes and Duties*

- (1) Except as provided in the AGREEMENT, the CONTRACTOR shall be liable for all taxes, import duties, withholding taxes, charges, or other assessments of whatsoever nature, whether levied by the Government of Abu Dhabi or the UAE or by any other government elsewhere pursuant to and as existing and payable on the effective date of the AGREEMENT.
- (2) To the extent that VAT is payable by the CONTRACTOR in respect of any of the SERVICES performed for ADSWS under or in connection with the AGREEMENT, the consideration to be provided under the AGREEMENT for such SERVICES shall be increased by an amount equal to the VAT exclusive consideration (or its VAT exclusive market value if applicable) multiplied by the rate of VAT applicable to that aspect of the SERVICES.

17. *Not Used*

18. *Liquidated Damages*

- (1) If the CONTRACTOR fails to meet the prescribed performance parameters or agreed timelines/ completion dates for the PROJECT, then unless such failure is due to FORCE MAJEURE and/or due to ADSWS's sole default, the CONTRACTOR shall pay to ADSWS liquidated damages calculated as per the mechanism set forth in the FORM OF AGREEMENT ("LIQUIDATED DAMAGES").

- (2) The CONTRACTOR's performance shall be measured against the SCOPE OF SERVICES and any specific KPIs set out in ANNEXURE II: SCOPE OF SERVICES. Any delays shall be measured against the agreed timelines or milestone completion dates set out in this AGREEMENT or otherwise agreed between the PARTIES in writing.
- (3) The maximum amount of the LIQUIDATED DAMAGES individually and in aggregate shall be as set out in the FORM OF AGREEMENT. Reaching such maximum liability cap shall entitle ADSWS to terminate the AGREEMENT.
- (4) ADSWS shall have the right, without prejudice to any other method of recovery, to deduct the amount of LIQUIDATED DAMAGES from any monies due or which may become due to the CONTRACTOR or any security or bank guarantees held by ADSWS in connection with the AGREEMENT.

19. *Claims and Liens*

- (1) ADSWS shall have a first and paramount lien on all materials forming or intended to form part of the SCOPE OF SERVICES. The CONTRACTOR undertakes not to create or do any act, deed or thing which shall result in the creation of any other lien or charge on any materials or equipment forming or intended to form part of the SCOPE OF SERVICES.
- (2) The CONTRACTOR shall protect, indemnify, and keep ADSWS harmless from and against any and all liability for the payment of the amount of any lien or claim against the property of ADSWS and/or the materials or equipment or any part thereof created by the CONTRACTOR or by any SUBCONTRACTORS, or for materials, labour, or services the payment of which the CONTRACTOR shall be responsible under the terms of the AGREEMENT. Excluded therefrom are such liens and claims as are caused solely by any action or deed on ADSWS's part, which shall be for ADSWS's account.
- (3) If at any time ADSWS shall receive notice or information of the recording of any lien, or any evidence of any such lien or claim, which, if valid, shall constitute a legal charge on the property of ADSWS and/or the materials or equipment or any part thereof or on any of the CONTRACTOR's equipment not forming part of the materials or equipment, it shall forthwith communicate the receipt of such notice, information, or evidence to the CONTRACTOR.
- (4) If the CONTRACTOR fails to pay or otherwise discharge such lien, or satisfy such claim, within a period of fourteen (14) calendar days after written notice from ADSWS, ADSWS shall have the right to deduct and retain from the amount due or to become due to CONTRACTOR, until such lien or claim shall be paid, discharged, or released, a sum necessary to discharge such lien or claim.

20. *Not Used*

21. *Variation Orders*

- (1) If a VARIATION to the SCOPE OF SERVICES is required, ADSWS shall initiate such VARIATION by forwarding to the CONTRACTOR a written request describing the nature of the variation requested. The CONTRACTOR shall prepare and forward to ADSWS a statement of the consequences of such variation, including details of any:
 - (a) impact on the SCOPE OF SERVICES;
 - (b) expected impact on the timelines for the completion of the SERVICES;
 - (c) additional expenses or savings anticipated; and
 - (d) additional costs that will be incurred by the CONTRACTOR for performance of any additional SERVICES.
- (2) A cap on the value of any VARIATIONS raised throughout the Term of the AGREEMENT shall be as follows:
 - (a) the aggregate value of VARIATIONS that can be requested shall be limited to a maximum of thirty percent (30%) of the overall value of the AGREEMENT (as may be amended by ADSWS's procurement policies from time to time); and
 - (b) a maximum of three (3) time extensions can be requested.The lowest value of the above two options is permitted, as per ADSWS's procurement policy.
- (3) If ADSWS decides that a VARIATION should be implemented, it shall give its written confirmation and acceptance thereof.
- (4) The prices for any VARIATION shall be established by reference to the applicable rates specified in the AGREEMENT or, if no such rates exist, a fair valuation of the SERVICES to be performed or to be deleted.
- (5) No VARIATION shall result where it is within the SCOPE OF SERVICES or is due to the CONTRACTOR's failure to comply with the AGREEMENT.
- (6) If during the performance of the SERVICES, the CONTRACTOR is of the opinion that any instruction received from ADSWS or any other development affecting the SERVICES should be treated as a VARIATION, the CONTRACTOR shall notify ADSWS in writing of its opinion, following receipt of such instruction or the occurrence of such other development and within the timelines agreed in the AGREEMENT, and shall await ADSWS's further instructions. The burden of demonstrating that such instruction or other matter constitutes a VARIATION shall be upon the CONTRACTOR. If the CONTRACTOR fails to notify ADSWS of its opinion, any additional SERVICES carried out pursuant to such instruction or any other development affecting the SERVICES shall not be construed as a VARIATION.

- (7) No VARIATION shall in any way vitiate or invalidate the AGREEMENT, but the value, if any, of any VARIATION shall be taken into account in ascertaining the amount of the AGREEMENT.
- (8) In case of a VARIATION (including a time extension VARIATION), the CONTRACTOR shall provide an extended PERFORMANCE GUARANTEE and insurance policies within ten (10) calendar days of such VARIATION being agreed. VARIATION ORDERS shall be approved and issued only once the extended PERFORMANCE GUARANTEE and evidence of insurance have been approved by ADSWS in writing.
- (9) Commencement of any additional/amended SERVICES shall not be permitted until the approval and issuance of a VARIATION order by ADSWS.

22. Suspension and Termination

- (1) ADSWS shall have the right to suspend partly or in whole at any time, the performance by the CONTRACTOR of the SERVICES or any other obligations under this AGREEMENT, by immediate written notice to the CONTRACTOR (without the need for any notice or resort to the courts).
- (2) Notwithstanding any DISPUTE arising between the CONTRACTOR and ADSWS during the execution of the SERVICES, the CONTRACTOR agrees not to suspend or delay for any reason the performance of all or any part of the SERVICES.
- (3) ADSWS may terminate this Agreement at any time, with or without cause, automatically and without the need to obtain a court order, by giving fifteen (15) calendar days' written notice to the CONTRACTOR.
- (4) Without prejudice to any other rights of ADSWS under the AGREEMENT or otherwise at law, ADSWS shall have the right to terminate the AGREEMENT by issuing to the CONTRACTOR a written notice to the CONTRACTOR, automatically and without the need for any notice or resort to the courts, in, but not limited to, any of the following cases where the CONTRACTOR:
 - (a) delays the performance of the SCOPE OF SERVICES;
 - (b) stops or suspends the implementation of the SCOPE OF SERVICES totally or any part thereof for a period as defined in the AGREEMENT, without appropriate reasons acceptable to ADSWS;
 - (c) violates any of the terms and conditions of the AGREEMENT or fails to fulfil any of its obligations under the AGREEMENT and does not rectify the same within the timelines prescribed in the AGREEMENT or by ADSWS in writing;
 - (d) tries to deceive or defraud in its dealings with ADSWS;
 - (e) offers, or tries implicitly or explicitly, to bribe any public officer concerned with the SERVICES or ADSWS or any of their respective assistants, or if the CONTRACTOR offers, to such persons, any donations, gifts, rewards to

- seduce such person or persons to do or to abstain from doing any act prejudicial to the interests of ADSWS;
- (f) becomes or is under the threat of becoming bankrupt or insolvent or commits any act that may cause it to become bankrupt or insolvent, or is placed under legal or administrative action for declaration of bankruptcy or insolvency; and/or
- (g) reaching the maximum cap for the LIQUIDATED DAMAGES (as applicable) as set out in the FORM OF AGREEMENT, whether individually or in aggregate.
- (5) On the expiry or termination of this AGREEMENT for any reason, the CONTRACTOR shall cooperate fully with ADSWS and do all things necessary to facilitate an orderly transfer of all documentation relating to the SERVICES to ADSWS and/or to such other person or entity as ADSWS may nominate in writing.
- (6) Unless otherwise instructed by ADSWS in writing, on or after issuing the termination notice, the CONTRACTOR shall not commence any new activities related to the execution of the SERVICES, such as undertaking new work or placing new orders.
- (7) The amounts due to the CONTRACTOR will be settled pro-rata up until the effective date of suspension or termination as per the correctly issued invoices and relevant supporting documentation, and the CONTRACTOR shall not have any claim or cause of action against ADSWS for damages or any form of compensation for non-performance, contractual breach or default arising out of, during the term of this AGREEMENT or at any time thereafter, nor claim consequential, indirect or punitive damages, including but not limited to, loss of profits, loss of business opportunities or investments, etc., from the other Party.
- (8) ADSWS shall be entitled to set-off or deduct from any amounts due to the CONTRACTOR, any monies reasonably determined by ADSWS to be paid to ADSWS.
- (9) In the event ADSWS terminates the AGREEMENT for reason of CONTRACTOR default as contemplated immediately above, then (as a minimum) the following shall apply:
- (a) ADSWS shall not be liable to make any further payments to the CONTRACTOR until the EXCESS COSTS (as defined below) have been determined in accordance with (d) below and the CONTRACTOR has complied with any of its obligations with respect to the repayment of any ADVANCE PAYMENT paid to it by ADSWS, the return of any documentation provided to it by ADSWS, and the delivery to ADSWS of all deliverables for which the CONTRACTOR has already been paid but which have not been delivered at the date of termination (as applicable);

- (b) ADSWS shall have the right to complete any outstanding SERVICES and/or correct any DEFECTS either itself or by engaging one or more other contractors;
 - (c) as soon as reasonably practicable after such termination, ADSWS may determine all costs, losses, expenses and damages incurred or to be incurred by ADSWS or any of its affiliates arising out of, or in any way in connection with, the termination of the AGREEMENT and the completion of the SERVICES and/or the remedy of any DEFECTS by another contractor, including:
 - i) legal fees and expenses;
 - ii) those suffered or to be suffered as a result of the non-performance or default in performance by the CONTRACTOR, as prescribed in the AGREEMENT;
 - iii) if ADSWS elects to complete the SERVICES (itself or through others), any other additional costs incurred or to be incurred in completing any outstanding works and/or correcting any DEFECTS (including the costs of engaging a replacement contractor and the amount by which the costs payable under the replacement contract for carrying out the SERVICES exceed the amount that would have been payable to the CONTRACTOR),
- (together, the "**EXCESS COSTS**").
- (d) if the amount of the EXCESS COSTS exceeds the balance of the AGREEMENT PRICE as specified in the AGREEMENT that was not due and payable as at the date of termination of this AGREEMENT, the CONTRACTOR shall pay to ADSWS within thirty (30) calendar days of demand the amount of such excess, on a provisional basis, and such amount shall be payable as a debt due by the CONTRACTOR to ADSWS;
 - (e) as soon as possible after the final acceptance is achieved by ADSWS or any other contractor(s) who it has engaged as a consequence of the termination of the AGREEMENT, ADSWS shall recalculate the EXCESS COSTS and reconcile the payments made and seek any further amounts due or repay excess amount received; provided that the CONTRACTOR shall have the right to audit such EXCESS COSTS through an independent auditor, which request for audit shall be submitted by the CONTRACTOR within fifteen (15) calendar days after receipt of ADSWS's reconciliation statement and which audit shall be completed within sixty (60) calendar days of being requested; and
 - (f) if the CONTRACTOR does not pay any or all of the amounts as shall become due in accordance with sub-clause (e) above, ADSWS shall be entitled to draw on the ADVANCE PAYMENT GUARANTEE or the PERFORMANCE GUARANTEE or to sell the CONTRACTOR's equipment and retain the

proceeds for any part of the amounts due and payable but remaining unpaid by the CONTRACTOR.

Termination of the AGREEMENT in accordance with the foregoing in this Clause shall not affect the requirement to maintain the ADVANCE PAYMENT GUARANTEE and PERFORMANCE GUARANTEE, which the CONTRACTOR shall maintain until such time as the CONTRACTOR has no further obligations and/or liabilities under the AGREEMENT.

23. Right of Audit

During the term of the AGREEMENT, ADSWS or its authorized representative(s) shall have the right to inspect and audit, at all reasonable times, the CONTRACTOR's books and other records relating to all costs and charges for which payments are to be or have been made by ADSWS under the AGREEMENT, in order to:

- (i) verify the accuracy of any reimbursable costs payable by ADSWS;
- (ii) verify the costs submitted by the CONTRACTOR in relation to any adjustments to the total contract price as prescribed under the AGREEMENT;
- (iii) verify the CONTRACTOR's (and as applicable, any SUBCONTRACTOR's) compliance with the AGREEMENT and any APPLICABLE LAWS;
- (iv) identify or investigate actual or suspected fraud, corruption, impropriety or accounting mistakes or any breach or threatened breach of security, which is not in compliance with the AGREEMENT or the APPLICABLE LAW;
- (v) identify or investigate any circumstances which may impact the financial stability of the CONTRACTOR;
- (vi) verify the accuracy and completeness of any technical processes (if applicable);
- (vii) review the CONTRACTOR's quality management systems; and
- (viii) review the CONTRACTOR's compliance with ADSWS's HSE Policy as requirements stated in this AGREEMENT.

24. Consortium (and Joint Venture)

Where the legal form of the CONTRACTOR is a JV, it shall comply with the following requirements:

- (i) The JV shall be a business organization duly organized, existing, and registered and in good standing under the laws of its country of domicile. The AGREEMENT shall be signed by all partners to the JV to be legally binding on each member of the JV consortium.
- (ii) the CONTRACTOR must furnish evidence of the JV's legal structure and information with respect to: (a) the legal relationship among the consortium members, and (b) the role and responsibility of each consortium member.

- (iii) A certified copy of the complete JV agreement or consortium agreement, signed by all parties, must be submitted to ADSWS, together with powers of attorney authorizing the execution of such agreement.
- (iv) The lead member of any JV consortium must be authorized to act and receive instructions on behalf of all the JV or consortium members, either within the JV agreement or consortium agreement or otherwise, and evidence of such authorization must be provided to ADSWS. The lead member of a consortium will act as the main point of contact and manager of that consortium, for the purposes of this AGREEMENT.
- (v) All consortium members shall be jointly and severally liable for the execution of the AGREEMENT. In the event that any one of the consortium members ceases to be a member of the consortium or goes into liquidation, then the surviving member(s) shall have the full obligation to carry out and complete the AGREEMENT and shall be empowered to use all necessary facilities furnished by any party in the JV.
- (vi) The CONTRACTOR shall ensure that there is no change in the beneficial ownership of shareholding of each consortium member, or in the composition of the consortium (if relevant) after the COMMENCEMENT DATE without prior written approval of ADSWS. Furthermore, ADSWS shall in no way be obliged to grant such approval.

25. [ADWS's Working Hours](#)

ADWS's normal working hours are currently forty (40) hours per week, Monday through Friday. Saturday and Sunday, as well as official holidays, shall be off days. These working hours/days may be amended by ADWS at its discretion, from time to time and as notified to the CONTRACTOR.

26. [Notices](#)

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be deemed to have been given and received (a) upon delivery, when personally delivered, or delivered by courier; or (b) on the third BUSINESS DAY after mailing by registered or certified mail, postage prepaid, return receipt requested; or (c) upon transmission when sent by email, in any case to the other PARTY's address as set out herein or used for communications during the SERVICES, which address may be updated by either PARTY in writing from time to time.

27. [Force Majeure](#)

- (1) If either PARTY to the AGREEMENT is rendered temporarily unable, wholly or in part, by any event of FORCE MAJEURE to comply with its obligations as defined in the AGREEMENT, well founded notice of such FORCE MAJEURE shall be given to the other PARTY in writing within three (3) BUSINESS DAYS after the occurrence of the cause relied on.

- (2) The following events or circumstances shall not be, or be deemed to be, a FORCE MAJEURE even where they satisfy the requirements of paragraph (1) above:
 - (i) the unavailability of funds, or non-payment of a sum of money by or to the CONTRACTOR;
 - (ii) financial hardship or the inability of the CONTRACTOR to secure funds, to make a profit or achieve a satisfactory rate of return in relation to or in connection with any activities undertaken pursuant to the AGREEMENT or otherwise;
 - (iii) the occurrence of any shortage of CONTRACTOR personnel, materials or other resources, unless as a direct result of a FORCE MAJEURE event;
 - (iv) the occurrence of any inclement weather condition, other than as provided in the definition of FORCE MAJEURE in this AGREEMENT;
 - (v) failure to obtain or maintain any permit, licence or consent, where such failure is due to the act or omission of the CONTRACTOR; and
 - (vi) failure or inability to perform where such failure is attributable to market prices or currency devaluation.
- (3) In the event that a FORCE MAJEURE occurrence exists and is preventing or delaying performance of any obligation under the Agreement, the Party giving notice shall be excused from the performance, or the timely performance, as the case may be, of such obligation for so long as the circumstances giving rise to such prevention or delay may continue. Notwithstanding the foregoing, no Party shall be released from its obligations hereunder as a result of any event contributed to by the negligence/fault on the part of the Party claiming Force Majeure nor shall a Party be released from its obligations hereunder due to the effects of a Force Majeure occurrence that could have been avoided or mitigated by the exercise of reasonable care and diligence on the part of the Party claiming relief.
- (4) Neither Party shall be liable for failure to perform their obligations which arises as a direct consequence of a FORCE MAJEURE occurrence and both Parties shall bear their own respective costs arising from and attributable to FORCE MAJEURE.
- (5) In the event of an occurrence of FORCE MAJEURE, ADSWS and CONTRACTOR shall promptly meet and jointly agree on a course of action and such course of action shall be implemented immediately after the meeting.
- (6) If the CONTRACTOR is delayed in performing the AGREEMENT by FORCE MAJEURE, the schedule but not the AGREEMENT PRICE, except as otherwise expressly provided in the AGREEMENT, shall be adjusted by means of an agreed VARIATION.

- (7) The PARTY claiming FORCE MAJEURE shall also give written notice to the other PARTY of the cessation thereof within three (3) BUSINESS DAYS after such cessation.

28. Independent Contractor

- (1) The CONTRACTOR shall act as an independent party performing the SCOPE OF SERVICES, maintaining complete control over its employees and all of its SUBCONTRACTORS and shall in no case represent ADSWS or act in its name without its prior written approval.
- (2) The CONTRACTOR shall hold harmless, defend and indemnify ADSWS from and against any liability or penalty which may be imposed by any AUTHORITIES on ADSWS by reason of any alleged violation of the APPLICABLE LAW by ADSWS arising out of the acts or omissions of the CONTRACTOR or of those of the CONTRACTOR's employees while performing the SCOPE OF SERVICES.

29. Subcontracting

- (1) The CONTRACTOR shall not subcontract any part of the SCOPE OF SERVICES under the AGREEMENT without the prior written consent of ADSWS. Such consent shall not relieve the CONTRACTOR of any of its obligations hereunder or create any contractual relationship between ADSWS and the CONTRACTOR's SUBCONTRACTORS.
- (2) The CONTRACTOR shall be fully responsible for any part of the SCOPE OF SERVICES performed by its SUBCONTRACTORS and for their acts and omissions and for those of persons either directly or indirectly employed by them to the same extent as the CONTRACTOR shall be liable for the acts and omissions of persons directly employed by it.

30. Compliance, Waiver and Remedies

- (1) None of the terms or conditions of the AGREEMENT shall be considered waived by ADSWS or CONTRACTOR unless such waiver has been issued to the CONTRACTOR in writing. No such waiver shall be construed as a waiver of any past or future default, breach, or modifications of any of the terms or conditions of the AGREEMENT unless expressly stipulated in such waiver.
- (2) The CONTRACTOR shall be required to comply with the terms and conditions defined in the AGREEMENT. Failure to comply shall lead to a deduction in the contract payments as per the discretion of ADSWS.

31. Assignment

- (1) The CONTRACTOR shall not assign or transfer the AGREEMENT or any part thereof nor shall he assign or transfer any share or interest therein in any manner or degree without the prior written consent of ADSWS. Notwithstanding any

assignment to which ADSWS has given consent, the CONTRACTOR shall remain responsible to ADSWS for the proper performance of the SCOPE OF SERVICES.

- (2) ADSWS shall have the right to assign or transfer the AGREEMENT or any part thereof or any share or interest therein without the consent of the CONTRACTOR, but ADSWS shall inform the CONTRACTOR of such event in writing thereafter.

32. Proprietary rights of ADSWS in reports and records

- (1) The CONTRACTOR agrees that all intellectual property in and to all documents pertaining to the AGREEMENT, including but not limited to all deliverables, writings, reports, documents, data, maps, images and other materials that the CONTRACTOR makes (or participates in making), conceives, discovers, or develops at any time as a result of or in connection with the CONTRACTOR'S performance of the SERVICES or involving any confidential information disclosed by or belonging to ADSWS, in any and all media and forms of expression ("**WORK PRODUCT**") shall be the sole and exclusive property of ADSWS, and shall be considered as works made for hire. The CONTRACTOR waives and shall procure that its employees and SUBCONTRACTORS waive, any rights that it may have therein and shall do all that is necessary to ensure that ADSWS's right, title and interest in such Work Product is perfected. ADSWS shall be entitled to use such documents for any purpose outside the SCOPE OF SERVICES as prescribed in the AGREEMENT, and CONTRACTOR shall have no right to use such documents beyond the scope of this AGREEMENT.
- (2) In the event of infringement of any THIRD PARTY's or SUBCONTRACTOR's intellectual property rights by the CONTRACTOR in relation to any SERVICES PRODUCT, the CONTRACTOR shall be liable to indemnify ADSWS against any and all losses, claims and damages arising therefrom.

33. Confidentiality

- (1) Any information supplied or communicated by ADSWS to CONTRACTOR or otherwise acquired by CONTRACTOR in connection with the AGREEMENT, shall be treated by CONTRACTOR as confidential and shall not, without prior written approval of ADSWS, be published or disclosed, or made use of, reproduced or copied by CONTRACTOR except to the extent necessary for the purpose of implementing the AGREEMENT. CONTRACTOR shall ensure that the provisions of this Clause are incorporated in any SUBCONTRACT and that the affiliates, officers, employees and agents of CONTRACTOR and SUBCONTRACTORS comply with the same.
- (2) The CONTRACTOR'S obligation not to divulge information shall not apply to information which:
- (i) is at the time of disclosure in the public domain or after disclosure becomes part of the public domain otherwise than in consequence of a breach by CONTRACTOR of its obligations under this Clause;

- (ii) was in CONTRACTOR'S possession, as evidenced by CONTRACTOR'S written records, prior to award of the CONTRACT provided that any information supplied by ADSWS prior to award of the CONTRACT shall be treated for the purpose of this Clause as if such information had been supplied in connection with the CONTRACT and during the TERM hereof;
- (iii) was received from THIRD PARTIES having the right to disclose such information without breach of any confidentiality obligations;
- (iv) CONTRACTOR is obliged to mandatorily submit to AUTHORITIES or by orders of a court of law or arbitral tribunal, provided that CONTRACTOR shall disclose such information strictly to the extent required for the purpose of such submission and further provided that CONTRACTOR (i) promptly informs ADSWS of the information to be disclosed and to whom, (ii) agrees with ADSWS on the form and timing of such disclosure to the extent permissible by law, or to contest the requirement of such disclosure, and (iii) uses reasonable endeavours to ensure that the information is kept confidential by the recipient; or
- (v) is independently developed by CONTRACTOR without the use or benefit of any information supplied or communicated by ADSWS.

Provided that for the purposes of (i) and (ii) above, information shall not be deemed to be in the public domain or in the possession of CONTRACTOR on the ground only that:

- (a) the general principle is in the public domain or known to CONTRACTOR if the particular practice is not itself public knowledge; or
- (b) it constitutes a combination, conclusion or finding (not itself in the public domain or in the possession of CONTRACTOR) of or drawn from information which is in the public domain or in the possession of CONTRACTOR.

- (3) CONTRACTOR shall not use ADSWS's name in connection with the AGREEMENT or disclose the existence of the AGREEMENT in any publicity material or other similar communication to THIRD PARTIES without prior written APPROVAL from ADSWS. This prohibition specifically includes, but is not limited to, any public release (either through print or broadcast news media, or social media platforms), any articles prepared for internal or external publication, technical papers, and discussions with media persons.

34. Data Protection

Where CONTRACTOR is processing personal data as a data processor on behalf of ADSWS, CONTRACTOR shall:

- (i) only undertake processing of personal data reasonably required in connection with the SCOPE OF SERVICES.
- (ii) implement appropriate technical and organizational measures to comply with the data privacy and protection laws under the APPLICABLE LAW ("**DATA PROTECTION LAWS**").

- (iii) only carry out the processing on ADSWS's written instructions, including in respect of any proposed international transfer of personal data, and not for CONTRACTOR own purposes. If CONTRACTOR is required to process the personal data for any other purpose by any other jurisdiction other than UAE Laws to which CONTRACTOR is subject, CONTRACTOR shall inform ADSWS of this requirement before commencing the processing, unless that law prohibits this on important grounds of public interest.
- (iv) CONTRACTOR is requested not disclose personal data to any third parties unless such disclosure is made in accordance with the provisions of the confidentiality obligations under this AGREEMENT.
- (v) CONTRACTOR is requested to bring into effect and maintain reasonable technical and organizational measures to prevent unauthorized or unlawful processing of personal data and accidental loss, disclosure, or destruction of, damage or alteration to, personal data including but not limited to taking reasonable steps to ensure reliability of its employees having access to the personal data.
- (vi) taking into account the nature of the processing and the information available to CONTRACTOR, assist ADSWS in:
 - (a) responding to data subject requests, including, insofar as possible, requests by a data subject to exercise rights;
 - (b) ensuring compliance with the obligations.
- (vii) not sub-contract the processing of personal data to any THIRD PARTY without ADSWS's prior written consent. Where ADSWS does consent to CONTRACTOR engaging a subcontractor to carry out any data processing in connection with this AGREEMENT, CONTRACTOR must enter into a written contract with such subcontractor which shall include provisions in favor of ADSWS which are the same as those in this Clause and as are required by DATA PROTECTION LAWS.
- (viii) CONTRACTOR is requested to use appropriate systems and procedures to ensure that any personal data which it processes in the course of providing the SCOPE OF SERVICES are adequate, relevant, not excessive, accurate and, where necessary, kept up to date, and not retained for longer than is necessary.
- (ix) if CONTRACTOR becomes aware of any accidental, unauthorized, or unlawful destruction, loss, alteration, or disclosure of, or access to, the personal data that CONTRACTOR processes in the course of providing the SERVICES to ADSWS, the CONTRACTOR shall promptly notify ADSWS; and
- (x) Upon expiry or termination of this AGREEMENT and on ADSWS's request, securely destroy or return personal data to ADSWS and delete existing copies at ADSWS'S sole option (unless the APPLICABLE LAW requires storage of the personal data) and provide written certification of the same to ADSWS.
- (xi) Notify ADSWS in the event that any personal data is to be transferred or stored outside the UAE.

(xii) ADSWS may, at reasonable intervals, request a written description of the technical and organizational methods employed by CONTRACTOR and/or the subcontractors referred to in this Clause. Within thirty (30) calendar days of such a request, CONTRACTOR shall, at its own cost, supply written particulars of all such measures detailed to a reasonable level such that ADSWS can determine whether or not in connection with the personal data, it is compliant with the DATA PROTECTION LAWS.

35. Applicable Law

The laws of the Emirate of Abu Dhabi and the federal laws of the UAE (the **APPLICABLE LAW**) shall govern and apply to the construction, validity, and performance of the AGREEMENT.

36. Dispute Resolution

- (1) Any DISPUTE between ADSWS and the CONTRACTOR, shall be settled in accordance with the provisions of this Clause.
- (2) Each PARTY shall notify the other PARTY in writing when it considers a DISPUTE has arisen. Such notice shall contain: (i) sufficient information to enable the other PARTY to be fully informed as to the nature of the DISPUTE; (ii) the amount of any monetary claim (if relevant); and (iii) the position advocated by the PARTY giving the notice and a summary of the outcome that such PARTY is seeking.
- (3) Where a PARTY has given a notice of a DISPUTE in accordance with this Clause, the senior representatives of both ADSWS and the CONTRACTOR (each with the authority to settle the DISPUTE) shall promptly meet in an attempt to settle such DISPUTE amicably before commencement of proceedings initiated in the Abu Dhabi Courts.
- (4) Any DISPUTE which has not been settled pursuant to sub-clause (3) above within thirty (30) calendar days from the first notification of DISPUTE by a PARTY (whether the PARTIES made any efforts or not) shall be exclusively and finally decided by the competent local courts in the Emirate of Abu Dhabi.

37. Not Used

38. No Third Party Rights

The terms and provisions of the AGREEMENT shall be intended solely for the benefit of each PARTY thereto (and their respective successors or permitted assigns), and it shall not be the intention of the PARTIES thereto to confer THIRD PARTY beneficiary rights or any rights upon any other person or entity, except the PARTIES, to enforce any term of the AGREEMENT.

39. Entire Agreement

The AGREEMENT shall constitute the entire agreement between the PARTIES and sets out a full statement of the contractual rights and liabilities of the PARTIES in relation to the subject matter hereof, and supersedes all discussions, negotiations, agreements and

correspondences between them (made orally or in writing) prior to the date of this AGREEMENT except as set out herein.

40. Costs

Each Party shall be responsible for its own costs incurred in the preparation and negotiation of this AGREEMENT.

41. Severability

If any provision of this AGREEMENT is determined to be prohibited, invalid or unenforceable by a court of law or AUTHORITY, that provision will, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this. The PARTIES shall negotiate in good faith to agree on a provision to substitute the ineffective provision, which shall be substantially similar in the intention to the original provision.

42. Counterparts

The AGREEMENT may be signed in any number of counterparts which, when taken together, will constitute one instrument.

ANNEXURE II: SCOPE OF SERVICES

A. SCOPE OF SERVICES and SPECIFICATIONS

[Note: Agreed scope to be inserted prior to issuance of final agreement]

B. KEY PERFORMANCE INDICATORS (KPIs)

[Note: To be inserted prior to issuance of final agreement prior to issuance of final agreement]

ANNEXURE III: PRICING AND PAYMENTS

The payment terms shall follow the structure below:

[Note: Agreed pricing table and payment terms to be inserted prior to issuance of final agreement]

ANNEXURE IV: POLICIES

- 1) Business Partner Code of Conduct (As attached)

[Note: To be inserted prior to issuance of final agreement]

ANNEXURE V: CONTRACTOR GUARANTEES

1. PERFORMANCE GUARANTEE

[Note: To be inserted prior to issuance of final agreement]

ANNEXURE VI: INSURANCE

- 1) Insurance Requirements and Conditions;
- 2) Copies of Contractor's Insurance Policies

[Note: Annexure - Insurance Requirements, and copies of Contractor's Insurance Policies to be inserted prior to issuance of final agreement]

ANNEXURE VII: CONTRACTOR'S TECHNICAL AND COMMERCIAL PROPOSAL AND POST TENDER CLARIFICATIONS

[Note: To be inserted prior to issuance of final agreement]

ANNEXURE VIII: HSE REQUIREMENTS

As attached.