

General Conditions for Work Service Order
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General Conditions of Work Service Order

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract except where expressly stated otherwise or the context does not permit, the following words and expressions shall have the following meaning:

Acceptance Certificate means the certificate issued by Tabreed to the Consultant in accordance with clause 4.4 and which states the Date of Completion;

Affiliate means, with respect to any person, any other person that:

- (a) controls either directly or indirectly the first person;
- (b) is controlled directly or indirectly by the first person; or
- (c) is controlled directly or indirectly by a person that directly or indirectly controls the first person,

for the purposes of this definition, **control** means either the right to exercise more than 50% of the voting rights in the appointment of the directors of a person or the power to direct, or cause the direction of, the management or policies of a person;

Authority includes any local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, having jurisdiction over the Services, the Project, the Consultant or Tabreed;

Business Day means any day other than Friday, Saturday or a public holiday in Abu Dhabi;

Commencement Date means the date stated in the Exhibit 1 (Work Service Order Specific Terms);

Confidential Information means all confidential (whether or not specifically so identified) studies, reports, data, drawings, specifications, plans, models, documents and materials whether stored or conveyed orally, in writing or by electronic means including all computer or other machine readable data, logic sheets, code, listings and test data and all information relating to the business affairs or finances of Tabreed, the Consultant or the Project;

Contract means this Contract entered into between Tabreed and the Consultant, comprising the Contract Documents;

Contract Documents means the documents listed in Article 2 of the Work Service Order Agreement;

Credit Period means the period as set-out in Exhibit 1 (Service Specific Terms).

Date of Completion means the date of completion of the Services as set out in the Acceptance Certificate;

Delay Liquidated Damages means the liquidated damages as set out in Exhibit 1 (Service Specific Terms) which shall be payable by the Consultant for any failure to achieve the Date of Completion by the Time for Completion;

Dispute has the meaning given in clause 33.2;

Effective Date means the date as defined in Exhibit 1 (Work Service Order Specific Terms);

Fee is the fee set out in Exhibit 1 (Work Service Order Specific Terms) and Exhibit 2 (Fees), as adjusted in accordance with this Contract;

Finance Documents means any and all loan agreements, security agreements and other agreements entered into by Tabreed and the Funder relating to, among other things, the financing of the Project including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing;

Funder means any person or persons or prospective person or persons providing debt, guarantee or capital market financing or refinancing under the Finance Documents to Tabreed, and their permitted successors and assigns, including any agent or trustee for such person or persons to indebtedness;

Good Industry Practice means the practices which are generally engaged in or observed by reputable international consultants regarding services of a similar complexity, scope, nature and purpose to the Services;

Intellectual Property Rights means patents, inventions, copyright and related rights, trademarks, trade names, service marks and domain names, goodwill, rights to sue for passing off, design rights, database rights, rights in know-how and Confidential Information, trade secrets, moral rights, proprietary rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications or rights to apply for such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Key Personnel means the personnel of the Consultant, if any, named in Exhibit 1 (Service Specific Terms) who are employed to perform key roles with respect to the provision of the Services, and such replacements as are made in accordance with the terms of this Contract;

Laws means any treaty, legislation, statute, directive, regulation, rule, judgment, decision, decree, order, regulation, instrument, by-law or any other law of, or having effect in, any jurisdiction;

Performance Guarantee has the meaning given in clause 9.1;

Project means the project defined in Exhibit 1 (Service Specific Terms) and the Specification for which the Services are to be provided;

Services mean the services to be performed by the Consultant in accordance with this agreement as set out in Annex 1 and Specification, including any Variations;

Specification means the following documents:

- (a) Part I - Agreed Clarification List;
- (b) Part II - Tabreed's Requirements; and
- (c) Part III - Consultant's Proposal.

Time for Completion means the date or time period stated for completion of the Services in the Exhibit 1 (Work Service Order Specific Terms);

Variation means any alteration, amendment, omission, addition or other variation to the Services agreed or determined in accordance with clause 5; and

Variation Notice means a notice requesting a Variation which is issued in accordance with clause 5.1.

1.2 Unless expressly stated otherwise or the context does not permit:

- (a) headings are for convenience only and do not affect interpretation;
- (b) references to the singular include the plural and vice versa;
- (c) a word indicating a gender includes every other gender;
- (d) references to any Law shall be construed also as references to all other Laws made under such Law and to all such Laws as amended, re-enacted, consolidated or replaced, or as their application is modified whether before or after the date of this Contract;
- (e) "includes" is not a word of limitation;
- (f) all reference to dates are to dates in the Gregorian calendar;
- (g) all reference to Articles are references to articles of the Work Service Order Agreement;
- (h) all reference to clauses are references to clauses of this General Conditions for Work Service Order;
- (i) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (k) reference to an Exhibit is a reference to an Exhibit to this Contract and each Exhibit is part of this Contract;
- (l) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; and
- (m) a reference to a Party includes its executors, administrators, successors and permitted assigns.

2. CONTRACT DOCUMENTS

2.1 Contract Documents Mutually Explanatory

Subject to Clause 2.2, all Contract Documents are intended to be read and construed together as a composite whole and each shall be treated as complementary to and mutually explanatory of the others.

2.2 Order of Precedence

- (a) Unless expressly stated otherwise, if there is any ambiguity or conflict between any of the Contract Documents, for the purposes of interpreting this Contract, the order of precedence shall be as stated under Works Service Order Agreement;
- (b) The Consultant shall promptly notify Tabreed's Representative in writing of any conflict, ambiguity, error, omission, discrepancy or inconsistency between or within the Contract Documents as soon as it comes to its attention. Any conflicts, ambiguities, errors or discrepancies shall be resolved in writing by Tabreed without undue delay after such notification by the Consultant and shall be final and binding unless contested in writing within 7 days from the receipt by the Consultant. The Consultant shall bear the cost of any rectification work required as a result of the resolution provided by Tabreed's Representative. Any disputes shall be settled pursuant to the provisions of Clause 33.

3. THE CONSULTANT'S OBLIGATIONS

3.1 Standard of Performance

- (a) The Consultant shall perform the Services and its other obligations under this Contract in accordance with:
 - (i) this Contract;
 - (ii) Good Industry Practice;
 - (iii) any applicable international standards and codes of practice;

- (iv) the highest professional standards of reasonable skill, care and diligence to be expected of experienced and competent international consultants providing similar services for projects of a similar scope, quality, size, purpose and complexity to the Project;
 - (v) the requirements of all insurance policies;
 - (vi) the requirements of any relevant Authorities;
 - (vii) all Laws; and
 - (viii) any instructions and directions of Tabreed given from time to time in accordance with this Contract.
- (b) The Consultant shall ensure that the Services and all deliverables provided in connection with the Services are fit for the purposes for which they are intended.
 - (c) The Consultant shall satisfy itself as to the nature and scope of the work required by the Services and ensure that its personnel possess the appropriate skills and are sufficiently experienced, efficient and qualified to perform the tasks required of them.

3.2 The Services

- (a) The Consultant shall:
 - (i) examine all information supplied by Tabreed and shall satisfy itself of its sufficiency. If the Consultant considers at any time that such information is not sufficient to enable the Consultant to provide the Services in accordance with this Contract, then the Consultant shall promptly advise Tabreed in writing specifying the further information, documents or other particulars it requires;
 - (ii) provide all equipment, materials, facilities, premises, utilities, transport, accommodation, stationery, staff, manpower, labour, professional services, administration services and research material necessary for the proper execution of the Services;
 - (iii) comply with all approvals, consents, instructions, resolutions, regulations, directions and determinations of Tabreed as may be given from time to time;
 - (iv) throughout the performance of the Services, attend all meetings as reasonably requested by Tabreed's representative. The Consultant shall be represented at these meetings by personnel with suitable authority, experience and qualifications, who can make direct and reasonable contributions to such meetings;

- (v) perform all other services, functions and responsibilities which, although not expressly mentioned in this Contract, are necessary for, or incidental to, the proper performance of the Services in accordance with the terms of this Contract;
- (vi) maintain complete and accurate books and records in connection with the performance of the Services and shall procure that its sub-consultants do the same. All such books and records shall be available for inspection by Tabreed at all times and Tabreed shall be entitled to take copies of all or any part of such books and records;
- (vii) unless otherwise expressly agreed in writing by Tabreed, be liable for any tax (including any personal, corporate value added or withholding tax), levy, impost, duty (including customs duty), registration fee or other charge, fee or withholding of a similar nature (including any penalty payable in connection with any failure to pay or any delay in paying any of the same) whether levied by any agency, authority, or governing body in the UAE or outside the UAE in connection with this Contract;
- (viii) be responsible for any loss incurred by Tabreed as a result of it following the Consultant's advice or recommendations; and
- (ix) be liable both during the continuance of this Contract and for any such longer liability period as may be specified by Law from the completion of the Services or the date of termination of this Contract, for the consequence of any act, omission, negligence, error, breach of contract, or lack of skill, care or diligence by the Consultant or its personnel in the performance of the Services or in respect of any liability imposed under Law.

3.3 Interface and Communication

- (a) The Consultant shall:
 - (i) regularly consult, interface, co-ordinate and co-operate with Tabreed's other consultants and contractors and any other persons as directed by Tabreed where this is necessary or desirable for the proper performance of the Services; and
 - (ii) immediately, if at any time it identifies any potential inconsistency or interface problem between its Services and the services of other contractors or consultants engaged in relation to the Project, advise Tabreed's representative, who will determine whether an inconsistency or interface problem exists and, if it deems it necessary, issue to the Consultant an appropriate instruction to resolve the inconsistency or

interface problem. The Consultant shall, at its own cost, comply with any such instruction given to it by Tabreed's representative.

3.4 Consents

At its own cost, the Consultant shall apply for, obtain and maintain for the duration of this Contract all consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, any Authority, Tabreed or any third party in order to perform the Services.

3.5 Representatives

For the administration of this Contract, the Consultant and Tabreed shall each designate an official or individual to be its representative.

3.6 Monthly and Other Reports

- (a) The Consultant shall provide Tabreed with monthly reports which shall include:
 - (i) detailed information on the performance of the Services during the relevant period;
 - (ii) any information that this Contract requires to be supplied to Tabreed; and
 - (iii) any other information that is reasonably required by Tabreed.
- (b) The Consultant shall immediately advise Tabreed of any:
 - (i) matter of significant importance requiring prompt notification to Tabreed; and
 - (ii) decision required by Tabreed and the deadline for providing it.
- (c) The Consultant shall provide Tabreed with all such other occasional reports as may be reasonably required by:
 - (i) Good Industry Practice; or
 - (ii) Tabreed acting reasonably,and shall provide access to such other information as may be reasonably required by Tabreed.

3.7 Compliance and Approvals

The reviewing or giving of any approval, consent, comment, instruction, direction or opinion by, or on behalf of, Tabreed in connection with this Contract shall not relieve the Consultant of:

- (a) any of its obligations or liabilities under this Contract;
- (b) its duty to ensure the correctness, accuracy and suitability of the Services; or
- (c) its obligation to perform the Services in accordance with this Contract.

3.8 Health, Safety, and Environmental Regulations

- (a) The Consultant shall ensure that its principals, employees, subcontractors and agents comply with Tabreed's prevailing health, safety and environmental rules and regulations and all applicable health, safety and environmental laws in relation to this Contract.
- (b) Where the Consultant is required to perform the Services on a premises under the custody of Tabreed's customer or any third party, the Consultant shall ensure that its principals, employees, subcontractors and agents comply with the customer or third party's prevailing health, safety and environmental rules and regulations and all applicable health, safety and environmental laws in relation to this Contract.
- (c) Where the Consultant's scope of the Services include project management services, unless expressly stated to the contrary in the Contract, the Consultant shall be responsible for establishing and enforcing on the site or premises of which Tabreed has assigned to the Consultant health, safety, and environmental including those pertaining to security, gate control, health and safety, sanitation, medical care and fire prevention as the case may be.

4. COMMENCEMENT AND COMPLETION

4.1 Effective Date

- (a) Subject to clause 4.1(b), this Contract shall take effect on the Effective Date.
- (b) If the Consultant commences any part of the Services before the Effective Date or before the Commencement Date, this Contract shall be deemed to have become effective on the date such Services were commenced. Those Services shall be subject to the terms of this Contract.

4.2 Commencement and Completion

The Consultant shall:

- (a) commence providing the Services on the Commencement Date; and

- (b) achieve the Date of Completion by the Time for Completion, subject to extensions in accordance with this Contract.

4.3 Acceleration or deferral of Services

- (a) Tabreed may require the Consultant to accelerate or defer the provision of the Services by giving written notice to the Consultant. Such notice shall set out the time and/or periods at or during which Tabreed requires the Services to be performed.
- (b) The Consultant shall notify Tabreed within 7 days after receipt of such notice whether the Consultant accepts or objects to any matter set out in Tabreed's notice. If the Consultant objects to any matter, its notice to Tabreed shall give details of the grounds of such objection and shall set out the Consultant's proposals in respect of such matters including any proposed change to the Fee.
- (c) If no agreement is reached between the Parties as to any matter referred to in the Consultant's objection notice within 7 days of receipt of that notice by Tabreed, then the Consultant shall carry out the acceleration or deferral in accordance with Tabreed's directions on the terms and conditions as determined by Tabreed, acting reasonably.

4.4 Acceptance of Services

- (a) If the Consultant considers that it has completed the performance of the Services in accordance with this Contract, it shall give Tabreed a notice requesting a review and inspection of the Services.
- (b) Following receipt of such request, Tabreed may undertake a review and inspection to determine whether the Services have been completed in accordance with this Contract.
- (c) If, as a result of such review and inspection, Tabreed identifies any outstanding matters to be completed by the Consultant in order to complete the performance of the Services in accordance with this Contract, the Consultant shall take all measures necessary to promptly complete those outstanding matters at its cost.
- (d) The process in clauses 4.4(a) to 4.4(c) shall be repeated until Tabreed gives a notice stating that there are no more outstanding matters and issues an Acceptance Certificate to that effect.

4.5 The Tabreed shall within 28 days after giving such Acceptance Certificate:

- (a) return to the Consultant the Performance Guarantee; and

(b) pay to the Consultant the amounts, if any, retained by Tabreed under clause 8.3.

4.6 The issue of an Acceptance Certificate by Tabreed shall not relieve the Consultant of any of its other obligations in connection with this Contract including those that are stated to survive expiry or termination of this Contract. Despite the issue of the Acceptance Certificate, the Consultant shall remain liable for any defects in the Services for a period of 10 years from the date of issue of the Acceptance Certificate.

5. VARIATIONS

5.1 At any time, either Party may give the other Party a Variation Notice requesting a Variation.

5.2 If the Variation Notice is given by Tabreed, the notice shall include details of the proposed Variation. Within 7 days after receipt of the notice and before the Consultant carries out the Variation, the Consultant shall give Tabreed a notice (together with full supporting details) setting out:

- (a) any objection the Consultant has to the proposed Variation;
- (b) a detailed breakdown of any adjustment to this Contract that would be necessary in order to enable the Consultant to perform its obligations under this Contract;
- (c) any adjustment to the Time for Completion;
- (d) the steps the Consultant proposes to take to implement the proposed Variation;
and
- (e) a detailed breakdown of any increase or decrease in the Fee as a result of the proposed Variation.

5.3 If the Variation Notice is given by the Consultant, the notice shall (together with full supporting details) set out:

- (a) details of the proposed Variation; and
- (b) all of the matters referred to in clauses 5.2(b) to 5.2(e).

5.4 Within 28 days after receipt of a Variation Notice from the Consultant, Tabreed shall give the Consultant a notice setting out any objection Tabreed has to the proposed Variation.

5.5 Within 14 days after the time period referred to in either clause 5.2 or 5.4 as relevant, the Parties shall attempt to reach agreement on whether to proceed with the proposed Variation and the terms and conditions of that Variation. If the Parties have not reached agreement within that period, Tabreed shall make the determination, acting reasonably.

With respect to any increase or decrease in the Fee as a result of the proposed Variation, Tabreed's determination shall be made on the basis of the rates and prices referred to in Exhibit 2 (*Fees*).

If there are no such applicable rates and prices, then a fair and reasonable valuation of the Variation shall be made by Tabreed.

- 5.6** Promptly after the Parties have agreed, or Tabreed has determined, a Variation in accordance with clause 5.5, the Consultant shall carry out the Variation as agreed or determined.
- 5.7** A Variation may involve the omission of any part or parts of the Services and the Consultant agrees that Tabreed may engage others to perform the part or parts so omitted. The Consultant acknowledges that any one or more omission shall not constitute a basis to allege that Tabreed has repudiated this Contract despite the extent or timing of the omission.
- 5.8** The Consultant is not entitled to any payment (pursuant to this Contract or otherwise at Law) in relation to any variation of the Services unless that variation has been agreed or determined in accordance with this clause 5.
- 5.9** No Variation issued in accordance with this Contract will vitiate or invalidate this Contract.
- 5.10** Unless otherwise agreed in writing by Tabreed, the Consultant shall not cause delay to the Time of Completion as a result of any disagreement of the Variation Notice and must continue to perform its obligations under this Contract pending resolution of the Variation matter.

6. INFORMATION SUPPLIED BY TABREED

- 6.1** Any information, documentation or data supplied by Tabreed:
- (a) has been or shall be provided only for the Consultant's convenience; and
 - (b) has not been and shall not be relied upon by the Consultant for any purpose (including entering into this Contract or performing its obligations under this Contract).
- 6.2** Tabreed does not assume any responsibility or duty of care with respect to such information, documentation or data. The Consultant shall use its professional skill and judgment when considering such information, documentation or data and shall promptly notify Tabreed if it considers there is any inaccuracy, incompleteness or inadequacy in it.

6.3 The Consultant shall not be entitled to any claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of such information, documentation or data or the non-provision of any other information, documentation or data by Tabreed.

7. PERSONNEL

7.1 The Consultant shall be responsible for the selection, hiring, supervision, transportation, repatriation and the payment of remuneration and associated benefits (including the withholding and remitting of all relevant taxes) of its personnel, including any Key Personnel.

7.2 The Consultant shall provide sufficient numbers of personnel to properly and diligently complete the Services. Such personnel shall be suitably qualified, experienced and competent to carry out the roles assigned to them. The Consultant shall, at Tabreed's request, provide Tabreed with evidence of the competency of such personnel (including details of previous experience and qualifications).

7.3 The Consultant shall give Tabreed at least 14 days prior notice if it intends to replace any Key Personnel and Tabreed shall have the right to refuse such replacement if it is not satisfied with the ability of the replacement individual. If at any time Tabreed reasonably determines that a member of the Key Personnel is incapable of performing to the standards expected of such a position, Tabreed may require the replacement of such member and the Consultant shall use its best endeavours to promptly find a suitable replacement. Any approved replacement must be fully engaged with the Services no later than 15 days from the date the outgoing individual ceased to be fully engaged with the Services.

7.4 The Consultant shall:

- (a) ensure that its personnel comply with all of Tabreed's policies and regulations from time to time while on Tabreed's premises;
- (b) comply with all labour Laws and regulations and shall ensure that all of its personnel maintain appropriate immigration and labour permits;
- (c) comply with all local immigration and work permitting requirements and Laws relating to the employment of local labour and expatriate personnel.

7.5 The Consultant shall:

- (a) at all times be responsible and liable for the welfare and all acts or omissions of its personnel and those of its sub-contractors;

- (b) at all times maintain discipline and good order amongst its personnel and those of its sub-contractors; and
- (c) use reasonable endeavours to prevent unlawful, riotous and disorderly conduct by its personnel.

In the event of any such behaviour or failure by the Consultant, the Consultant shall bear the cost of delays and any other costs of both the Consultant and Tabreed.

7.6 The Consultant shall, or shall at Tabreed's request, promptly remove and replace any person failing to maintain discipline and good order with another suitably qualified, experienced and competent person. The removal and replacement of any such person shall be at the cost of the Consultant.

7.7 The Consultant shall provide, or procure the provision of, all training for its personnel and, where requested by Tabreed, Tabreed's personnel, in accordance with this Contract and Good Industry Practice at the Consultant's cost.

8. PAYMENT

8.1 Pre-condition

No payment of any kind shall be made by Tabreed to the Consultant in connection with or in relation to this Contract until Tabreed:

- (a) receives the Performance Guarantee;
- (b) receives copies of the insurance policies required to be obtained by the Consultant in accordance with clause 15 and evidence that the premiums are current and that the insurance policies are in force; and
- (c) receives a valid invoice in conformance with this Contract in relation to the payment to be made.

8.2 Fee

- (a) Tabreed shall pay the Consultant the Fee in accordance with Exhibit 2 (*Fees*) and this clause 8.
- (b) The Consultant shall not be entitled to any payment other than the Fee in connection with this Contract except as provided in this clause 8.

8.3 Performance retention

Despite any other provision of this Contract, Tabreed may retain the amount set out in the Exhibit 1 (Work Service Order Specific Terms) from any payment due to the Consultant.

Tabreed shall return to the Consultant any amount retained in accordance with clause 4.5(b).

8.4 Invoices

- (a) The Consultant shall issue invoices for the periods or at the times as set out in Exhibit 1 (Work Service Order Specific Terms).
- (b) The Consultant shall give Tabreed a correct and complete invoice which shall include:
 - (i) the period or Services covered by the invoice;
 - (ii) the basis for and calculation of the amount claimed; and
 - (iii) all documents and information that Tabreed determines are necessary to audit the invoice.
- (c) If Tabreed objects to any invoice (in whole or in part), it shall:
 - (i) notify the Consultant within 15 days after receiving such invoice of the objection and specify the reason for Tabreed's objection; and
 - (ii) pay in accordance with this clause 8 any part of the invoice to which Tabreed does not object provided that the Consultant issues a new invoice in accordance with this clause 8 for that part of the original invoice to which Tabreed does not object.
- (d) If the Consultant receives an objection notice from Tabreed, the Consultant shall amend and submit a revised invoice accordingly. If Tabreed objects to a revised invoice (in whole or in part), then the above procedure shall be repeated until such time as Tabreed receives an invoice to which it does not object. The Tabreed shall pay such invoice within the time period referred to in clause 8.5(a)(i).

8.5 Payment Terms

- (a) Tabreed shall make payments to the Consultant:
 - (i) within the Credit Period after the receipt by Tabreed of an invoice that complies with this clause 8;
 - (ii) to a bank nominated by the Consultant; and
 - (iii) in the currency set out in the Exhibit 1 (Work Service Order Specific Terms).
- (b) Payments made by Tabreed shall:

- (i) be without prejudice to any of Tabreed's rights;
 - (ii) not be construed as a waiver of its right to object to any invoice so paid; and
 - (iii) not indicate, or be deemed to indicate, Tabreed's acceptance or approval of the Consultant's performance of its obligations under this Contract to which the invoice relates.
- (c) If Tabreed makes any payment to the Consultant in accordance with this Contract by transfer to a bank nominated by the Consultant, the Consultant shall bear all charges imposed in connection with such transfer including charges imposed by Tabreed's bank, the bank nominated by the Consultant and any intermediary.

8.6 Set off

Notwithstanding any other provision of this Contract, Tabreed may set off or deduct from any amounts due to the Consultant:

- (a) any amount due, or which it is reasonably apparent may become due, from the Consultant to Tabreed;
- (b) any amount paid by Tabreed to a third party where the Consultant was obliged to make such payment in accordance with this Contract but failed to do so;
- (c) any deduction or withholding tax required by Law; and
- (d) any amount due to Tabreed from an Insurer which is paid to the Consultant rather than directly to Tabreed.

8.7 Payment of sub-contractors

Upon receipt of payment under this Contract, the Consultant shall:

- (a) promptly pay its sub-contractors, personnel and suppliers in accordance with their contracts any part of the payments it receives under this Contract that are attributable to the works or services performed and/or goods supplied by each sub-contractor, personnel and supplier in connection with this Contract; and
- (b) if so requested by Tabreed, give Tabreed a notice confirming that it has complied with clause 8.7(a).

9. PERFORMANCE GUARANTEE

9.1 Within 15 days of the Effective Date, the Consultant shall provide Tabreed with an unconditional and irrevocable performance guarantee to secure the Consultant's performance of its obligations under this Contract which:

- (a) is in the form as set-out in Exhibit 3 (*Forms*);
- (b) is for the amount set out in the Exhibit 1 (*Work Service Order Specific Terms*);
and
- (c) is issued by a bank acceptable to Tabreed which is duly licensed and operating in Abu Dhabi or Dubai,

(Performance Guarantee).

9.2 If the Consultant fails to submit or maintain the Performance Guarantee in accordance with this clause 9, the Consultant shall not be entitled to submit any invoices for payment and Tabreed:

- (a) may, at its sole discretion, suspend or terminate this Contract in accordance with clauses 16 and 17 respectively;
- (b) may, at its sole discretion, draw down (in whole or in part) under any existing Performance Guarantee; and/or
- (c) shall not be obligated to make any payments to the Consultant of any kind whatsoever in connection with this Contract.

9.3 The Tabreed shall be entitled to liquidate the Performance Guarantee or any other security provided on behalf of the Consultant, either partially or fully, to the extent that Tabreed is of the opinion that monies are owed by the Consultant to Tabreed due to breach of this Contract or as may otherwise be due or permitted under this Contract.

10. WARRANTIES

The Consultant warrants that:

- (a) it is duly registered and authorised to perform its obligations under this Contract;
- (b) it has the full power and all necessary authorisations to enter into and comply with its obligations under this Contract;
- (c) it has taken all corporate and other action required to authorize the execution and performance of its obligations under this Contract;

- (d) that this Contract is legally binding; and
- (e) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of the Consultant's knowledge and belief) threatened against it for its winding-up, dissolution, bankruptcy, insolvency or re-organisation or any analogous procedures or for the appointment of a receiver, administrator, administrative receiver, trustee, arbitration manager or similar official of it or of any or all of the assets or revenues of any of its shareholders, Affiliates or sub-contractors.

11. DEFECTS

- 11.1** The Consultant shall promptly and diligently repair, replace or otherwise make good any defects in the Services as may be notified by Tabreed to the Consultant from time to time.
- 11.2** The Consultant shall bear all costs incurred in connection with performing its obligations under clause 11.1 including the cost of removal and disposal and the costs associated with repairing, replacing and making good the defects.
- 11.3** The Consultant shall promptly and diligently perform its obligations under clause 11.1 and shall do so in accordance with the timetable reasonably determined by Tabreed.
- 11.4** If the Consultant fails to fully rectify the defects in accordance with the timetable determined by Tabreed under clause 11.3, Tabreed may rectify the defects not rectified by the Consultant or engage another Party to do so, at the Consultant's risk and cost.
- 11.5** Without limiting the preceding provisions in this clause 11, Tabreed may at any time reject any part of the Services which Tabreed considers is not in accordance with this Contract. If Tabreed rejects any part of the Services, it may deduct from payments otherwise due to the Consultant amounts reasonably determined by Tabreed as relating to those rejected Services until such time as those rejected Services have been completed in accordance with this Contract. Despite any other provision of this Contract, the Consultant shall not be entitled to any payment in connection with rectifying any Services rejected by Tabreed.
- 11.6** This clause 11 shall survive expiry or termination of this Contract for any reason.

12. DELAY LIQUIDATED DAMAGES

- 12.1** If the Consultant does not achieve the Date of Completion within the Time for Completion, the Consultant shall pay Tabreed the Delay Liquidated Damages for each day or part thereof of delay up to and including the Date of Completion or the date on

which this Contract is terminated, whichever occurs first, except to the extent such delay is directly due to the acts or omissions of Tabreed.

- 12.2** The Consultant acknowledges and agrees that the Delay Liquidated Damages may not be sufficient to compensate for the genuine pre-estimate of the loss likely to be suffered by Tabreed.
- 12.3** The total Delay Liquidated Damages payable by the Consultant under this Contract shall not exceed the limit for Delay Liquidated Damages set out in the Exhibit 1 (Work Service Order Specific Terms).
- 12.4** The Tabreed may deduct Delay Liquidated Damages when calculating any payment due or to become due to the Consultant.
- 12.5** In the event that the Consultant is delayed in the performance of the Services by any matter which is not the responsibility of the Consultant under this Contract, Tabreed shall be entitled to extend the Time for Completion by an amount it considers reasonable in all the circumstances. The Tabreed's decision on such extension shall be final and binding on the Consultant. The Consultant shall not be entitled to any additional fees or costs resulting from such delay or extension unless expressly agreed in writing by Tabreed or unless expressly provided for in this Contract.
- 12.6** Nothing in this clause 12 is to be taken to limit any other obligation or liability of the Consultant or other right of Tabreed arising from a breach of this Contract.

13. INTELLECTUAL PROPERTY

13.1 All Intellectual Property Rights:

- (a) belonging to a Party (or which it uses under a licence from a third party) prior to the date of this Contract; or
- (b) developed by a Party independently of this Contract,

shall remain vested in that Party (or the relevant third party licensor).

13.2 Immediately upon creation or performance, all rights, title, interest, property and Intellectual Property Rights in:

- (a) any works and services (including deliverables);
- (b) all documents, data, records, logs, drawings, specifications, processes, articles, computer programs, object code, source code, network designs, notes, sketches, findings, interim and final reports, inventions, improvements, modifications,

discoveries, tools, scripts and all other related documents (whether machine readable or not); and

- (c) any items arising from or created, produced or developed by the Consultant (whether alone or jointly with others) under or in connection with this Contract, and any equipment installed by the Consultant as part of the Services,

(Materials) shall vest in and remain the exclusive property of Tabreed.

13.3 The Consultant irrevocably and unconditionally assigns and transfers to Tabreed, and shall, and shall procure that its Affiliates, officers, directors, employees, agents, contractors and sub-contractors shall, assign and transfer to Tabreed, all rights, title, interest, property and Intellectual Property Rights in and to the Materials.

13.4 Until such time as the Intellectual Property Rights in the Materials have fully vested in Tabreed in accordance with this clause 13 Intellectual Property Rights belonging to the Consultant (or which it uses under a licence from a third party) prior to the date of this Contract, the Consultant grants (and shall procure that its Affiliates, officers, directors, employees, agents, contractors and sub-contractors grant) to Tabreed an exclusive, irrevocable, royalty-free and otherwise unrestricted licence to use such Intellectual Property Rights including the right for Tabreed to sub-licence such licence.

13.5 After the Intellectual Property Rights in the Materials are owned by Tabreed, the Consultant shall have the non-exclusive, non-transferable, irrevocable, non-sublicenceable and royalty-free right during the Term to use the Materials solely in connection with its performance of its obligations under this Contract.

13.6 The Consultant indemnifies, defends and holds harmless Tabreed and its Affiliates, officers, directors, employees, agents and contractors against all claims, liabilities, actions, loss and costs (including all legal fees and costs on a full indemnity basis) arising out of or in connection with any infringement or alleged infringement of Intellectual Property Rights claimed by any third party in connection with Tabreed's ownership and/or use of the Materials and/or this Contract.

13.7 The Consultant shall:

- (a) promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to Tabreed) required by Law or reasonably requested by Tabreed in order to give effect to this clause 13; and
- (b) not do or fail to do any act which would or might prejudice Tabreed's rights under this clause 13.

13.8 The obligations in this clause 13 shall survive the expiry or termination of this Contract for any reason.

14. INDEMNITY AND LIABILITY

14.1 The Consultant indemnifies, defends and holds harmless Tabreed and its Affiliates, officers, directors, employees, agents and contractors against any loss, damage or cost (including all legal fees and costs on a full indemnity basis) arising out of or in connection with the entry into this Contract or the performance or breach of the Consultant's obligations under this Contract including all demands, claims and actions made or brought by a third party (including any regulatory or public authority), or any non-compliance with or breach of any Law or any infringement or alleged infringement of third party rights, misrepresentation, negligence, fraud or wilful misconduct by the Consultant, its shareholders, Affiliates, officers, directors, employees, agents, contractors or Sub-contractors, relating to or in connection with this Contract.

14.2 Subject to clause 14.3:

- (a) to the maximum extent permitted by Law, neither Party shall be liable for any indirect, or consequential loss or damage; and
- (b) the Consultant's liability in connection with this Contract shall not exceed the Fee.

14.3 Despite any other provision of this Contract, the Consultant's liability to Tabreed shall not be limited with respect to:

- (a) the Consultant's obligations under clauses 14.1;
- (b) any breach by the Consultant of clause 13 or 19.2;
- (c) any personal injury or damage to property to the extent that it is caused directly or indirectly by an act or omission by or on behalf of the Consultant; or
- (d) any claim Tabreed has against the Consultant with respect to any misrepresentation, gross negligence, fraud or wilful misconduct.

15. INSURANCE

15.1 Without limiting the Consultant's obligations and responsibilities in connection with this Contract, the Consultant shall, at its own cost, insure or cause to be insured with an insurer satisfactory to Tabreed the insurance policies as requested by Tabreed and in accordance with this Contract and as required by Law including:

- (a) workmen's compensation and employer's liability insurance, with a limit of liability not less than the amount set out in the Exhibit 1 (*Work Service Order Specific Terms*) covering the agents, servants and employees of the Consultant for all compensation and other benefits required of the Consultant by the workmen's compensation or similar statutory insurance Laws of any nation or political subdivision thereof to which the Consultant's operations under this Contract are subject in respect of liability for bodily injury by accident or disease including death resulting therefrom and sustained by any agent servant or employee of the Consultant arising out of and in the course of his employment. In addition, the employer's liability insurance must incorporate a clause indemnifying Tabreed as though they are the insured and must incorporate a clause waiving the Consultant's insurers of any and all rights of subrogation that the Consultant's insurers might have otherwise be able to exercise against Tabreed;
- (b) public and third party liability insurance, in the joint names of Tabreed and the Consultant, with a limit of liability not less than the amount set out in the Exhibit 1 (*Work Service Order Specific Terms*) in respect of damage to or loss of any real or personal property and the injury to or death of any person arising out of or otherwise in connection with the performance by the Consultant of the Services and its other obligations under this Agreement. The policy cover shall include a waiver of subrogation in favour of Tabreed, cross liability clause and a primary, and a primary insurance clause;
- (c) motor vehicle third party and passenger liability insurance, in the joint names of Tabreed and the Consultant, in respect of death of or injury to persons and loss or damage to property in respect of motor vehicles used by the Consultant in connection with the execution of the Services and such insurance shall provide an unlimited indemnity for death of or injury to persons for an amount not less than the amount set out in the Exhibit 1 (*Work Service Order Specific Terms*) for any one occurrence for loss of or damage to third party property resulting from an accident; and
- (d) professional indemnity insurance for protection from claims arising out of or in connection with the performance of the Services caused by negligent error, omission or acts for which the insured is liable. Such professional indemnity insurance shall provide for the amount set out in the Exhibit 1 (*Work Service Order Specific Terms*) and for the period of time set out in the Exhibit 1 (*Work Service Order Specific Terms*).

15.2 The Consultant shall ensure that each insurance policy includes provisions:

- (a) that the insurer has agreed to waive all rights of subrogation against Tabreed, its Affiliates, officers, directors, employees, agents and contractors; and
 - (b) that requires at least 90 days written notice shall be given by the insurer to the Consultant and Tabreed prior to any cancellation, non-renewal or material modification to such insurance policy.
- 15.3** The Consultant shall provide, within 7 days of a request by Tabreed, copies of the insurance policies and evidence that the premiums are current and that the insurance policies are in force.
- 15.4** If the Consultant fails to effect or keep in force the Insurance Policies, Tabreed may, at its sole discretion:
- (a) effect and keep in force any such Insurance Policy and deduct the cost of doing so from any money due or which may become due to the Consultant or recover the same as a debt due from the Consultant; and/or
 - (b) stop all payments otherwise due to the Consultant until such time as the Consultant has complied with its obligations under this clause 15.
- 15.5** All liabilities in excess of the indemnities and all deductibles provided under the insurance policies shall be for the account of and paid by the Consultant.
- 15.6** The Consultant shall indemnify Tabreed against all claims, demands, costs and charges arising from and in respect of risks and liabilities assumed by the Consultant whether or not such claims, demands, costs and charges are covered under the insurance policies.
- 15.7** Approval by Tabreed of any insurer or the terms of any insurance policy proposed by the Consultant shall not relieve the Consultant of any of its obligations or liabilities under or arising in connection with this Contract or at Law.
- 15.8** The Consultant shall notify the insurers with a copy to Tabreed of any occurrence that is likely to give rise to a claim under any insurance policy as soon as possible and in any event within 15 days after the Consultant becomes, or should have become, aware of such occurrence.
- 16. SUSPENSION**
- 16.1** At any time and for any reason, Tabreed may give the Consultant written notice suspending (in whole or in part) the performance of the Consultant's obligations under this Contract.

- 16.2** The effective date of any suspension of the performance of the Consultant's obligations under this Contract shall be the date on which the Consultant receives the notice of suspension or such later date as may be specified in such notice.
- 16.3** To the extent that the suspension is not directly or indirectly due to a breach of this Contract by the Consultant, Tabreed shall pay to the Consultant any reasonable direct costs arising from the suspension which are incurred by the Consultant in the course of performing its obligations under this Contract up to and including the effective date of the suspension. Those direct costs incurred by the Consultant shall be set out in an invoice issued by the Consultant in accordance with clause 8.
- 16.4** If the suspension is not due to a breach of this Contract by the Consultant and the suspension continues for a period of more than 90 consecutive days, the Consultant may request that Tabreed:
- (a) if the suspension relates to the whole performance of the Consultant's obligations under this Contract, terminate this Contract at its convenience in accordance with clause 17; or
 - (b) if the suspension relates to a part only of the performance of the Consultant's obligations under this Contract, terminate that part of its obligations which has been suspended subject to the Parties agreeing appropriate amendments to this Contract to account for such partial termination including amendments to the obligations of the Consultant, the timing of those obligations and the Fee.
- 16.5** Tabreed shall, at its sole discretion, determine whether to accept a request made by the Consultant to terminate its obligations under this Contract (in whole or in part) and shall notify the Consultant of such determination within 14 days of receiving the Consultant's request.

17. TERMINATION

- 17.1** Tabreed may terminate the Consultant's engagement under this Contract, or any part thereof, at any time for its convenience by giving at least 30 days' notice of termination. Following such termination Tabreed shall pay to the Consultant:
- (a) such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date; and
 - (b) any reasonable direct costs of demobilisation (excluding any cost of redeploying machinery, equipment or personnel or repatriating personnel) arising from the termination which are incurred by the Consultant as a direct result of the termination,

as are set out in an invoice issued by the Consultant in accordance with clause 8.

17.2 Tabreed may terminate the Consultant's engagement under this Contract, or any part thereof

- (a) by giving immediate notice of termination if:
 - (i) the Consultant becomes or is deemed to be insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory (other than for solvent reconstruction), passes a resolution for its winding up, has a receiver, manager or administrator, trustee or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt;
 - (ii) the Consultant is legally prohibited or restricted from performing its obligations under this Contract;
 - (iii) there is any change in the legal or beneficial ownership or control (as defined in the definition of "Affiliate") of the Consultant;
 - (iv) the Consultant or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-contractors or suppliers is convicted of any offence or is otherwise guilty of serious misconduct or any conduct that, in Tabreed's opinion, does or may bring the Consultant (or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-contractors or suppliers), Tabreed (or any of its Affiliates, officers, directors, employees, agents, contractors or suppliers) or its or their business, products or services into disrepute;
 - (v) the Consultant is liable, or in the reasonable opinion of Tabreed is likely to become liable, for the limit of Delay Liquidated Damages as set out in the Exhibit 1 (*Work Service Order Specific Terms*); or
 - (vi) the Consultant commits, whether directly or indirectly through others, any acts of fraud, bribery or other acts harmful or damaging to Tabreed's interest;
- (b) by giving at least 30 days' notice of termination following the issuance of a default notice and the expiry of a 28 day cure period commencing from the date of the default notice, if the Consultant commits a breach of any of its obligations under this Contract, unless the Consultant has remedied the breach within the cure period to the reasonable satisfaction of Tabreed;
- (c) by giving notice in accordance with clause 18.8 for the reasons set out therein.

17.3 If Tabreed terminates the Consultant's engagement under this Contract on any of the grounds referred to in clause 17.2, Tabreed shall pay to the Consultant such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date of the termination as are set out in an invoice issued by the Consultant in accordance with clause 8 less:

- (a) all costs and damages arising from such breach; and
- (b) incremental costs on the Fee incurred by Tabreed to appoint a third party to complete the performance of the Consultant's obligations under this Contract.

Tabreed's deduction of the above costs and damages from payments due to the Consultant shall not prejudice any other right Tabreed has in connection with this Contract or as a result of the Consultant's breach of this Contract. Furthermore, should there not be sufficient Fees due to the Consultant from which to make the deductions referred to in 17.3(a) and (b) above, Tabreed shall separately invoice those costs to the Consultant and may recover such from the Performance Guarantee (clause 9.3).

17.4 If this Contract is terminated, or the Consultant's engagement is terminated, for any reason:

- (a) the Parties shall cease further performance of their obligations under this Contract after the effective date of the termination and the Consultant shall take all such actions in this regard as reasonably directed by Tabreed;
- (b) the Parties shall each retain all rights and claims which arose on or prior to the effective date of termination;
- (c) the Parties shall be released from any further obligations in connection with this Contract;
- (d) Tabreed shall be entitled to make demands under the Performance Guarantee for any monies due to Tabreed by the Consultant;
- (e) the Consultant shall use its best endeavours to mitigate or minimise all damage and cost suffered or incurred by Tabreed, the Consultant and third parties in connection with the termination including the Consultant's costs of demobilisation;
- (f) the Consultant shall immediately deliver to Tabreed or otherwise dispose of as directed by Tabreed:
 - (i) all Confidential Information;

- (ii) all items to which Tabreed has any right, title, interest, property or Intellectual Property Rights arising in connection with this Contract or otherwise;
- (iii) all deliverables (whether completed or not) and all related documents, materials and information that are reasonably required by Tabreed in order to be able to complete such deliverables; and
- (iv) any other documents, materials and property belonging to Tabreed or its Affiliates, officers, directors, employees, agents or contractors,

which are in the possession or control of the Consultant, or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-contractors or suppliers and the Consultant shall certify in writing to Tabreed that the same has been done.

17.5 The Consultant acknowledges and agrees:

- (a) that by signing this Contract it consents to Tabreed's entitlement to terminate this Contract or the Consultant's engagement under this Contract under this clause 17 in accordance with the meaning of 'consent' and 'mutual consent' contemplated under the Civil Code; and
- (b) that Tabreed is entitled to exercise its right to terminate under this clause 17 without the need to obtain a court order in accordance with clause 271 of UAE Federal Law No. 5 of 1985.

17.6 The obligations in this clause 17 shall survive the expiry or termination of this Contract for any reason.

18. FORCE MAJEURE

18.1 Force Majeure means any event or circumstance not within the reasonable control of a Party and which, by the exercise of due diligence and the level of skill, prudence and foresight generally expected of a person in the Party's position, that the Party is not reasonably able to foresee, prevent, avoid, control or overcome including strikes, lockouts, bans, slowdowns (excluding those occurring among the employees of the Consultant or its sub-contractors) or other industrial disturbances of a general nature, acts of a public enemy, wars, terrorism, blockades, insurrections, riots, sabotage, epidemic or quarantine, landslides, earthquakes, floods, sand storms, lightning, civil disturbances, fire or explosions.

18.2 The following matters shall not constitute Force Majeure under this Contract:

- (a) lack of finances;

- (b) lack of funds;
- (c) inability to borrow funds;
- (d) an obligation to pay any amount; or
- (e) equipment breakdown resulting from wear and tear, lack of maintenance or the failure to carry sufficient spare parts.

18.3 If there is any Dispute as to whether an event or circumstance constitutes Force Majeure or whether or to what extent a Party is affected by Force Majeure, the Party claiming to be affected by Force Majeure shall bear the burden of proving that the event or circumstance constitutes Force Majeure and that it is so affected.

18.4 Consequences of Force Majeure

- (a) If a Party is unable to comply with its obligations under this Contract as a result of Force Majeure, that Party's performance of the obligations affected by Force Majeure shall be suspended in whole or in part to the extent that, and for the duration which, that Party's ability to perform those obligations is affected by Force Majeure.
- (b) The Consultant may request an adjustment to the Time for Completion if its performance of the Services has been suspended due to Force Majeure. Such request shall be made within 7 days after the end of the suspension and shall include the proposed revised Time for Completion which Tabreed may accept or reject acting reasonably.

18.5 Notification

A Party which is, or expects to be, unable to perform any obligation under this Contract by reason of Force Majeure shall:

- (a) notify the other Party of the occurrence of the Force Majeure as soon as possible but not more than 2 days after its occurrence;
- (b) notify the other Party as soon as possible but not more than 7 days after the occurrence of the Force Majeure giving:
 - (i) reasonably full particulars of the Force Majeure;
 - (ii) details of the obligations that it is unable to perform by reason of the Force Majeure;

- (iii) the date of commencement of the Force Majeure and an estimate of the period of time required to enable it to resume full or partial performance of its obligations under this Contract; and
 - (iv) where possible, the means proposed to be adopted to avoid or remove the circumstances constituting the Force Majeure and to mitigate the effect of the Force Majeure;
- (c) resume full performance as quickly as possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of performance;
- (d) notify the other Party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur; and
- (e) notify the other Party when resumption of performance has occurred.

18.6 Mitigation

- (a) A Party affected by Force Majeure shall use its best endeavours to avoid or remove the circumstances constituting the Force Majeure and to mitigate its effect. The other Party shall co-operate and provide such assistance as the Party affected by the Force Majeure may reasonably request.
- (b) If a Party gives a notice where it reasonably expects to be unable to perform any obligation under this Contract by reason of Force Majeure, that Party's obligation to mitigate shall commence upon the giving of the notice but that Party's relief from performance shall only apply once the impact of the Force Majeure has occurred.

18.7 Liability not relieved

Force Majeure shall not relieve a Party of its obligation to perform this Contract to the extent that its failure to perform is contributed to by:

- (a) its negligence; or
- (b) its failure to promptly use its best endeavours to mitigate or remedy the Force Majeure and its effects.

18.8 Prolonged Force Majeure

If a Party has given the other Party a notice in accordance with clause 18.5 and the same Force Majeure prevents or inhibits its performance of its obligations under this Contract for a period of more than 90 days, then either Party may give the other Party a notice

requiring the Parties to consult in good faith to decide what action should be taken to carry out the intentions of this Contract. If the Parties are unable to agree on what action should be taken within 7 days after the date of such notice, then Tabreed may immediately terminate this Contract by notice to the Consultant.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1 Assignment

- (a) Subject to clause 19.1(b) Tabreed shall not be entitled to assign, novate or transfer any of its rights under this Contract without the consent of the Consultant, consent not to be unreasonably withheld or declined.
- (b) Tabreed shall be entitled to assign, novate or transfer any of its rights under this Contract without the consent of the Consultant to its Affiliates, and where applicable, Funder.
- (c) The Consultant shall not assign, novate or transfer any of its rights under this Contract without the prior written consent of Tabreed.

19.2 Subcontracting

- (a) The Consultant shall not sub-contract the whole or any part of the performance of its obligations under this Contract without the prior consent of Tabreed.
- (b) Despite Tabreed's consent to the Consultant sub-contracting any of the performance of its obligations under this Contract, the Consultant shall remain liable and responsible to Tabreed for the proper performance by the sub-contractor of the Consultant's obligations under this Contract.
- (c) The Consultant shall ensure that each sub-contract includes:
 - (i) at the request of Tabreed, an obligation on the sub-contractor to enter into a collateral warranty on terms and conditions as reasonably required by Tabreed; and
 - (ii) at the request of Tabreed, an obligation on the sub-contractor to enter into an Contract to novate its sub-contract from the Consultant to Tabreed in a form reasonably determined by Tabreed;
- (d) The Consultant shall procure that each sub-contractor complies with its obligations under its sub-contract.

20. CONFIDENTIALITY

20.1 Each Party acknowledges that all Confidential Information disclosed to it by the other Party is the property of the other Party and is confidential and the receiving Party undertakes to the other Party not to disclose it to any other person except:

- (a) to such officers, employees, agents, representatives, contractors, subcontractors, suppliers and consultants of the receiving Party to the extent that they need to know in order to perform their duties in relation to this agreement;
- (b) to the extent that it is public knowledge at the time of disclosure to the receiving Party or subsequently becomes public knowledge through no fault of the receiving Party; or
- (c) to the extent that disclosure of it is mandatory under any Laws or order of a competent court or authority.

20.2 In the case of disclosures under the provisions of clause 20.1(a) it shall be the responsibility of the receiving Party to procure that all persons to whom Confidential Information is disclosed shall first have entered into a confidentiality undertaking in terms similar to those of this clause 20.

20.3 In the case of mandatory disclosures as referred to in clause 20.1(c), the receiving Party shall immediately give notice to the other Party and so far as circumstances permit consult with the other Party in advance of disclosure as to the form, nature, purpose, extent and timing of such disclosure and/or upon appeal or other legal process as may be available against such disclosure or in relation to such requirement and provide the other Party with copies of any disclosure made immediately upon it being released.

20.4 The receiving Party undertakes not to use or permit others to use the Confidential Information except for the purposes of providing Services or performing duties in relation to this Contract.

20.5 Where a Party has or will have access to computer systems and/or software of the other Party, the first Party shall at all times ensure that:

- (a) all necessary and reasonable steps are taken to safeguard Confidential Information and to prevent unauthorized access, copying, tampering, systems failure or corruption or deletion; and
- (b) security copies of the other Party's data or any other data compiled by the first Party in connection with performing obligations under this Contract are updated regularly and stored in a secure location.

20.6 The receiving Party shall return all Confidential Information disclosed to it by the other Party as soon as it is no longer required for performing obligations under this Contract and in any event upon expiry or termination of this Contract or on demand by the other Party, together with all copies, notes and transcriptions thereof or shall destroy such copies, notes and transcriptions and deliver to the other Party a signed certificate stating that it has done so and that no copies have been retained.

20.7 The confidentiality obligations of this clause 19.22 shall continue in full force and effect until the expiry of 5 years from the termination of this Contract.

21. NOTICES

21.1 All notices, demands, requests, reports, statements, invoices, consents and approvals under or in connection with this Contract shall be:

(a) in writing; and

(b) sent by courier (against a signed receipt), delivered by hand (against a signed receipt) or by fax to the address or number set out in the Exhibit 1 (*Work Service Order Specific Terms*) or as otherwise notified by a Party.

21.2 Notices shall be deemed to be received:

(a) if delivered by hand or courier, on the day of delivery provided that delivery takes place on a Business Day; and

(b) if sent by fax, on the day shown on the transmission report produced by the machine sending the fax which confirms transmission of the entire fax unless it is not a Business Day in the place of receipt in which case the notice will be deemed to be received at the start of the next Business Day.

22. SEVERABILITY

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction and to the fullest extent permitted by applicable Law, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract and without affecting the validity or enforceability of any provision in any other jurisdiction.

23. COUNTERPARTS

This Contract may be executed in any number of counterparts which shall together constitute one Contract.

24. CUMULATIVE RIGHTS

Unless expressly stated otherwise or the context does not permit, the rights, powers, privileges and remedies provided in this Contract are cumulative.

25. NO WAIVER

25.1 No delay or failure to exercise any right, power, privilege or remedy under this Contract shall impair or operate as a waiver thereof in whole or in part.

25.2 No single or partial exercise of any right, power, privilege or remedy under this Contract shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy.

25.3 A waiver or consent given by a Party under this Contract shall only be effective and binding on that Party if it is given or confirmed in writing by that Party.

26. FURTHER ASSURANCES

The Consultant shall do all further acts and execute or procure the execution of all further documents (in form and content reasonably satisfactory to Tabreed) required by Law or reasonably required by Tabreed to give effect to this Contract.

27. RELATIONSHIP OF THE PARTIES

Nothing in this Contract shall constitute, or be deemed to constitute:

- (a) a partnership between the Parties; or
- (b) either Party as the agent of the other for any purpose.

28. ENTIRE AGREEMENT

In relation to its subject matter, this Contract:

- (a) embodies the entire understanding of the Parties and constitutes the entire Contract between the Parties; and
- (b) supersedes any prior written or other Contract of the Parties.

29. NO REPRESENTATION OR RELIANCE

The Consultant acknowledges:

- (a) that Tabreed has not (nor has any person on Tabreed's behalf) made any representation or other inducement to the Consultant to enter into this Contract; and
- (b) that it does not enter into this Contract in reliance on any representation or other inducement by or on behalf of Tabreed,

except for representations or inducements expressly set out in this Contract.

30. AMENDMENTS

This Contract may only be amended or modified by a document signed by or on behalf of each Party.

31. THIRD PARTY RIGHTS

Unless stated otherwise, no third party shall have the benefit of any rights under this Contract.

32. GOVERNING LAW

This Contract is governed by and is to be construed in accordance with the Laws of the Emirate of Abu Dhabi and applicable federal Laws of the UAE as applied in the Emirate of Abu Dhabi.

33. DISPUTE RESOLUTION

33.1 The Parties shall make every effort in good faith to reach an amicable solution to any difference between them arising out of or in connection with this Contract.

33.2 Either Party shall be entitled any time to give to the other notice identifying any difference and recording that such difference constitutes a dispute (Dispute) between the Parties which, failing an agreed solution within 10 Business Days of such notice, either Party may refer the Dispute to a meeting of the chief executive officers of each Party without lawyers present to take place within 10 Business Days of the date of the notice of referral. If the Dispute is not resolved within 10 Business Days from the date of such notice (regardless of whether a meeting of the chief executive officers has taken place), either Party may refer the Dispute to arbitration in accordance with this clause 33.

33.3 Any Dispute shall be finally and exclusively resolved by arbitration before three arbitrators under the Rules of Arbitration of the International Chamber of Commerce (ICC, the Rules), which Rules are deemed to be incorporated by reference into this clause. Each party shall nominate one arbitrator and the Party nominated arbitrators shall jointly nominate the chair of the tribunal. If a Party fails to nominate an arbitrator within the time

specified by the Rules or the Party nominated arbitrators fail to nominate the chair of the tribunal, the ICC Court of Arbitration will appoint such arbitrator in accordance with the Rules.

- 33.4** The seat or legal place of the arbitration shall be the Abu Dhabi Global Market and the language of the arbitration shall be English. Either party may commence the arbitration by submitting a Request for Arbitration to the Secretariat of the ICC Court of Arbitration in accordance with Article 4 of the Rules, and by serving a copy of the Request for Arbitration on the other Party.
- 33.5** The award of the arbitration tribunal shall be final and binding on the Parties. The existence of a Dispute or arbitration proceedings does not in any way excuse a Party from performing its obligations under this Contract. Each Party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Contract being served on it in accordance with the terms of this Contract.
- 33.6** Despite any activation of the Dispute resolution procedure set out in this clause 33, the Consultant shall continue to perform its obligations under this Contract pending resolution of the Dispute.

- end of General Conditions of Work Service Order -