
Operation and Maintenance Contract Abu Dhabi Island of Abu Dhabi Emirate

Contract O-12753

between

Abu Dhabi Sewerage Services Company
as ADSSC

and

xxx
as Contractor

FORM OF AGREEMENT / CONDITIONS OF CONTRACT

AUGUST 2016

CONTENTS

FORM OF AGREEMENT

1.	Definitions	4
2.	Duration and Commencement	4
3.	Services.....	7
4.	Remuneration and Terms of Payment	8
5.	Access	9
6.	Insurance.....	9
7.	Security	9
8.	Assignment.....	9
9.	NOTICES	9
10.	Governing Law and Language.....	10
11.	Dispute Resolution	10

CONDITIONS OF CONTRACT

PART 1 : CONTRACT INTERPRETATION

PART 2 : SUBJECT MATTER OF CONTRACT

PART 3 : PAYMENT

PART 4 : INTELLECTUAL PROPERTY

PART 5 : MANAGEMENT PROCESSES

PART 6 : GUARANTEES AND LIABILITIES

PART 7 : RISK DISTRIBUTION

PART 8 : VARIATION IN CONTRACT ELEMENTS

APPENDICES

APPENDIX 1 : SCOPE OF SERVICES

APPENDIX 2 : SERVICES AREA AND FACILITIES

APPENDIX 3 : PERFORMANCE STANDARDS

APPENDIX 4 : PAYMENT, INCENTIVE COMPENSATION, RETENTION & WITHHELD SUMS

APPENDIX 5 : FORMS OF SECURITY

APPENDIX 6 : CONTRACTOR CONSENTS

APPENDIX 7 : CONTRACTOR'S INSURANCE

APPENDIX 8 : OPERATING FEE AND SCHEDULES OF RATES

APPENDIX 9 : PRELIMINARY SERVICE DELIVERY PLANS (TO BE PREPARED BY BIDDERS)

THIS AGREEMENT is dated [•] and made

BETWEEN:

- (1) **ABU DHABI SEWERAGE SERVICES COMPANY**, (ADSSC); and
- (2) [•], with its registered office at [•] and with commercial registration number [•] (the "Contractor").

WHEREAS:

- (A) ADSSC desires to appoint a contractor to provide wastewater systems operation and maintenance services as described in this Agreement.
- (B) Contractor is an operator experienced in the provision of wastewater systems operation and maintenance services as described in this Contract.
- (C) Contractor has agreed to such engagement on the terms and conditions of this Contract.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions**

Unless the context otherwise requires, words and expressions defined in the annexed Conditions of Contract shall have the same meanings where used in this Agreement.

2. **Duration and Commencement**

2.1 **Effective Date and Duration**

The Contract shall come into effect on and from the date of execution of this Agreement by both Parties (the "Effective Date") and shall expire at the end of the Term which shall be final day of the sixth Contract Year, unless terminated earlier pursuant to CC 32 or extended in accordance with clause 2.7 of this Agreement.

2.2 **Satisfaction of Conditions**

The Parties shall ensure that the following conditions (the "Conditions") are met (or, in the case of clauses 2.2(A) or 2.2(B) only, the same may be waived in writing by ADSSC at its sole discretion) as soon as possible following the Effective Date and, in any event, by no later than the Conditions Satisfaction Date or such later date as may be agreed by the Parties:

- (A) ADSSC has received from Contractor (or on behalf of the Contractor):
 - (1) in accordance with CC 13.2, the Advance Payment Bond, duly executed by all parties thereto;

- (2) in accordance with CC 13.3, the Performance Bond, duly executed by all parties thereto; and
 - (3) in accordance with CC 13.9, the Parent Company Guarantee, duly executed by all parties thereto; and
 - (B) those Contractor Consents stated in Appendix 6 (*Contractor Consents*) (the obtaining of which is a condition precedent to the commencement of the Services) have been obtained by the Contractor;
 - (C) Contractor has effected the insurances which it is required to effect by CC 27 and has provided to ADSSC evidence of the same as required by CC 27.1(C);
- 2.3 If the conditions referred to in clause 2.2 of this Agreement are not satisfied or waived, as applicable, by the Conditions Satisfaction Date, the Parties shall meet to discuss the expedient satisfaction of the outstanding Conditions. If the Parties cannot agree on a timetable for the completion of the outstanding Conditions within 30 days of first meeting, then the following shall apply:
 - (A) if only one of the Parties has satisfied all of the conditions within its control, then that Party may elect to terminate the Contract by giving 30 days' notice to the other Party and upon the expiry of such period the Contract shall automatically terminate without the need for further notice, unless the outstanding conditions have been satisfied as at such date in which case the Contract shall not terminate. If the Contract is terminated pursuant to this clause 2.3(A), the terminating Party shall be entitled to recover from the other Party all reasonable and justifiable losses, costs and expenses suffered or incurred by the terminating Party in connection with the Contract from the Effective Date until the date of such termination, provided that the non-terminating Party's liability under this clause 2.3(A) shall in no event exceed AED 2,000,000; or
 - (B) if neither Party has satisfied all of the conditions within its control, then either Party may elect to terminate the Contract by giving 30 days' notice to the other Party and upon the expiry of such period the Contract shall automatically terminate without the need for further notice, unless the outstanding conditions have been satisfied as at such date in which case the Contract shall not terminate. If the Contract is terminated pursuant to this clause 2.3(B), each Party shall be responsible for its own losses, costs and expenses incurred in connection with the Contract from the Effective Date until the date of such termination and neither Party shall have any liability to the other.
- 2.4 For the purposes of clauses 2.3(A) and 2.3(B), payment of the Advance Payment by ADSSC shall not be deemed to be within ADSSC's control unless and until all other Conditions (except for the payment of the Advance Payment) have been satisfied or waived.
- 2.5 For the avoidance of doubt, ADSSC may call upon the Bid Bond in satisfaction of any amount owed to it as a result of termination pursuant to clause 2.3(A) of this Agreement or, if already provided at the time of termination, the Performance Bond.
- 2.6 **Commencement of the Transition Services and Services**

Contractor shall commence:

- (A) the Transition Services on a date (the “**Transition Services Commencement Date**”) which shall be the first day of the first month following the later of the date (i) falling thirty days after the Effective Date; and (ii) on which satisfaction of all the Conditions is achieved or such other date as may be agreed between the Parties; and
- (B) the Services on a date (the “**Services Commencement Date**”) three months after the Transition Services Commencement Date;
- (C) Handover shall be deemed to have taken place at the beginning of the Services as recorded in the Handover Certificate issued by the ADSSC.

2.7 Extension of the Term

- (A) ADSSC shall be entitled to give written notice to the Contractor of not less than 180 days before:
 - (1) the end of the Term to extend the Term of this Contract for a period of up to 12 months (the “**Twelve Month Extension Period**”) or 24 months beyond the end of the Term (the “**Twenty-four Month Extension Period**”) beyond the Expiry Date;
 - (2) the expiry of the Twelve Month Extension Period to extend the Term of this Contract for a further period of up to 12 months beyond the expiry of the Twelve Month Extension Period; and
 - (3) the expiry of the Twenty-four Month Extension Period to extend the Term of this Contract for a further period of up to 12 months beyond the expiry of the Twenty-four Month Extension Period
- (B) If ADSSC shall have given notice to the Contractor pursuant to clause 2.7 (A), the Parties shall meet as soon as practicable to negotiate and agree such terms and conditions as they may consider appropriate at the time to apply to any such proposed extension. The Parties shall negotiate such terms and conditions in good faith with the purpose of, to the extent appropriate, carrying forward the commercial, operational and remuneration principles contained in the Contract, including in particular those principles applicable to:
 - (1) the Service Delivery Plans;
 - (2) the Performance Standards as specified in Appendix 3 (*Performance Standards*) and Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*) and applying to Contract Year 4 and/or Contract Year 5 (as the case may be); and
 - (3) the calculation and quantification of a monthly operating fee to apply to each month of the period of any such extension, having regard to the business requirements of ADSSC as may have existed in Contract Year 4 or Contract Year 5 (as the case may be).

- (C) The parties acknowledge that any and all references to Contract Year 4 or Contract Year 5 in Appendix 3 (*Performance Standards*) and Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*) (or, in any other part of the Contract) are included in that Appendix (or such part of the Contract) for the purpose of assisting with any negotiations that may take place pursuant to clause 2.7 with regard to the terms and conditions to apply to any extension of the Contract and do not of themselves grant any entitlement to the Contractor to an extension beyond the end of the Term.

3. **Services**

3.1 **Scope of Services**

Contractor shall carry out:

- (A) in relation to the period between the Transition Services Commencement Date and the Services Commencement Date, the Transition Services set out in Section 4.1 of Appendix 1 (*Scope of Services*); and
- (B) in relation to the period between the Services Commencement Date and the expiry of the Term or earlier termination of this Agreement, the Services set out in Sections 4.2 to 4.6 of Appendix 1 (*Scope of Services*),

within the Services Area and undertake and accept the other obligations and risks to be performed and undertaken by Contractor as set out under the Contract.

3.2 **Post-Contract Assistance**

Without prejudice to clause 2.1 of this Agreement, Contractor shall provide Post-Contract Assistance after the expiry or termination of the Term in accordance with CC 7.2 if so requested by ADSSC.

3.3 **Performance Guarantee**

- (A) Contractor guarantees that it shall attain the Performance Standards in relation to the provision of the Services in accordance with the terms but subject to the conditions of the Contract, including in particular the provisions of Appendix 3 (*Performance Standards*) and Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).
- (B) The Contractor shall provide the Deliverables as part of the Services as detailed in Appendix 1 (*Scope of Services*).

4. **Remuneration and Terms of Payment**

4.1 **Monthly Operating Fee**

In consideration of the performance by Contractor of its obligations hereunder, ADSSC shall pay to Contractor the Monthly Operating Fee pursuant to the terms of the Contract.

The aggregate Operating Fee for the Term is AED [•] [insert amount from Appendix 8].

ADSSC shall also pay to Contractor such other adjustments to the Monthly Operating Fee as set out in CC 11 and Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).

4.2 **Performance related Incentive Compensation**

- (A) In addition to the payment of the Monthly Operating Fee, Contractor may be entitled to receive variable Incentive Compensation in accordance with CC 11.2.
- (B) Contractor's entitlement to receive Incentive Compensation in respect of each KPI shall not exceed, in each Contract Year, the amount determined by reference to the Incentive Compensation Table in Attachment 1 to Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).

4.3 **Withheld Sums and Retention**

- (A) Contractor's entitlement to receive the Monthly Operating Fee and any Incentive Compensation shall be reduced by any Monthly Retention Sum, Target Withheld Sum and/or Key Personnel Withholding Sum calculated, in each case, pursuant to Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).
- (B) The Target Withheld Sum assessed and forfeited in respect of any Contract Year shall not exceed the relevant amounts stated in Section 4.6 of Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).

4.4 **Terms of Payment**

The Monthly Operating Fee, any adjustments to the Monthly Operating Fee and any Incentive Compensation shall be paid by ADSSC to Contractor at the times, subject to, and in accordance with, CC 12 and Appendix 4 (*Payment, Incentive Compensation, Retention and Withheld Sums*).

4.5 **Liability**

Liability of ADSSC to the Contractor under and in connection with this Contract, or the Services, shall not be greater than those sums expressly stated in this Contract as payable by ADSSC to the Contractor. ADSSC shall have no liability to the Contractor for any loss, expenses cost or other amounts suffered or incurred by the Contractor in connection with this Contract or the Services, other than as stated in clauses 4.1 and 4.2 of the Agreement and CC 25 or otherwise as agreed in writing between the parties from time to time.

5. **Access**

ADSSC shall provide Contractor with access to the Facilities on and from the Transition Services Commencement Date, in accordance with CC 10.1.

6. **Insurance**

The insurances to be taken out and maintained by Contractor pursuant to CC 27 shall be as specified in Appendix 7 (*Contractor's Insurances*).

7. **Security**

7.1 **Advance Payment Bond**

Pursuant to CC 13.2, Contractor shall deliver to ADSSC a duly executed bond, substantially in the form set out in Appendix 5 (*Forms of Security*), issued by a financial institution acceptable to ADSSC in the amount equal to the value of the Advance Payment.

7.2 **Performance Bond**

Pursuant to CC 13.3, Contractor shall deliver to ADSSC the duly executed Performance Bond.

8. **Assignment**

Neither ADSSC nor Contractor shall without the express prior written consent of the other assign or charge to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder or grant any interest in or to or in respect of any thereof to any such person.

9. **Notices**

All notices to be given under the Contract shall be sent to ADSSC or Contractor, as the case may be, at the address set forth below:

To: ADSSC

Address: [•]
Facsimile: [•]
Attention: [•]

To: Contractor

Address: [•]
Facsimile: [•]
Attention: [•]

or such other address as is notified pursuant to CC 4.

10. **Governing Law and Language**

10.1 **Governing law**

The Contract shall be governed and interpreted in accordance with the federal laws of the United Arab Emirates and the Emirate of Abu Dhabi.

10.2 **Governing language**

The governing language of the Contract shall be English.

10.3 **Arbitration**

Any dispute, claim or difference arising out of or related to this AGREEMENT or breach thereof shall first be referred to the PARTIES for an amicable settlement and shall, in the event such referral fails, be finally referred to the courts of Abu Dhabi in accordance with United Arab Emirates laws in addition to the laws of Abu Dhabi Emirate.

11. **Dispute Resolution**

Any dispute, claim or difference arising out of or related to this AGREEMENT or breach thereof shall first be referred to the PARTIES for an amicable settlement and shall, in the event such referral fails, be finally referred to the courts of Abu Dhabi in accordance with United Arab Emirates laws in addition to the laws of Abu Dhabi Emirate.

IN WITNESS WHEREOF ADSSC and Contractor have caused this Agreement to be duly executed by their duly authorised representatives on the day and year first above written.

ADSSC

Signed by:

Title:

for and on behalf of **ADSSC**

Contractor

Signed by: [•]

Title: [•]

for and on behalf of [•]

Signed by: [•]

Title: [•]

for and on behalf of [•]