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## **SAMPLE SERVICE CONTRACT FOR COLLECTION OF MUNICIPAL SOLID WASTE AND STREET CLEANING**

**Sample Services Contract  
Appendices – Performance Bonds**

## **SAMPLE SERVICE CONTRACT FOR COLLECTION OF SOLID WASTE AND STREET CLEANING**

### **Overview of the Sample Service Contract<sup>2</sup>**

The development of effective private sector partnerships in the waste management sector has been identified as a first step to building a stable framework for the development of private sector participation (PSP) in SWM in [COUNTRY]. [MINISTRY] has identified as one of the priorities for PSP in [COUNTRY] improved service contracts for street sweeping, waste collection, operation of waste transfer stations and operation of landfill sites. As one of the first steps, the [MINISTRY] recognizes the need to develop bidding documents for these contracts, following international good practice.

These Sample Bidding Documents address service contracts for waste collection, operation of waste transfer stations, and operation of landfills in order to reflect the specific needs of [COUNTRY]. To avoid overlapping with other contract types, and in particular the generic bidding documents being prepared for the design, build, and operation of landfill and transfer stations, the generic bidding documents for waste collection only cover services and not investments in facilities which cannot be removed in the event of regular or early termination of the contract.

The Sample Bidding Documents have been developed as a template for producing typical bidding documents. It should be used as a baseline for case by case development of project specific bidding documents.

Care should be taken to check the relevance of the provisions of the standard documents against the requirements of the specific services to be procured. The Sample Bidding Documents for Waste Services need to be adapted to the circumstances of each project.

This document contains the sample bidding documents for a service contract in solid waste management and includes:

- Sample Contract
- Appendices to the Contract – Performance bonds

**The sample service contract has been developed assuming that payment for services will be on a Bills of Quantity unit price basis.**

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<sup>2</sup> For the use of these sample bidding documents, it is very important to note the following:

1. The documents should only be used as background reference – definitely do not “cut and paste” without reviewing circumstances in detail.
2. The contracts should be reviewed to ensure that they are consistent with the laws of [COUNTRY].

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**SERVICE CONTRACT** dated [date]

BETWEEN

[name of Authority] (the “Contracting Authority”) whose Principal Office is at [location]; AND

[name of Contractor] (the “Contractor”) a company incorporated under the laws of [country] whose Principal Office is at [location].

**WHEREAS:**

- A. The Contracting Authority is responsible for the provision of municipal solid waste services;
- B. The Contracting Authority has received all requisite approvals necessary and has conformed with all requisite laws in accordance with the Applicable Law to permit the Contracting Authority to enter into the Contract;
- C. The Contracting Authority has the jurisdiction to enter into the Contract pursuant to the Applicable Law;
- D. The Contracting Authority wishes to increase and improve the efficiency and quality of the Services;
- E. The Contractor responded to the Prequalification Documents dated [date] and Bidding Documents dated [date] organized by the Contracting Authority and was selected as the recommended Contractor to enter into the Contract and to perform the Services set out in Schedule 1;
- F. The Contractor has the corporate capacity and authority to enter into the Contract.

**Now, therefore**, in consideration of the promises and the mutual covenants of the Parties hereto, as set forth hereinafter, it is mutually agreed as follows:

**1 Definitions**

The following expressions have the following meanings wherever used in this Contract, unless the context otherwise requires:

- i. “ADJUDICATOR” is the person appointed jointly by the Contracting Authority and the Contractor to resolve disputes in the first instance, as provided for in clause 40 and shall be [specify adjudicator]<sup>1</sup>.
- ii. “APPLICABLE LAW” means the laws and other instruments having the force of law in [COUNTRY], as they may be issued and in force from time to time, including decrees of the Government.
- iii. “AUTHORISED OFFICER” means the person from time to time designated by the Contracting Authority to have the duties, rights and obligations outlined in clause 7.
- iv. “BANK GUARANTEE” means a guarantee from a bank for compensation to the Contracting Authority in the event that it must assume the obligations and/or duties of the Contractor in order to continue the services as defined by this Contract.
- v. “COMMENCEMENT DATE” means the day when the Contractor starts providing the Services under clause 4.
- vi. “CONTRACT” means this Contract and the schedules, annexes and appendices hereto, as described in clause 2(1).

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<sup>1</sup> Note to Government – complete as appropriate

- vii. "CONTRACT DOCUMENTS" means the documents forming the Contract, as specified in clause 2(1).
- viii. "CONTRACTING AUTHORITY" means the Party who employs the Contractor.
- ix. "CONTRACTING AUTHORITY EQUIPMENT" means such Equipment as is to be provided by the Contracting Authority to the Contractor for performance of the Services, as described in Schedule 7.
- x. "CONTRACTING AUTHORITY STAFF" means all personnel specifically designated by the Contracting Authority's Authorised Officer to be responsible for assuring proper delivery of services under this Contract.
- xi. "CONTRACTOR" means the Company that has signed the Contract and agreed to perform the Services.
- xii. "CONTRACT PRICE" means the sum or sums to be ascertained and paid in accordance with sub-clause 30(2).
- xiii. "CONTRACTOR REPRESENTATIVE" means the person designated from time to time by the Contractor to have the duties, rights and obligations outlined in clause 7.
- xiv. "CONTRACTOR STAFF" means all personnel specifically designated by the Contractor's Representative to be responsible for delivering services under this Contract including solid waste collection workers, vehicle drivers, workshop mechanics, supervisors and administration staff.
- xv. "EQUIPMENT" means any consumables, equipment, materials, implements and plant or other things required or necessary for the Contractor to perform the Services.
- xvi. "GOVERNMENT" means the [Government of [COUNTRY]]<sup>2</sup>.
- xvii. "FINANCIAL PENALTIES" means penalties to be paid by the Contractor to the Contracting Authority, through adjustments in payments by the Contracting Authority to the Contractor or otherwise, upon issuance by the Contracting Authority of a default notice in accordance with clause 23.
- xviii. "FORCE MAJEURE EVENT" has the meaning set out in clause 20.
- xix. "[COUNTRY]" means [COUNTRY].
- xx. "LOCATION" means the place where the Services or any part thereof are to be performed by the Contractor or to which goods, equipment or materials are to be delivered or stored or where work is to be executed by the Contractor or where documents or records are held or stored by or on behalf of the Contractor in connection with the provision of the Services together with, in respect of property owned or occupied by the Contracting Authority, so much of the area surrounding such place as the Contractor shall with the consent of the Contracting Authority use in connection with the services or with such delivery, storage, or work otherwise than for the sole purpose of access to such place.
- xxi. "MONTH" means all the calendar days of the month.
- xxii. "NOTICE" means either a rectification Notice, a default Notice, or a supplementary default Notice in accordance with clause 22.
- xxiii. "OPERATION PERIOD" means the period from the Commencement Date to and including the date of termination of the Contract.
- xxiv. "PARTY" means the Contracting Authority or the Contractor, as the case may be, and "PARTIES" means both of them.
- xxv. "PERFORMANCE SPECIFICATIONS" means the specifications that the Contractor is to follow as

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<sup>2</sup> Note to Government – provide appropriate definition for Government.

provided in Schedule 2 (Performance Specification and Penalties).

- xxvi. "PREMISES" means any land, building, and or structure, or portion thereof.
- xxvii. "REGULATORY FRAMEWORK" means any laws, regulations, decrees and policies officially developed and approved by the Government, for the purposes of regulating solid waste generation, collection, transport, recycling, reuse, treatment, and disposal. A reference to any laws, regulations, decrees or policies shall be deemed to include a reference to any amendment or re-enactment of the same.
- xxviii. "SCHEDULED DATE OF TERMINATION" means the scheduled date for expiry of the contract as described in clause 5 which is the date falling [specify number of years for operation period]<sup>3</sup> years after the Commencement Date.
- xxix. "SERVICES" means the services to be performed by the Contractor as contemplated by this Contract and further described in Schedule 1, Description of Services.
- xxx. "SUBCONTRACT" means any contract between the Contractor and any party (other than the Contracting Authority or the Contractor's employees) for the performance of any part of the Services.
- xxxi. "SUBCONTRACTOR" means any party (other than the Contractor) to a Subcontract.
- xxxii. "VARIATION" means any alteration to the Services in accordance with clause 6 "Contract Variation".
- xxxiii. "WEEK" means 7 consecutive days starting on Monday and ending on the following Sunday.

## 2 Interpretation of the Contract

### (1) Contract Documents

All documents forming part of the Contract, and all parts thereof, are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole. The following documents and appendices which are incorporated by reference into this Contract shall be referred to as follows:

- a. Contract
- b. Appendix "1" - Form of Bid Security
- c. Appendix "2" - Form of Performance Guarantee
- d. Schedule "1" - Description of Services
- e. Schedule "2" - Performance Specifications and Penalties
- f. Schedule "3" - Bill of Quantities
- g. Schedule "4" - Reporting Requirements
- h. Schedule "5" - Key Personnel and Subcontractors
- i. Schedule "6" - Breakdown of Contract Price
- j. Schedule "7" - Services, Premises, Equipment provided by Contracting Authority

### (2) Index and Headings

The index and headings to the clauses are inserted for convenience of reference only and are not part of the Contract and do not limit, alter or affect the meaning or operation of the Contract.

### (3) Singular or Plural

The singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

<sup>3</sup> Note to Government – to be completed (usual period for service contract 2 – 5 years, depending on how much investment in Equipment is required by Contractor)

**(4) Applicable Law**

The Contract shall be interpreted in accordance with Applicable Law.

**(5) Language**

All correspondence, documentation and discussion with respect to the Contract and the Services shall be in [English]<sup>4</sup>, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

**(6) Authorised Representative**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Contracting Authority or the Contractor may be taken or executed by the following officials

For the Contracting Authority	-	[specify authorised representative]
For the Contractor	-	[specify authorised representative].

**(7) Entire Agreement**

This Contract constitutes the entire agreement between the Contracting Authority and the Contractor with respect to the subject matter of the Contract and supersedes all communications, negotiations, and agreements, whether written or oral, made by the Parties with respect thereto prior to the date of the Contract.

**(8) Notices**

All notices, approvals, consents, instructions, certificates to be given under the Contract shall be in writing and shall be sent by personal delivery, courier, facsimile or email to the addresses for notice of the relevant Part as set out below:

**Contracting Authority**

Mailing Address: [specify address]  
 Facsimile: [specify fax number]  
 Email: [email address]

**Contractor**

Mailing Address: [specify address]  
 Facsimile: [specify fax number]  
 Email: [email address]

Any notice sent by facsimile or email shall be confirmed by the sender no later than two days after dispatch by a notice sent by courier. Any notice sent by courier shall be deemed to have been delivered 10 days after dispatch. In providing the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, with proper payment for the courier, and conveyed to the courier service for transmission. Any notice delivered personally or sent by facsimile or email shall be deemed to have been delivered on the date of dispatch.

**(9) Liability**

No review, approval or acknowledgement by the Contracting Authority shall relieve the Contractor from any liability or obligation under the Contract.

**(10) Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**(11) Survival of obligations**

Upon termination or expiration of the Contract all rights and obligations of the Parties hereunder shall cease, except clause 11(7) (Copyright), 11(8), 39 and 40 [specify other clauses that are to survive the termination of this Contract].

<sup>4</sup> Note to Government – modify as appropriate

### 3 Effectiveness of the Contract

This Contract shall come into force and effect on the date of signature of this Contract by both Parties or such other date as the Parties may agree in writing.

### 4 Commencement of Services

- (1) Within 30 days of the signature of the Contract, the Contractor shall submit to the Contracting Authority for approval the final work plan showing the general methods, arrangements, order and timing for the Services, compliant with the draft work plan submitted by the Contractor as part of its bid for the Contract. The Contracting Authority shall review the final work plan and inform the Contractor of its approval within [specify period] days of receipt of the final work plan. If the Contracting Authority fails to provide its approval within this period then the final work plan will be deemed to be approved. The Contractor shall deliver the Services in accordance with the approved final work plan as updated.
- (2) Subject to the fulfilment of any conditions precedent as set out in clause 4(3), the Commencement Date shall be [specify period] days following approval by the Contracting Authority of the final work plan.
- (3) [The following are conditions precedent to commencement of Services:
  - (a) Delivery to the Contracting Authority by the Contractor of the Bank Guarantee;
  - (b) Receipt by the Contractor of such approvals as are required for the Contractor to perform the Services;
  - (c) Delivery by the Contracting Authority to the Contractor of the Contracting Authority Equipment and the Contracting Authority Premises;
  - (d) Other conditions precedent<sup>5)</sup>;

### 5 Scheduled Date of Termination

Unless terminated earlier pursuant to clause 22, the Contract shall expire and the Contractor shall terminate provision of Services on the Scheduled Date of Termination.

### 6 Contract Variation

- (1) The Authorised Officer shall be entitled to issue to the Contractor instructions in writing in relation to all or any of the following:
  - a) to provide the Services or any part thereof in such manner as the Authorised Officer may reasonably require providing that a requirement to provide the Services to the Performance Specifications and Applicable Laws shall not be a Variation;
  - b) to provide such services additional to the Services including additional or substituted sites as the Authorised Officer may reasonably require providing that such additional services shall be the same as or similar to the Services;
  - c) to vary permanently the Services or any part thereof.

<sup>5)</sup> **Note to the Contracting Authority: Please insert such conditions precedent to commencement of the Services as applicable**



- (2) The valuation of Variations shall be ascertained by the Authorised Officer in accordance with the following provisions:
- a) where the Variation is of a similar character to and is executed under similar conditions to the Services, the prices for the work contained in Schedule 3 (Bills of Quantity) shall determine the valuation; therefore the cost breakdown of unit prices shall be used in accordance with Schedule 6 (Breakdown of Contract Price)<sup>6</sup>.
  - b) where the Variation is not of a similar character to, and is not executed under similar conditions to the Services, the valuation shall be the fair price having due regard where applicable to the prices contained in the in Schedule 3 (Bills of Quantity) and the cost breakdown of unit prices provided in Schedule 6 (Breakdown of Contract Price).
- (3) The Contractor shall not make any Variation without an instruction from the Authorised Officer.
- (4) Variation of the terms and conditions of this Contract, including any Variation of the scope of the Services or of the unit prices, may only be made by written agreement between the Parties.

## **7 Authorised Officer**

- (1) The Authorised Officer shall by notice provide the Contractor with all information, instructions and decisions of the Contracting Authority made under the provisions of the Contract. All information, instructions and decisions from the Authorised Officer shall be as if from the Contracting Authority and shall commit the Contracting Authority.
- (2) The Authorised Officer may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of such delegation shall be the subject of prior notification to the Contractor. Information, instructions and decisions from any nominated deputy acting within the terms of his delegated authority shall be as if from the Authorised Officer.
- (3) The Authorised Officer and any person authorised by the Authorised Officer shall have access at all reasonable times to the Location (whether owned by the Contractor or any Subcontractor) and the Contractor shall afford every facility for and every assistance in obtaining the right of access. The Authorised Officer shall co-ordinate with the Contractor the access requirements to the Location.
- (4) Only the Authorised Officer or his nominated deputy is authorised to receive on behalf of the Contracting Authority, notifications, information and decisions of the Contractor under the provisions of the Contract.
- (5) The Contracting Authority shall have the right to change the Authorised Officer at any time at its sole discretion and shall notify the Contractor in accordance with clause 2(8).
- (6) Instructions, information and decisions from anyone other than the Authorised Officer or any nominated deputy acting within the terms of his delegated authority shall have no contractual force or validity even if they are written on the Contracting Authority notepaper.

## **8 Contractor Representative**

- (1) The Contractor Representative shall have the right to commit the Contractor to any course of action within the rights of the Contractor under the provisions of the Contract and shall notify the Contracting Authority of all information and decisions of the Contractor under the provisions of the

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<sup>6</sup> If Contract is for lump sum, then this will need to be amended accordingly

Contract. All information and decisions from the Contractor Representative shall be as if from the Contractor and shall commit the Contractor.

- (2) The Contractor Representative may from time to time delegate any of his responsibilities to any nominated deputy and withdraw any such delegation. The terms of any such delegation shall be the subject of prior agreement of the Contracting Authority. Information and decisions from any such nominated deputy acting within the terms of his delegated authority shall be as if from the Contractor Representative.
- (3) Only the Contractor Representative or his nominated deputy is authorised to receive, on behalf of the Contractor, notifications, information and decisions of the Contracting Authority made under the provisions of the Contract and notification to the Contractor Representative shall be deemed to be notification to the Contractor.
- (4) While the Services are being performed the Contractor Representative or his nominated deputy shall be readily available to discharge his responsibilities in accordance with the Contract.
- (5) The Contractor Representative shall not be replaced except with the prior agreement of the Contracting Authority to the choice of a successor.

## **9 The Responsibility of the Contractor to Inform Itself**

The Contractor agrees that the Contractor has visited the Location before tendering and has satisfied itself as to the nature of the Services, including but not limited to the supervision, Services and all labour, materials and equipment required for the performance of Services and the correctness and sufficiency of the rates and prices stated in the Contract Price. Any failure by the Contractor to take account of matters which affect the Services shall not relieve the Contractor from its obligations under the Contract, nor entitle it to claim against the Contracting Authority.

## **10 Responsibility of the Contractor to Inform the Contracting Authority**

- (1) The Contractor shall notify the Contracting Authority as soon as possible of all items which in the opinion of the Contractor appear to be deficiencies, omissions, contradictions or ambiguities or conflicts with applicable law in the Contract. The Authorised Officer will review these items and issue the necessary instructions before the Contractor proceeds with any part of the Services affected.
- (2) The Contractor shall notify the Contracting Authority immediately whenever accidents or incidents occur. The Contractor shall also notify the Contracting Authority of any other incidents arising out of the performance of the Contract which might affect the interests or other operations of the Contracting Authority, or others.
- (3) The Contractor shall notify the Contracting Authority immediately of any impending or actual stoppages of Services, industrial disputes or other matters affecting or likely to affect the performance of the Contract or lead to a delay in the time schedule referred to in clause 18 hereof.
- (4) In the event of the Contractor being unable to perform the Services or any part thereof, the Contractor shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration and action taken to rectify the situation. Nothing in this condition shall in any way alter, modify, relieve or in any way vary the Contractor's obligation to provide the Services.
- (5) The Contractor shall keep the Contracting Authority fully informed of the progress of the Services.

**11 Contractor's Obligations**

- (1) During the Operating Period the Contractor shall perform the Services in accordance with the Performance Specifications as set out in Schedule 1 and the Contract and with due care and diligence.
- (2) The Contractor shall comply with the Applicable Law and shall ensure that Contractor Staff and its Subcontractors comply with the Applicable Law.
- (3) Should the Contractor require any further instruction or information in connection with the performance of the Services, the Contractor shall make a written request for the same to the Authorised Officer.
- (4) The Contractor shall at all times during the Contract period allow the Authorised Officer, and such persons as may from time to time be nominated by the Authorised Officer, access to:
  - (a) All Locations for the purpose of inspecting work being performed pursuant to the provision of the Services.
  - (b) All Locations for the purpose of inspecting records and documents in the possession of the Contractor in connection with the provision of the Services.
  - (c) Materials, stores, and spare parts in order to ensure that such items comply with manufacturers' specifications and have been obtained from such suppliers as are specified in the Specification.
  - (d) Any employee or agent or Subcontractor of the Contractor for the purpose of interviewing him/her/them in connection with the carrying out of all or any part of the Services.
  - (e) Equipment used or proposed to be used in connection with the performance of the Services for the purpose of ensuring that such Equipment meets the requirements of the Performance Specification and relevant statutory requirements, including the Contractor Authority's Equipment.
- (5) If the Contractor fails in the opinion of the Authorised Officer to provide the Services or any part thereof with due care and diligence, or in accordance with the Performance Specifications, the Contracting Authority may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Contractor under the Contract, and shall be recoverable from the Contractor by the Contracting Authority as a debt.
- (6) The Contractor shall submit to the Contracting Authority the reports and documents specified in Schedule 4 (Reporting Requirements) in the form, in the numbers and within the periods set forth in Schedule 4.
- (7) As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in all plans, drawings, specifications, designs, reports, and other documents and software submitted by the Contractor in accordance with clause 11(6). The Contractor shall be deemed, by signing this Contract, to give the Contracting Authority a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate such documents in connection with the Services, including making and using modifications of them.
- (8) The Contractor shall keep confidential and shall not, without the written consent of the Contracting Authority, divulge to any third party any documents, data or other information arising directly or indirectly from the performance of Services under the Contract, whether such information has been

furnished prior to, during or following termination of the Contract. Notwithstanding this clause 11(8), the Contractor may furnish to its Subcontractors such documents, data and other information to the extent required for the Subcontractors to perform their work under the Contract, in which event the Contractor shall obtain from such Subcontractors an undertaking of confidentiality similar to that imposed on the Contractor under this clause 11(8).

- (9) The Contractor shall provide to the Authorised Officer a copy of each year's audited accounts within six months of the relevant accounting reference date. In the event that the Contractor fails to provide accounts in accordance with this condition then, without prejudice to any other rights or remedies available to the Contracting Authority, the Authorised Officer or such persons as may from time to time be nominated by the Authorised Officer shall be given access to all and any accounting documents and information in the possession, custody or control of the Contractor which are relevant to the Contract.

## **12 Subcontracts**

- (1) The Contractor shall ensure that the rights of the Contracting Authority and the requirements in the Contract regarding Subcontractors are effectively provided for in any Subcontract.
- (2) The Contractor shall not subcontract the whole or the majority of the Services but where a Subcontract is provided for in the Contract or where the Contractor wishes to enter into a Subcontract, then before the Contractor enters into any Subcontract, the Contracting Authority shall be given an adequate opportunity to review the form of the Subcontract, the choice of the Subcontractor, the part of the Services which shall be covered under the Subcontract, and any other details the Contracting Authority shall request or specify. The Contractor shall not enter into the proposed Subcontract until The Contracting Authority has given its written consent to the proposed Subcontract.
- (3) No Subcontract shall bind or purport to bind the Contracting Authority and each Subcontract shall provide for its immediate termination in the event of termination of the Contract or suspension in the event of suspension of the Services. Each Subcontract shall provide that it shall be assigned to the Contracting Authority or its nominee if the Contracting Authority gives written notice to the Subcontractor that it requires such an assignment if The Contracting Authority terminates the Contract. Unless such an assignment takes place the Subcontractor shall only be responsible to the Contractor, who shall in turn be responsible to The Contracting Authority.
- (4) The Contractor shall be responsible for all work, acts, defaults and breaches of duty of any Subcontractor or its employees or agents as fully as if they were the work, acts, defaults or breaches of duty of the Contractor.
- (5) The Contractor agrees that it shall furnish to the Contracting Authority, if requested, satisfactory evidence that all Subcontractors (including suppliers to the Contractor) have been paid on time and in full for work done or goods supplied in connection with the performance of the Services.
- (6) If such satisfactory evidence is not supplied then the Contracting Authority shall not be bound to make any further payment to the Contractor for that part of the Services until it is supplied.
- (7) Furthermore the Contracting Authority, may by the issue of a Variation, reduce the Contract Price by the amount not paid to such Subcontractors, and may then make such payment directly to such Subcontractors. Such direct payment to Subcontractors shall be deemed to be payment under the Contract and the Contractor shall have no further entitlement to such amount.

**13 Personnel of the Contractor and Subcontractors**

- (1) The Contractor shall ensure that all Contractor Staff employed under the Contract are at all times properly and sufficiently qualified, trained, competent, careful, skilled, honest, experienced, instructed and supervised, as the case may be, with regard to the Services and in particular:
  - (a) The task or tasks to be performed by such person;
  - (b) All relevant provisions of the Contract and the Performance Specifications;
  - (c) All Applicable Laws and relevant policies, rules, procedures and standards of the Contracting Authority;
  - (d) All relevant rules, procedures and statutory requirements concerning health and safety at work;
  - (e) Fire risks and fire precautions;
  - (f) The need to maintain the highest standards of hygiene, courtesy and consideration; and
  - (g) The need to recognise situations which may involve any actual or potential danger of personal injury to any person at any Location or with any Equipment or Contracting Authority Equipment and, where possible, without personal risk, to make safe such situations, and forthwith to report such situations to the Authorised Officer and where the Location belongs to the Contracting Authority to the member of the Contracting Authority's staff with responsibility for the Location.
- (2) All monies or other items of value found by the Contractor's employees at any Location other than the premises of the Contractor, shall be handed to the Authorised Officer or his/her representative as soon as possible and a written receipt obtained thereof.
- (3) All supervisory personnel of the Contractor and any Subcontractor shall be able to read, write and communicate fluently in the language specified in clause 2(5) and shall be able to directly communicate fluently in the language of the personnel they are supervising.
- (4) The Contractor shall make its own arrangements for the engagement of personnel, local or otherwise, and save in so far as the Contract otherwise provides, for their transport, housing, maintenance, payment, board and lodging.
- (5) The Contractor shall at its own cost forthwith replace any of its employees or agents or any Subcontractor or procure the replacement of any person employed by any Subcontractor whom the Contracting Authority, in its reasonable discretion, considers to be incompetent, to have acted in a manner prejudicial to the Contracting Authority's best interests, to have failed to comply with the Contracting Authority's safety or other rules or regulations, to have produced sub-standard work.
- (6) The Contractor shall ensure that all employees of the Contractor and any Subcontractor engaged on the Contract comply are in possession of a valid work permit and appropriate vaccination certificates for the duration of the Contract. Details of such work permits are, if the Contracting Authority so requests, to be submitted to the Contracting Authority prior to the person being engaged in the Services.
- (7) The Contractor agrees that it shall furnish to the Contracting Authority, if requested, satisfactory evidence that the Contractor's personnel who are engaged in the Services have been paid on time and in full for their wages and for any other payments required by law to be paid to them. Unless the Contractor provides such satisfactory evidence, the Contracting Authority may make such

payments directly to such personnel or to any organisations on their behalf. Any such payments made by the Contracting Authority shall be deemed to be payments to the Contractor under the Contract and the Contractor shall have no further entitlement to any amounts so paid.

#### **14 Control and Supervision of Contractor's Employees**

- (1) The Contractor shall provide and maintain an office and shall notify the Contracting Authority of its location. The Contractor's office shall be staffed by the Contractor with competent and responsible persons and shall be open during regular working days between 8:00 a.m. and 4:30 p.m. One telephone/fax line shall be provided by the Contractor to be used primarily for communication between the Contractor and the Contracting Authority.
- (2) The Contractor shall appoint a Contractor Representative to act on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contractor Representative shall be deemed to have been given or made to the Contractor.
- (3) The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity, home address and telephone numbers of the person appointed as Contractor Representative and of any subsequent appointment.
- (4) The Contractor shall forthwith give notice in writing to the Authorised Officer of the identity, address and telephone numbers of any person authorised to act for any period as deputy for the Contractor Representative and when such deputy ceases to be so authorised.
- (5) The Contractor shall ensure that the Contractor Representative, or a competent deputy, duly authorised by the Contractor to act on its behalf, is present at each location and available to meet the Authorised Officer or the Authorised Officer's representative at all reasonable times during which the Services is provided.
- (6) The Contractor Representative shall inform the Authorised Officer promptly of and confirm, in writing, any instances of activity or omission on the part of the Contracting Authority which prevent or hinder, or which may prevent or hinder the Contractor from complying with the Contract. The provision of information under this Condition shall not in any way release or excuse the Contractor from any of its obligations under the Contract.
- (7) The Contractor shall provide a sufficient number of supervisors to ensure that the Contractor Staff engaged in and about the provision of the Services are at all times adequately supervised and properly perform their duties to the Performance Specifications and Applicable Laws and with due care and diligence.
- (8) The Contractor shall ensure that its employees perform their duties in an orderly and as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them.
- (9) The Contractor shall ensure that when requested to do so any employee of the Contractor shall disclose his/her identity and status as an employee of the Contractor and shall not avoid so doing.
- (10) The Contractor shall require its employees at all times while engaged in the provision of the Services to be properly and presentably dressed in appropriate uniforms or workwear, including personal protective equipment such as, but not limited to, overalls, protective footwear and gloves to the satisfaction of the Contracting Authority. Such uniforms and personal protective equipment to be worn by the Contractor's employees shall be provided, maintained and replaced as necessary by the Contractor.

**15 Staff and Operational Records**

- (1) The Contractor shall maintain current, accurate and adequate records of all employees who are or who are to be engaged in connection with the provision of the Services. These records shall be kept at the appropriate location and shall include employee attendances and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Authorised Officer or his/her representative at all reasonable times, and a copy of these records shall be provided to the Authorised Officer or the Authorised Officer's representative if so requested.
- (2) The Contractor shall prepare a schedule of routine operations for each Location which shall be available for reference by the Authorised Officer or his/her representative and for the Contractor's employees. The Contractor shall provide a copy of the schedule to the Authorised Officer or his/her representative.
- (3) The Contractor shall maintain current and accurate records of all work carried out in the provision of the Services. These records shall be open for inspection by the Authorised Officer or his/her representative at all reasonable times.
- (4) The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions, or levies of any kind, related to or arising out of the employment of any person by the Contractor and shall fully and promptly indemnify the Contracting Authority in respect of any liability of the Contracting Authority thereof.

**16 Complaints in Respect of Service**

The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner, and in accordance with the Contract. The Contractor shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Contractor shall notify the Authorised Officer forthwith in writing within 24 hours of all complaints received and of all steps taken in response thereto.

**17 Schedule**

The Contractor shall be responsible at all times for scheduling, progress reporting, forecasting and independently controlling progress to achieve the expeditious and efficient performance of the Services in accordance with the Contract.

**18 Gratuities**

The Contractor shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any form of money or reward, collection, or charge for any part of the Services other than charges properly approved by the Contracting Authority in accordance with the provisions of the Contract.

**19 Equipment**

- (1) The Contractor shall provide all Equipment necessary for the provision of the Services other than the Contractor Authority Equipment.
- (2) The Contracting Authority shall provide the Contracting Authority Equipment.

- (3) The Contractor shall be responsible for the security, maintenance, repair and replacement<sup>7</sup> of all Equipment used by the Contractor in connection with the provision of the Service and the Contracting Authority shall be under no liability in respect thereof.

## 20 Force Majeure

- (1) A Force Majeure Event shall mean an event beyond the reasonable control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the said Party is unable to avoid, including without limiting the generality of the foregoing, war (declared or undeclared), insurrection, acts of terrorism, natural and physical disasters, maritime disasters, nationalization, confiscation or requisitioning under order of the Government, boycotts or strikes other than strikes limited to the workforce of, or provided by, the Contractor and/or Subcontractors.
- (2) A Force Majeure Event shall not include the following:
- (a) breakdown of any item of Equipment used by the Contractor or any Subcontractor;
  - (b) contractual commitment made by the Contractor or any Subcontractor to third parties which limits the ability of the Contractor or any Subcontractor to perform the Services;
  - (c) inclement weather.
- (2) Should either Party be delayed in performing the Contract by a Force Majeure Event, that Party shall notify the other Party immediately giving the full particulars thereof, shall use its best efforts to remedy the situation as soon as possible and shall notify the other Party of the steps being taken to remedy the situation.
- (3) The affected Party issuing a notice under clause 20(2) shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant Force Majeure Event continues and to the extent that that Party's performance is prevented, hindered or delayed.
- (4) The Party or Parties affected by the Force Majeure Event shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract.
- (5) Should the Contractor be delayed in the performance of the Services by an event which the Contractor considers is a Force Majeure Event and the Contractor is unable to avoid or prevent such delay by any reasonable effort, within 7 (seven) days of such event the Contractor shall request in writing that the Contracting Authority initiate the procedure for a Variation. If the Contracting Authority agrees that the event is a Force Majeure Event, then, as soon as practicable the Contracting Authority shall authorise a Variation. Such Variation shall also reimburse the Contractor for such extra costs as the Contractor unavoidably incurs by reason of such Force Majeure Event, to the extent that the Contractor cannot reduce or mitigate them by exercising best endeavours to do so.

## 21 Responsibility for the Services

- (1) The Contractor shall perform the Services in accordance with the Performance Specifications and the Contract and with all due diligence and care and shall ensure that the Services and facilities, materials and Equipment used to produce or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship.

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<sup>7</sup> Note to Government – it may in some cases be appropriate for Government to take risk of maintenance and repair of Contracting Authority Equipment



- (2) In the event of any breach of clauses 21(1) herein the Contractor shall be responsible at its cost for the correction of any defective Services. This is without prejudice to any liability the Contractor may have to pay a penalty hereunder.
- (3) In the event of a breach of clause 21(1) herein then the Contracting Authority shall notify the Contractor of the breach. Upon receipt of such notification from the Contracting Authority the Contractor shall immediately carry out the Contractor's responsibilities. Alternatively the Contracting Authority may undertake at its option any of the Contractor's responsibilities under this clause 21 in which case the Contracting Authority shall notify the Contractor of its intention and shall be entitled to recover from the Contractor all costs incurred by the Contracting Authority in carrying out such responsibilities.

## 22 Termination

- (1) The Contracting Authority may terminate this Contract before the Scheduled Date of Termination, by not less than 30 (thirty) days' written notice of early termination to the Contractor, to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this clause 22 and 60 (sixty) days' in the case of the event referred to in (g):
  - (a) if the Contractor fails to perform any of its material obligations under the Contract;
  - (b) if the Contractor become insolvent or bankrupt;
  - (c) if the Contractor assigns or subcontracts any right or interest hereunder other than in accordance with the Contract and such assignment or subcontracting may have a material impact on the Contractor's ability to perform the Services in accordance with the Contract;
  - (d) if the Contractor does not maintain a Bank Guarantee in accordance with clause 39;
  - (e) if the Contractor, in the judgment of the Contracting Authority, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract and includes collusive practice among Contractor (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels.

- (f) if, as the result of a Force Majeure Event, the Contractor is unable to perform all or a portion of the Services for a period of not less than 60 (sixty) days; or
  - (g) if the Contracting Authority, in its sole discretion, decides to terminate this Contract.
- (2) The Contractor may terminate this Contract before the regular date of termination, by not less than 30 (thirty) days' written notice to the Contracting Authority, such notice to be given after the occurrence of any of the events specified in paragraphs (a) or (b) of this clause 22(2):
    - (a) if the Contracting Authority fails to pay any monies due to the Contractor pursuant to this Contract and not subject to dispute pursuant to clause 42 within 45 (forty-five) days after receiving written notice from the Contractor that such payment is overdue; or

- (b) if, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days.
- (3) Upon early termination of this Contract pursuant to clauses 22(1) or 22(2), the Contracting Authority shall make the following payments to the Contractor:
- (a) remuneration pursuant to clause 30 for Services satisfactorily performed prior to the effective date of early termination;
  - (b) except in the case of early termination pursuant to paragraphs (a), (b), (c), (d) or (e) of clause 22(1), reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract;
  - (c) [in the event that the Contracting Authority wishes to purchase Equipment from the Contractor on termination of the Equipment, a reasonable valuation of such Equipment, taking into account depreciation and wear and tear.]

### **23 Recovery of Sums Due to the Contracting Authority**

Whenever any sum of money is recoverable from or payable by the Contractor to the Contracting Authority under the Contract this sum may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Contract.

### **24 Defaults in Performance of Service**

- (1) At any time after the Commencement Date the Authorised Officer may investigate each case where the Contractor has failed to properly perform the Services in accordance with the provisions of the Contract. Where the Authorised Officer is satisfied that in any particular case the Contractor has failed to perform the Services completely in accordance with the provisions of the Contract he shall be entitled to issue to the Contractor a notice instructing the Contractor to remedy the failure within a reasonable period of time (Rectification Notice). In addition, where the Service which has not been performed in accordance with the provisions of the Contract is, in the opinion of the Authorised Officer, of such a type or provided at such a frequency that the issuing of a Rectification Notice would be inappropriate and/or of no effect the Authorised Officer shall be entitled to issue a Default Notice.
- (2) If the Contractor fails to remedy the Services deficiency which is the subject of a Rectification Notice the Authorised Officer shall be entitled to issue a Default Notice. Further failure on the part of the Contractor to remedy the Service deficiency may result in the issuing of supplementary Default Notice. Each Default and Supplementary Default Notice will require the Contractor to remedy the Service deficiency within a set or defined period.
- (3) Without prejudice to the generality of the foregoing, the types of failure to provide Services for which notices may be issued are described in Schedule 2 (Performance Specifications and Penalties).
- (4) The time periods during which the Contractor is to remedy such deficiencies shall be reasonable having regard to, inter alia, the nature and frequency of the Services, or as the case may be, as set out in Schedule 2 (Performance Specifications and Penalties).
- (5) Each Notice may refer to one or more than one elemental Service deficiency, each of which shall be rectified by the Contractor.

- (6) All Notices shall be recorded and used by the Authorised Officer in determining the Contractor's overall Services performance and shall also be used in determining Financial Penalties and whether the Contracting Authority may terminate the Contract.
- (7) During the four (4) weeks immediately following the Commencement Date no Default Points shall be recorded in respect of Rectification Notices. However, Default Points may be recorded in respect of Default Notices and Supplementary Default Notices and the Financial Penalties Provisions above shall apply at all times after the Commencement Date.

## 25 Financial Penalties

In the event the Contractor fails as a result of any act or omission by it (other than as a consequence of the breach of this Contract by the Contracting Authority or a Force Majeure Event) in any month to meet the obligations of this Contract, the Contractor shall be liable to pay the Contracting Authority the applicable penalties as specified in Schedule 2 (Performance Specifications and Penalties). This clause 26 shall be without prejudice to any penalties that the Contractor may incur pursuant to any Applicable Law, and without prejudice to clause 36, the Contractor shall be fully and solely liable for the payment of any penalties imposed upon it by the Applicable Law.

## 26 Contract Payment

- (1) For the performance of the Services, the Contracting Authority shall pay the Contract Price to the Contractor, at the times and in the manner specified in clause 30 hereof.
- (2) All Equipment other than Contracting Authority Equipment and personnel necessary for the Contractor to be able to perform the Services in accordance with the Contract shall be at the Contractor's cost and deemed to be included in the Contract Price.

## 27 Price Adjustment

- (1) The unit prices set out in Schedule 3 (Bills of Quantity) shall be not be subject to price adjustment for 18 months after the Commencement Date.
- (2) After such period the unit prices to be paid in national currency will be adjusted on application of the Contractor once a year beginning with the 19 month after the Commencement Date if the adjusted price exceeds the last agreed with the factor of 1.05 (one point zero five). The Contractor is obliged to substantiate such adjustments and to prove the calculations of the application in accordance with the following calculation rules.

$$P_n = P_{n-1} * ( A + ( B * L_n / L_{n-1} + C * F_n / F_{n-1} ) )$$

$P_n$  = adjusted unit price for the local currency of [COUNTRY]

$P_{n-1}$  = last agreed unit price for currency of the local currency of [COUNTRY]

A, B, C = are coefficients, representing:

A is [insert value] - the nonadjustable portion;

B is [insert value] - the adjustable portion relative to labour costs and

C is [insert value] - the adjustable portion relative to fuel costs

The sum of A + B + C should be 1.

$L_n$  = average labour income for the date of the adjustment in accordance with to the latest available information of the [National Statistic Office of [COUNTRY]]

$L_{n-1}$  = average labour income for the date of the latest agreed prices in accordance with to the latest available information of the [National Statistic Office of [COUNTRY]]

$F_n$  = Average fuel cost for the date of the adjustment in accordance with to the latest available information of the [National Statistic Office of [COUNTRY]]

Fn-1 = Average fuel cost for the date of the latest agreed prices in accordance with to the latest available information of the [National Statistics Office of [COUNTRY]] or as specified in the SCC

- (3) The unit prices to be paid in foreign currency will be not subject to price adjustment due to fluctuation in the costs of inputs.

## 28 Taxes

- (1) The Contractor shall in respect of this Contract assume full and exclusive liability for payment of all taxes, duties, levies, charges and contributions of any nature exclusive of the applicable VAT whatsoever that are from time to time imposed by either:-
- (a) the Government; or
  - (b) any other fiscal or other authority whatsoever, in respect of:-
    - (i) employees or agents of the Contractor and its Subcontractors (whether or not such taxes, duties, levies, charges and contributions are measured by wages, salaries and/or other remuneration); and
    - (ii) the gains of the Contractor and its Subcontractors arising directly or indirectly out of the performance of the Services.
- (2) The Contractor shall, and shall cause its Subcontractors to report and pay all such taxes, duties, levies, charges and contributions directly to the appropriate authorities and otherwise comply with any applicable laws and regulations.
- (3) The Contractor hereby covenants and undertakes to defend, indemnify and hold harmless the Contracting Authority from any and all claims, suits, costs, liabilities, judgements, fines, penalties, demands, loss or damage including any and all expenses, disbursements, costs, legal fees, sums and amounts which the Contracting Authority suffers, incurs or is put to resulting from, or in any way connected with, any assessment or imposition, for which the Contractor is liable.

## 29 Changes in Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Contractor, then the remuneration and reimbursable expenses otherwise payable to the Contractor under this Contract shall be increased or decreased as agreed between the Parties, and corresponding adjustments shall be made to the amounts referred to in clauses 30(2), as the case may be. In the event that the Parties are unable to agree on the size of the adjustment, then this will be resolved pursuant to article 40 (dispute resolution).

## 30 Terms of Payment

- (1) The Contractors remuneration shall include all Subcontractors' costs, and all other costs incurred by the Contractor in carrying out the Services described in Schedule 1 (Description of Services). Except as provided in clauses 28 and 29, the unit prices may only be increased above the amounts stated in clause 30(2) if the Parties have agreed to additional payments in accordance with clauses 7.

- (2) [The Contract Price is the annual sum of the unit prices multiplied by the quantities as indicated in Schedule 3 (Bills of Quantity).][The Contract Price shall be a lump sum as provided for in [schedule [ ]]<sup>8</sup>.
- (3) The Contractor shall submit invoices for each calendar month of operation. The invoice must consider the effective quantity for each calendar month, measured as indicated in Schedule 3 (Bills of Quantity). The Contractor's invoice should outline the applicable VAT in accordance with Applicable Law.
- (4) Invoices shall be submitted by the Contractor within one working week from the completion of the month.
- (5) Each invoice shall include the Contract title.
- (6) Only original invoices will be accepted for payment. If the original invoice is lost in transit or mislaid, a certified true copy of such invoice signed by the Contractor Representative shall be submitted.
- (7) Eraser or white ink shall not be used for alteration, and invoices amended in this way shall be rejected.
- (8) If the Contracting Authority finds the invoice so submitted to be correctly prepared, adequately supported and in conformity with the requirements of the Contract, then the Contracting Authority shall within 30 (thirty) days of receipt of the invoice in question remit the invoiced amount into the bank account nominated by the Contractor.
- (9) In the event of the Contracting Authority disputing any item of any invoice submitted by the Contractor, the Contracting Authority shall within 30 (thirty) days notify to the Contractor the item in dispute and shall specify its reasons for dispute. Payment in respect of such item in dispute shall be withheld until settlement of the dispute but all undisputed items of such invoice shall be paid in accordance with clause 30(8) herein.
- (10) From any sum due to the Contractor under the Contract, the Contracting Authority may deduct the amount of any sum which it in good faith regards as being owed by the Contractor to the Contracting Authority under the Contract or otherwise.
- (11) Insofar as the Contract or any part thereof is cost reimbursable the Contract Price shall constitute the only income of the Contractor in connection with the Contract which inter alia implies that it shall not accept any trade commission, discount allowance or indirect payment or other consideration in connection with the Contract, without notifying and accounting for same to the Contracting Authority.
- (12) If the Contracting Authority has delayed payments beyond 15 (fifteen) days after the due date in accordance with clause 30(8), interest shall be paid to the Contractor for each day of delay at the rate of *[rate]*.

### **31 Audit Rights of the Contracting Authority**

- (1) The Contracting Authority or its duly authorised representative shall at any time during the execution of the Services under this Contract, have the right to carry out audits of all the records and related documents, procedures and controls of the Contractor insofar as they relate to this Contract.

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<sup>8</sup> Note to Government – to complete as applicable

- (2) The Contractor shall maintain or cause to have maintained its books and records, insofar as they relate to this Contract, in accordance with generally accepted practices. The Contracting Authority or its authorised representative shall have the right to reproduce any of the aforementioned records and documents.
- (3) The Contractor shall ensure that the provisions of clauses 31(1) and 31(2) herein are included in any Subcontract thereby providing the Contracting Authority with the same rights to carry out audits of any Subcontractor as it has in respect of this Contract.

### **32 Liens**

- (1) The Contractor agrees that it shall not and that it will cause any Subcontractor not to, claim any lien, attachment or charge on the Services or any property of the Contracting Authority in the possession of the Contractor or any Subcontractor or at any Location.
- (2) The Contractor shall indemnify the Contracting Authority against all costs and expenses of any nature whatsoever that it suffers, incurs or is put to by virtue of a breach of clause 32(1) herein.

### **33 Ownership**

Risk in and the care and custody of any or all part of the Services and all Equipment shall remain with the Contractor throughout the duration of the Contract<sup>9</sup>.

### **34 Limitation of Liability of the Contractor and the Contracting Authority**

- (1) The Contracting Authority on the one hand and the Contractor and its Subcontractors on the other hand shall in no event be liable one to the other for, and hereby give an indemnity one to the other against, indirect losses (including consequential losses), and loss of revenue, profit or anticipated profit arising out of or in connection with this Contract except to the extent of any agreed liquidated damages provided for in the Contract and except for any monies due in accordance with any clause that may be included in the conditions of Contract.
- (2) The Contractor shall include provisions in all Subcontracts to ensure that all Subcontractors comply with the provisions of clause 34(1) herein.

### **35 Responsibilities and Indemnities**

- (1) Subject to clause 35(5), the Contractor shall indemnify and hold harmless the Contracting Authority and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Contractor's performance of the Services and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Contracting Authority, its contractors, employees, officers or agents.
- (2) If any proceedings are brought or any claim is made against the Contracting Authority that might subject the Operator to liability under clause 35(1), the Contracting Authority shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Contracting Authority's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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<sup>9</sup> Note to Government – amend if any Equipment is to remain property of the Contracting Authority

- (3) If the Contractor fails to notify the Contracting Authority prior to the expiration of 30 days after receipt of a notice given pursuant to clause 35(2) that it intends to conduct any such proceedings or claim, then the Contracting Authority shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Contracting Authority within the 30 day period, the Contracting Authority shall make no admission that may be prejudicial to the defense of any such proceedings or claim.
- (4) The Contracting Authority shall, at the Contractor's request, provide all available assistance to the Operator in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- (5) Subject to clause 35(), the Contracting Authority shall indemnify and hold harmless the Contractor and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Contract and by reason of the negligence of the Contracting Authority or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Contractor, its contractors, employees, officers or agents.
- (6) The Party entitled to the benefit of an indemnity under this clause 35 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

### **36 Insurance**

The Contractor (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Contracting Authority, insurance against the risks, and for the coverage, as shall be specified in Schedule 1 (Description of Services), Annex C; and (b) at the Contracting Authority's request, shall provide evidence to the Contracting Authority showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### **37 Permits, Laws and Regulations**

- (1) The Contractor shall abide by and comply, and secure compliance by its Subcontractors, with Applicable Law of any governmental or regulatory body having jurisdiction over the Services.
- (2) The Contractor shall obtain and (if required by law) renew such licences and permits from the responsible Authorities as are necessary for the Contractor to perform the Services, to do business and employ persons, and shall obtain all temporary permits and authorisations required by any applicable law, rules or regulations.
- (3) All costs of complying with all applicable laws, rules and regulations and obtaining authorities, approvals, licences, permits, for performance of the Services shall be for the account of the Contractor.
- (4) All operations necessary for the performance of the Contract shall be carried on so far as compliance with the requirements of the Contract permits so as not to interfere unnecessarily or improperly with the convenience of the public or the access to, public or private roads and footpaths to or of properties. The Contractor hereby indemnifies the Contracting Authority against all claims, demands, proceedings, damages costs, charges and expenses whatever arising in relation to any of the aforesaid matters in so far as the Contractor is responsible for such interference.

### 38 Customs Clearance/ Duties

The Contractor shall be responsible at its own cost for obtaining Government consent and customs clearance requisite to the import and re-export of all Equipment and other things provided by the Contractor, for incorporation into, or performance of, the Services including, but not limited to, all costs related to payment of import and export duties and levies and all other costs whatsoever.

### 39 Bank Guarantee

- (1) The Contractor shall provide the Contracting Authority with a Bank Guarantee in the form attached in Appendix 2 prior to the Commencement Date. The Contracting Authority shall not be obliged to make any payments to the Contractor under the Contract until it has received a Bank Guarantee in compliance with this clause.
- (2) The Bank Guarantee will be for the value of [value of performance guarantee <sup>10</sup>] to ensure that the Contractor shall perform all of its obligations and liabilities contained in, and in accordance with the Contract.
- (3) The Contractor shall obtain and provide to the Contracting Authority such Bank Guarantee within 28 days of receipt of the Letter of Acceptance.
- (4) The institute providing such Bank Guarantee shall be subject to the approval of the Contracting Authority.
- (5) The Contracting Authority will only make a claim under the Bank Guarantee if the Contractor fails to perform any of its obligations or to fulfil any liability arising out of, or in connection with the Contract.
- (6) The Bank Guarantee shall be governed by and construed in accordance with Applicable Law.

### 40 Settlement of Disputes

- (1) The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- (2) If any dispute arises between the Contracting Authority and the Contractor in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 15 days of the notification of disagreement of one Party to the other.
- (3) The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- (4) The Adjudicator is [insert name]. The Adjudicator shall be paid by the hour at the rate set out in Schedule 1 Annex D, together with reimbursable expenses as specified in Schedule 1 Annex D, costs being divided equally between the Contracting Authority and the Contractor, whatever decision is reached by the Adjudicator. Either Party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither Party refers the dispute to arbitration within that period, the Adjudicator's decision will be final and binding.

<sup>10</sup> **Note to the Contracting Authority:** the value is based on the risk in case of default: for Service Contracts it is usual to be a sum equal to 1 to 3 times the monthly Contract Price.



- (5) The arbitration shall be conducted in accordance with the arbitration procedure published by [the institution] and in [location]<sup>11</sup>.
- (6) Should the Adjudicator resign or die, or should the Contracting Authority and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Contracting Authority and the Contractor. In case of disagreement between the Contracting Authority and the Contractor, within 30 days, the Adjudicator shall be designated by [Appointing Authority] at the request of either Party, within 14 days of receipt of such request.

<sup>11</sup> **Note to the Contracting Authority:**

- (1) If the Contractor is a national of [COUNTRY], this provision should be modified and refer to local rules for settlement of disputes.
- (2) For smaller contracts, the arbitration procedures are usually those of an institution from the Contracting Authority's country. For larger contracts, and contracts that may be awarded to international contractors, an arbitration procedure of an international institution such as UNCITRAL (United Nations Commission on International Trade Law) or ICSID (International Center for Settlement of Investment Disputes) or the ICC (International Chamber of Commerce) may be appropriate.

<sup>11</sup> **Note to the Contracting Authority:**

Appointing Authority should be an independent professional institution or an official of such an institution.

IN WITNESS THEREOF the Parties hereto have executed this Contract the Day and year before written.

**SIGNED BY THE [CONTRACTING AUTHORITY] REPRESENTED BY**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**WITNESSED BY**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

and

**SIGNED BY [CONTRACTOR] REPRESENTED BY**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**WITNESSED BY**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

## Appendix A - Form: Bid Security (Bank Guarantee)

**Note to Contracting Authority:** Sample Bid Security is below. Bidders should not complete the Performance Security forms for the bid. Only the successful Bidder will be required to provide Performance and Advance Payment Securities.

Whereas, *[name of Bidder]*<sup>1</sup> *and in the case of joint venture here should say* [ a “joint venture” consisting of ~~*[name of first firm]*~~, ~~*[name of second firm]*~~, ~~*[name of last firm]*~~ ] (hereinafter called “the Bidder”) has submitted his Bid dated *[date]* for *[name of Contract]* (hereinafter called “the Bid”).

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called “the Bank”) are bound unto *[name of Contracting Authority]* (hereinafter called “the Contracting Authority”) in the sum of *[The Bidder should insert the amount of the Guarantee in words and figures denominated in the currency of the Contracting Authority’s country or an equivalent amount in a freely convertible currency.]* for which payment well and truly to be made to the said Contracting Authority, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*:

The conditions of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Contracting Authority during the period of Bid validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
  - (c) does not accept the correction of the Bid Price pursuant to Clause 25 of the Invitation to bid,

we undertake to pay to the Contracting Authority up to the above amount upon receipt of his first written demand, without the Contracting Authority’s having to substantiate his demand, provided that in his demand the Contracting Authority will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date *[Usually 28 days after the end of the validity period of the Bid]* days after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Contracting Authority, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

<sup>1</sup> *delete as applicable*

Date \_\_\_\_\_ Signature of the Bank \_\_\_\_\_

Witness \_\_\_\_\_ Seal \_\_\_\_\_

**APPENDIX B - FORM OF PERFORMANCE SECURITY**

To: *[name and address of Contracting Authority]*

Whereas *[name and address of Contractor]* (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Services]* (hereinafter called "the Contract");

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee]* *[amount in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed there under or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 28 days after termination of Services.

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_