

South Lebanon Water Establishment

And

Contractor

Performance-Based Operation and Maintenance  
Contract for Wastewater Services in the City of Saida,  
Lebanon

Issued on:

**THIS CONTRACT** is made on the    day of [    ]

## **BETWEEN**

1. **South Lebanon Water Establishment**, a public utility established under the Law 221 of Lebanon, dated 29/5/2000, with a registered office at Saida, Lebanon (**SLWE**); and
2. [    ], a company incorporated under the laws of [    ] (registered number [    ]) whose registered office is at [    ] (the "**Contractor**", which expression shall include successors and permitted assigns).

## **WHEREAS**

- A. The South Lebanon Water Establishment desires to appoint an international contractor to provide wastewater services in the City of Saida.
- B. Contractor is an international operator experienced in the provision of wastewater services of the type described in this Contract.
- C. Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **THE PARTIES AGREE** as follows:

## 1. Definitions

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

## 2. Term and Commencement

### Effective Date and Term

2.1 The Contract shall come into effect on and from the date of execution of this Agreement by both Parties (the **Effective Date**), and shall expire on the fifth anniversary of the Commencement Date unless terminated earlier pursuant to CC Clause 41 or extended in accordance with Clause 2.7 of this Agreement.

### Satisfaction of Conditions

2.2 The Parties shall ensure that the following conditions are met (or, in the case of Clauses 2.2(a) or 2.2(b) only, waived by SLWE) as soon as possible following the Effective Date and, in any event, by no later than the Conditions Satisfaction Date or such later date as may be agreed by the Parties:

- (a) SLWE has received from Contractor (or on behalf of the Contractor):

- (i) in accordance with CC Clause 35.2, the Advance Payment Security, duly executed by all parties; and
- (ii) in accordance with CC 13.3, the Performance Security duly executed by all parties;
- (b) Contractor has contracted the insurances which it is required to effect by CC Clause 23 and has provided to SLWE evidence of the same as required by CC Clause 23.1;
- (c) payment by SLWE of the advance payment in accordance with CC Clause 31.1; and
- (d) Contractor has been issued with (i) a commercial registration number, and (ii) a license by the Lebanese Authority.

2.3 If the conditions referred to in Clause 2.2 of this Agreement are not satisfied or waived, as applicable, by the Conditions Satisfaction Date, the Parties shall meet to discuss the expedient satisfaction of the outstanding conditions. If the Parties cannot agree on a timetable for the completion of the outstanding conditions within 30 days of first meeting, then the following shall apply:

- (a) if only one of the Parties has satisfied all of the conditions within its control, then that Party may elect to terminate the Contract by giving 30 days' notice to the other Party and upon the expiry of such period the Contract shall automatically terminate without the need for further notice, unless the outstanding conditions have been satisfied as at such date in which case the Contract shall not terminate. If the Contract is terminated pursuant to this Clause 2.3(a), the terminating Party shall be entitled to recover from the other Party all reasonable and justifiable losses, costs and expenses suffered or incurred by the terminating Party in connection with the Contract from the Effective Date until the date of such termination, provided that the non-terminating Party's liability under this Clause 2.3(a) shall in no event exceed US\$50,000; or
- (b) if neither Party has satisfied all of the conditions within its control, then either Party may elect to terminate the Contract by giving 30 days' notice to the other Party and upon the expiry of such period the Contract shall automatically terminate without the need for further notice, unless the outstanding conditions have been satisfied as at such date in which case the Contract shall not terminate. If the Contract is terminated pursuant to this Clause 2.3(b), each Party shall be responsible for its own losses, costs and expenses incurred in connection with the Contract from the Effective Date until the date of such termination and neither Party shall have any liability to the other.

2.4 For the purposes of Clauses 2.3(a) and 2.3(b), payment of the advance payment by SLWE shall not be deemed to be within SLWE's control unless and until all other conditions (except for the payment of the advance payment) set out in Clause 2.2 of this Agreement have been satisfied or waived.

2.5 For the avoidance of doubt, SLWE may call upon the Bid Bond in satisfaction of any amount owed to it as a result of termination pursuant to Clause 2.3(a) of this Agreement or, if already provided at the time of termination, the Performance Bond.

### Commencement of Services

2.6 Contractor shall commence the Services on a date (the **Commencement Date**) which shall be the first day of the first month following the later of the date falling (i) three months after the Effective Date, and (ii) one month after the satisfaction of all the conditions

set out in Clause 2.2 of this Agreement or such other date as may be agreed between the Parties.

### Extension of Term

2.7 If both Parties agree, this Contract may be extended for a period of up to 12 months after the end of the Term. SLWE shall notify Contractor at least three months prior to the end of the Term if it wishes to enter into negotiations regarding an extension to the Contract.

## 3. Services

### Scope of Services and Transition Assistance

3.1 Contractor shall, throughout the Term, carry out the Scope of Services set out in Schedule A (*Scope of Services*) within the Services Area and undertake and accept the other obligations and risks to be performed and undertaken by Contractor set out under the Contract.

3.2 Without prejudice to Clause 2.1 of this Agreement, Contractor shall provide Transition Assistance after the expiry or termination of the Term in accordance with CC Clause 3.2 if so requested by SLWE.

### Performance Guarantee

3.3 Contractor guarantees that it shall attain the Performance Standards in relation to the provision of the Services in accordance with the terms but subject to the conditions of the Contract.

## 4. Remuneration and Terms of Payment

### Quarterly Operating Fee

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

### Withheld Sums

4.5 Contractor's entitlement to receive the Quarterly Operating Fee shall be reduced by any Target Withheld Sum calculated pursuant to Section C.2.3 of Schedule B (*Scope of Services*).

4.6 The Monthly Retention Sums withheld in respect of any Contract Year shall not exceed the relevant amounts stated in C.2.4 of Schedule B (*Scope of Services*).

### Terms of Payment

4.7 The Quarterly Operating Fee shall be paid by SLWE to Contractor at the times, subject to, and in accordance with, CC Clause 29 and Section C.2. of Schedule B (*Scope of Services*).

## 5. Access

SLWE shall provide Contractor with access to the Facilities on and from the Effective Date, in accordance with CC 13.2.

## 6. Insurance

The insurances to be taken out and maintained by Contractor pursuant to CC Clause 23.

## 7. Security

### Advance Payment Security

7.1 Pursuant to CC Clause 35.2, Contractor shall deliver to SLWE a valid and enforceable security issued by a financial institution acceptable to SLWE in the amount equal to the value of the advance payment which SLWE is obliged to pay Contractor pursuant to CC Clause 31.1.

### Performance Security

7.2 Pursuant to CC 37.3, Contractor shall deliver to SLWE a valid and enforceable security, issued by a financial institution acceptable to SLWE in an amount equal to ten per cent of the total Contract Price.

## 8. Assignment

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

## 9. Contractor's Aggregate Liability

The aggregate liability of Contractor to SLWE shall be limited as set out in CC Clause 27.3.

## 10. Notices

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

**To SLWE:**

Address:

Attention:

**To Contractor:**

Address:

Attention:

or such other address as is notified pursuant to CC Clause 5.

## 11. Governing Law and Language

### Governing law

11.1 The Contract shall be governed and interpreted in accordance with the laws of the Lebanese Republic.

### Governing language

11.2 The governing language of the Contract shall be English.

## 12. Dispute Resolution

Any dispute between the Parties relating to the Contract shall be resolved in accordance with the procedure specified in CC 6.

**IN WITNESS WHEREOF** SLWE and Contractor have executed this Agreement by their duly authorized representatives on the date first above written.

### **SLWE**

Signed by: [print name]

Title:

for and on behalf of

**South Lebanon Water Establishment**

In presence of: [print name]

Title:

### **Contractor**

Signed by: [print name]

Title:

for and on behalf of

[insert name of Contractor]

In presence of: [print name]

Title:

# Schedule A

## Conditions of Contract

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## Part A - Contract and Interpretation

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### 1. Definitions

In the Contract the following words and expressions shall have the following meanings hereby assigned to them, except where the context otherwise requires:

**Advance Payment Bond** has the meaning set out in CC 13.2(a), and includes any amended or replacement bond under CC 13.6, and shall be substantially in the form set out in Appendix 5 (*Forms of Security*);

**Agreement** means the agreement in the form of the Form of Agreement entered into between the Parties on or about the date hereof which is included in the Contract Documents;

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Contractor's Bid.

**BoQ** is the abbreviation for Bill of Quantities.

CC means these Conditions of Contract

The **Commencement Date** means the date defined under Sub-Clause 9.1.

The **Completion Date** is the date of completion of the Services and Works as certified by the Project Manager, in accordance with Sub-Clause 9.1.

The **Contract** is the Contract between the SLWE and the Contractor to perform the services to be provided by the Contractor, and to execute, complete, and maintain the Works. It consists of the documents listed in Clause 3 below.

The **Contractor** is a person or corporate body whose Bid to carry out the Services has been accepted by SLWE.

The **Contractor's Bid** is the completed bidding document submitted by the Contractor to SLWE.

The **Contractor Project Office** is the location indicated by the Contractor from which the Team Leader operates, and where the Contractor shall receive notifications.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

The **Contractor's Representative** means the person named by the Contractor in the Contract or appointed from time to time by the Contractor, who acts on behalf of the Contractor.

The **Contractor Personnel** means the operations personnel to be employed directly by Contractor for the purposes of carrying out the Services, excluding, for the avoidance of doubt, any SLWE Personnel;

**Days** are calendar days; **months** are calendar months and **year** means 365 days

**Dispute Review Board (DRB)** is a board of three members selected and act in accordance with rules and procedures defined in the Contract to seek to resolve any dispute of any kind that may arise between SLWE and the Contractor in connection with or arising out of the Contract, as provided for in Clause 6 hereunder.

**Documents** means written documents, data, notes, files, manuals, reports, records, Customer information, financial information, personnel records, test results, drawings, specifications, graphical materials, photographs, models (including three dimensional physical models) and all other information (including that stored by electronic means).

The **Facilities** means the infrastructure and associated facilities owned or under the control of SLWE used for the collection, pumping, transmission and preliminary treatment of wastewater as set out in Section B of Schedule B (*Scope of Services*), including all piping, housing, network control systems and associated software, pumps, filters, maintenance equipment, meters and detection systems, facilities and any additions or modifications thereto made during the Term;

**Laws** means all national legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

**Letter of Acceptance** means the letter of formal acceptance, signed by SLWE, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

**Materials** are all supplies, including consumables, used by the Contractor for the provision of Services.

**Operating Expenses** shall include all amounts expended in respect of goods and services pursuant to CC 30.2 and all expenses incurred in connection with administering, implementing and monitoring the performance of the Services, but shall exclude all Capital Expenses as referred to in CC 7.2.

The **Project Manager** is the person named pursuant CC Clause 15.1 who is responsible for the overall administration of the Contract on behalf of SLWE, the supervision of services to be performed hereunder, and the execution of Works included in the Contract. The Project Manager may delegate through a written instrument some of his functions to any other competent person, retaining however the overall responsibility for the actions of that person. The Project Manager may not delegate the overall administrative control of the Contract.

**Quarterly Operating Fee** means, in respect of each month, the applicable amount set out in Table 1 of Schedule C (*Bill of Quantity and Quarterly Operating Fee*).

**Services** has the meaning given in CC Clause 7 [Scope of Services].

**South Lebanon Water Establishment** is the party who employs the Contractor to carry out the Services.

**SLWE** is the abbreviation for South Lebanon Water Establishment.

A **Subcontractor** is a person or corporate body who has a contractual agreement with the Contractor to carry out certain activities related to the services to be provided under the contract, which may include work on the Site.

**Target Withheld Sum** means the amount determined pursuant to Clause C.2.3 of Schedule B (Scope of Services)

The **Team Leader** is a person appointed by the Contractor who is in charge of managing all activities of the Contractor under the Contract. He is also the Contractor's Representative for the purposes of this contract.

A **Variation** is an instruction given by the Project Manager, which varies the Works.

## 2. Interpretation

2.1 In interpreting these Conditions of Contract (CC), singular also means plural, male also means female or neuter, and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract (CC).

## 3. Documents Forming the Contract

3.1 The documents forming the Contract shall be interpreted in the following order of priority:

- (1) the Agreement,
- (2) The Conditions of Contract,
- (2) The Scope of Services,
- (4) The Appendices.

## 4. Interpretation

### Language

4.1 All Contract Documents and all correspondence and communications to be given and all other documentation to be prepared and supplied under the Contract shall be written in the governing language specified in Clause 11.2 of the Agreement and the Contract shall be construed and interpreted in accordance with that language.

### Singular and Plural

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

## Governing Law

The Contract shall be interpreted under and governed by the laws of the country or state specified in Clause 11.1 of the Agreement.

## Codes and Standards

4.3 Wherever references are made in the Contract to codes and standards in accordance with which the Services shall be executed, the edition or the revised version of such codes and standards current at 30 days prior to the Bid Submission Date shall apply unless stated otherwise in the Contract.

## 5. Notices

5.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, special courier, facsimile or email to the address of the relevant party set out in Clause 10 of the Agreement, with the following provisions:

- (a) Any notice sent by facsimile or e-mail shall be confirmed within two (2) days after dispatch by notice sent by special courier, except as otherwise specified in the Contract.
- (b) Any notice sent by special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the courier service for transmission by special courier.
- (c) Any notice delivered personally or sent by facsimile or e-mail shall be deemed to have been delivered on date of its dispatch.
- (d) Either party may change its postal, facsimile or e-mail address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

5.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

5.3 The Contractor shall provide at its own cost, and maintain in operation permanently during the duration of the Contract, such communications equipment which ensures that both written (facsimile or e-mail) and oral (voice) communications can be established at all times

- (a) between the Team Leader and his senior field staff,
- (b) between the Project Manager and the Team Leader,
- (c) between the public telephone system and the Team Leader.

5.4 Within 28 days of the Start Date of the Contract, the Contractor must communicate to SLWE the address of his office, including the postal, facsimile and e-mail address, which for the purposes of this contract is called the Contractor Project Office, where Notices will be addressed to. SLWE may require that the physical location of the Contractor Project Office is within the close geographical area of the Contract Area. If the Contractor fails to communicate the address of his Contractor Project Office, and SLWE is otherwise unable to locate the Team Leader, all notifications to the Contractor shall be valid if they are deposited at a designated location within the office of the Project Manager, and if a copy is sent to the Contractor's legal address.

## 6. Settlement of Disputes

### 6.1 Dispute Review Board

- (a) If any dispute of any kind whatsoever shall arise between SLWE and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the disputed matter shall, in the first place, be referred in writing by either party to the Disputes Review Board (“the Board”), with a copy to the other party.
- (b) The Board shall be established when each of the three Board Members has signed a Board Member’s Declaration of Acceptance as required by the DRB’s Rules and Procedures (which, along with the Declaration of Acceptance form, are attached to the Contract, Appendix A). The Board shall comprise three Members experienced with the type of construction and services involved in the Contract and with the interpretation of contractual documents. One Member shall be selected by each of SLWE and the Contractor and approved by the other. If either of these Members is not so selected and approved within 28 days of the date of the Letter of Acceptance, then upon the request of either or both parties such Member shall be selected as soon as practicable by the Internal Chamber of Commerce, Paris. The third Member shall be selected by the other two and approved by the parties. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, then upon the request of either or both parties such third Member shall be selected promptly by SLWE who shall seek the approval of the proposed third Member by the parties before selection but, failing such approval, nevertheless shall select the third Member. The third Member shall serve as Chairman of the Board. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, or if within 14 days after the selection of the third Member, the parties fail to approve that Member, such third Member shall be selected promptly by the same International Chamber of Commerce, Paris. The third Member shall serve as Chairman of the Board.
- (c) In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member shall fail or be unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the vacancy on the Board, failing which the replacement shall be made by the Appointing Authority in the same manner as described above. Replacement shall be considered completed when the new Member signs the Board Member’s Declaration of Acceptance. Throughout any replacement process the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the Board shall not conduct a hearing nor issue a Recommendation until the replacement is completed.

- (d) Either SLWE or the Contractor may refer a dispute to the Board in accordance with the provisions of the DRB's Rules and Procedures, attached to the Contract. The Recommendation of the Board shall be binding on both parties, who shall promptly give effect to it unless and until the same shall be revised, as hereinafter provided, in an arbitral award. Unless the Contract has already been repudiated or terminated, the Contractor shall continue to proceed with the Services in accordance with the Contract.
- (e) If either SLWE or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by the Chairman of the Board of the written Request for Recommendation, then either SLWE or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 6.3, no arbitration in respect thereof may be commenced unless such notice is given.
- (f) If the Board has issued a Recommendation to SLWE and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either SLWE or the Contractor within 28 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon SLWE and the Contractor
- (g) Whether or not it has become final and binding upon SLWE and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.
- (h) All Recommendations that have become final and binding shall be implemented by the parties forthwith.
- (a) All cost incurred by the Board will be equally shared by SLWE and the Contractor. The contractor shall pay all costs and will get 50% of the amount reimbursed from SLWE (out of the contingencies).

## **6.2 Arbitration**

- (a) If either SLWE or the Contractor is dissatisfied with the Board's decision, then either SLWE or the Contractor may, in accordance with Sub-Clause 6.1(e), give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The arbitral tribunal shall have full power to open up, review, and revise any decision, opinion, instruction, determination, certificate, and any Recommendation(s) of the Board.
- (b) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with CC Sub-Clause 6.2(a), shall be finally settled by arbitration. Neither party shall be limited in the proceedings before such arbitration tribunal to the evidence or arguments put before the Board for the purpose of obtaining his Recommendation(s) pursuant to Sub-Clause 6.2(a). No Recommendation shall disqualify the Board from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute. Arbitration may be commenced prior to or after completion of the Services.

(c) Arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL).

6.3 Where neither SLWE nor the Contractor have given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 6.1(e) and the related Recommendation has become final and binding, either party may, if the other party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-Clause 6.2. The provisions of Sub-Clause 6.1 shall not apply to any such reference.

6.4 Notwithstanding any reference to the Board or Arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) SLWE shall pay the Contractor.

## Part B. Assignment of Responsibilities

### 7. Scope of Services

7.1 The Contractor shall manage, operate and maintain the Facilities as described in Schedule B: Scope of Services in order to provide:

- (i) Asset management and capital programming;
- (ii) Rehabilitation and repair planning;
- (iii) Wastewater treatment and sludge disposal

7.2 The Scope of Service excludes any major capital investment. Nevertheless, the Contractor shall provide tools, spare parts, small material and maintenance equipment that is deemed to be included in the price offered by the Contractor in the Schedule C (Bill of Quantity, item 2.1).

7.3 The methodology, procedures, actions and deliverables relating to the provision of the Services under the Contract shall be detailed in the Asset Management Plan. The Contractor shall undertake the Services in accordance with the approved Asset Management Plan.

### 8. Copyright

8.1 The copyright in all drawings, documents and other materials containing data and information furnished to SLWE by the Contractor herein shall remain vested in the Contractor or, if they are furnished to SLWE directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

### 9. Time for Commencement and Completion

9.1 The Contractor shall commence the Services within the period specified in Clause 2.6 of the agreement and shall expire on the fifth anniversary of the Commencement Date, unless terminated earlier pursuant to CC 42 or extended in accordance with sub-clause 2.7 of this Agreement.

## 10. Contractor's Responsibilities

10.1 The Contractor shall design and carry out the Services (including associated purchases and/or subcontracting) necessary to comply with the requirements established in the Scope of Services with due care and diligence in accordance with the Contract.

10.2 The Contractor confirms that he has entered into this Contract based on a proper examination and interpretation of the situation and based on limited information and data provided by SLWE and on the basis that the general understanding that the data related to the facilities might be substantially wrong. The Contractor acknowledges that any failure to acquaint itself with all available data and information shall not relieve its responsibility for properly estimating the difficulty/ challenges or costs for a successful Service performance.

10.3 The Contractor shall acquire in his name all permits, approvals and/or licenses from all local or national government authorities or public service undertakings in Lebanon that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of SLWE under CC Sub-Clause 13.3 hereof and that are necessary for the performance of the Contract.

10.4 The Contractor shall comply with all laws in force in Lebanon and where the Services are carried out. The laws will include all local, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless SLWE from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to CC Sub-Clause 13.1 hereof.

## 11. Subcontracting

11.1 The Contractor shall not subcontract all or substantially all of the Services.

11.2 The Contractor shall not subcontract part of the Services without the prior written consent of SLWE (such consent not to be unreasonably withheld or delayed).

12.3 The Contractor shall remain fully responsible for the acts, omissions, defaults and neglect of any Subcontractor as if they were the acts, omissions, defaults or neglect of Contractor notwithstanding that SLWE has given its approval of such subcontracting.

## 12. Assignment of Contract

12.1 Without prior written mutual consent of the contract parties, neither SLWE nor the Contractor shall assign to any third party all or any part of the contract thereof, or any right, benefit, obligation or interest therein or hereunder.

## 13. SLWE's Responsibilities

13.1 SLWE shall apply due diligence to ensure the accuracy of all information and/or data to be supplied to the Contractor as described in the Scope of Services, except when otherwise expressly stated in the Contract.



13.2 SLWE shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding Scope of Services. SLWE shall give full possession of, and accord all rights of access thereto 28 days after the date of Contract signing.

13.3 SLWE shall acquire and pay for all permits, approvals and/or licenses from all local or national government authorities or public service undertakings in Lebanon, only when such authorities or undertakings require SLWE to obtain them in SLWE's name, are necessary for the execution of the Contract, and are specified in the corresponding Scope of Services.

13.4 If requested by the Contractor, SLWE shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

13.5 SLWE shall be responsible for the continued operation of the wastewater system after Completion, in accordance with CC Sub-Clause 28.1, and shall be responsible for facilitating the Guarantee Test(s), in accordance with CC Clause 17.4.

13.6 All costs and expenses involved in the performance of the obligations under this CC Clause 13 shall be the responsibility of SLWE, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with CC Sub-Clause 17.4.

## 14. Confidential Information

14.1 SLWE and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from SLWE to the extent required for the Subcontractor(s) to perform his work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this CC Clause 14.

14.2 SLWE shall not use such documents, data and other information received from the Contractor for any purpose other than those related to the execution and supervision of the contract and the operation and maintenance of the system after completion. Similarly, the Contractor shall not use such documents, data and other information received from SLWE for any purpose other than the design, procurement of Plant and Equipment, construction or such Services as are required for the performance of the Contract.

14.3 The obligation of a party under CC Sub-Clauses 14.1 and 14.2 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of that party;
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto;

- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

14.4 The above provisions of this CC Clause 14 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Services or any part thereof.

14.5 The provisions of this CC Clause 14 shall survive termination, for whatever reason, of the Contract.

## Part C. Execution of Services

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### 15. Representatives

#### 15.1 Project Manager

- (a) If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, SLWE shall appoint and notify the Contractor in writing of the name of the Project Manager. SLWE may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of the Services. Such appointment shall only take effect upon receipt of such notice by the Contractor.
- (b) The Project Manager shall represent and act for SLWE at all times during the implementation of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.
- (c) All notices, instructions, information and other communications given by the Contractor to SLWE under the Contract shall be given to the Project Manager, except as herein otherwise provided.
- (d) The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

#### 15.2 Team Leader

- (a) If the Team Leader is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Team Leader and shall request SLWE in writing to approve the person so appointed. If SLWE makes no objection to the appointment within fourteen (14) days, the Team Leader shall be deemed to have been approved. If SLWE objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this CC Sub-Clause 15.2 (a) shall apply thereto.
- (b) The Team Leader shall represent and act for the Contractor at all times during the implementation of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract. The Team Leader shall be in charge of the day-to-day management of the services to be provided under the contract on behalf of the Contractor, and shall have legal and all other faculties to take all necessary decisions related to the execution of the contract.

- (c) All notices, instructions, information and all other communications given by SLWE or the Project Manager to the Contractor under the Contract shall be given to the Team Leader or, in its absence, his deputy, except as herein otherwise provided.
- (d) The Contractor shall not revoke the appointment of the Team Leader without SLWE's prior written consent, which shall not be unreasonably withheld. If SLWE consents thereto, the Contractor shall appoint some other person as the Team Leader, pursuant to the procedure set out in CC Sub-Clause 15.2(a).
- (e) The Team Leader may, subject to the approval of SLWE (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Team Leader, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to SLWE and the Project Manager.
- (f) Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this CC Sub-Clause 15.2(b) shall be deemed to be an act or exercise by the Team Leader.
- (g) From the commencement of the Services at the Facilities, the Team Leader shall supervise all work done at the site by the Contractor and shall be present at the site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Team Leader is absent from the site, a suitable person shall be appointed to act as his or her deputy.
- (h) SLWE may, by notice to the Contractor, object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of SLWE, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the site regulations provided under the Scope of Services. SLWE shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.
- (i) If any representative or person employed by the Contractor is removed in accordance with CC Sub-Clause 19.3, the Contractor shall, where required, promptly appoint a replacement.

## 16. Work Program

### 16.1 Contractor's Organization

The Contractor shall supply to the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Services. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed as included in the Contractor's Bid. The Contractor shall promptly inform the Project Manager in writing of any revision or alteration of such an organization chart.

### 16.2 Initial Assessment of the Conditions of the Plants and Stations and Baseline Conditions

Within four months after the commencement date, the Contractor shall determine the status of the WWTP Facilities, through physical inspection and submit a report to the Project Manager on such status to establish the baseline conditions of the Facilities. The initial assessment must include the energy consumption of the plants and stations, the average daily volumes of wastewater reaching the WWTP and their fluctuation and the main

physicochemical characteristics of the wastewater inflow (BOD<sub>5</sub>, COD, SS and pH) in order to establish the performance indicators baseline.

### **16.3 Progress Reports**

The Contractor shall monitor progress of all the activities specified in the program referred to in CC Sub-Clause 16.3 above, and supply a progress report to the Project Manager every quarter. The progress report shall be in a form acceptable to the Project Manager in accordance with the Scope of Services.

### **16.4 Progress of Execution**

If, at any time, the Contractor's actual progress falls behind the program referred to in CC Sub-Clause 17.1, or it becomes apparent that it will fall behind, the Contractor shall prepare and supply to the Project Manager a revised program. The revised program shall take into account the prevailing circumstances, and notify the Project Manager of the remediation steps to expedite progress. The program shall account for the Time for Completion under CC Sub-Clause 9.1 any extension thereof entitled under CC Sub-Clause 43, or any extended period as may otherwise be agreed upon between SLWE and the Contractor.

### **16.5 Standards of Service**

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Scope of Services.

## **17. Execution of Services**

### **17.1 Services to be Performed and Other Obligations**

The Contractor shall perform the Services set out in Schedule B in relation to the standards of services of the Scope of Services, and the other specifications described in the present contract.

### **17.2 Contractor's Equipment**

- (a) All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. Ownership of the goods and materials procured by the Contractor shall, at all times, be with SLWE.
- (b) Notwithstanding that SLWE has ownership of the goods and materials procured by the Contractor, the responsibility for care and custody of these goods and materials shall remain with the Contractor for the duration of the Contract.

### **17.3 Management Meetings**

- (a) Either the Project Manager or the Contractor may call for a management meeting. The purpose of a management meeting shall be to review the plans for remaining work and to deal with matters raised by either the Contractor or SLWE. Management meetings will be held at least monthly. A meeting agenda should be communicated among concerned parties at least 48 hours prior to meeting date. The meeting shall be document through minutes of meeting drafted by the contractor that will be reviewed and approved by the Project Manager.
- (b) The Project Manager shall record the proceedings of management meetings and provide copies the meeting attendees and to SLWE. The responsibility of the parties for actions identified in the minutes of meeting shall be decided upon jointly by both parties.

### **17.4 Test and Inspection**

- (a) The Contractor shall at its own expense carry out on the Site all such tests and/or inspections as needed to achieve the Services, and in accordance with the standards and procedures described in Schedule b (Scope of Services) and any test not explicitly listed but required by the Project Manager.
- (b) SLWE and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection.
- (c) The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor 's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of the works and/or the Contractor 's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

## 18. Procurement and Management of Capital Works

### 18.1 Responsibility to Manage SLWE's Capital Investment Program

Unless otherwise specified in the Contract, the Contractor will not be directly responsible for financing the investment program identified in the Approved Asset Management Plan, but will be responsible for designing, procuring, managing and supervising the Capital Works by delegation of SLWE. The Contractor's remuneration for managing the Capital Investment Program is included in the total remuneration as specified in Schedule C (Bill of Quantities and Quarterly Operating Fee).

### 18.2 Procurement Rules

In assuming its responsibilities to procure, or manage the procurement of, anything required for Specified Capital Works, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money.

## 19. Staff and Labor

19.1 The Contractor shall employ the key personnel provided in the Bidding documents. The appointed personnel shall carry out the functions and tasks stated in the Scope of Services and/or job descriptions approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or better than those of the personnel listed in the Contractor's Bid.

### 19.2 Labor

- (a) The Contractor shall provide and employ staff for the execution of the Services. Necessary Skilled, semi-skilled and unskilled labor force shall be employed on a full time and/or part-time basis for a proper and timely execution of the Contract. The Contractor is encouraged to use local nationals as labor force with necessary skills unless cleared and approved by the Project Manager.
- (b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labor, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) (such as work permits, residency, etc.) and/or visa(s) from the appropriate national authorities for the entry of all labor force and personnel.

- (d) The Contractor shall, at own expense, provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary indemnities of all such persons from the cessation of their employment on the Contract until their departure. In the event that the Contractor defaults in providing such means, SLWE may provide the same to such personnel and recover the cost of doing so from the Contractor.
- (e) The Contractor shall at all times use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and labor force.
- (f) The Contractor shall provide lodging, medical assistance, food and sanitary installations for the employees living in at the work site to comply with the Social, Sanitary and Health Conditions of Labor requirements. The Contractor shall also take all necessary actions to control the spread of infectious diseases.
- (g) The Contractor shall fully comply with labor laws in relation to his staff, labor and subcontractors employed staff. The contractor shall as well pay due diligence to all recognized festivals, official holidays, religious or other national and local customs and any new decrees and/or decisions.
- (h) The Contractor shall send, to Project Manager, details of any accident as soon as possible after its occurrence. The Contractor shall maintain records and document / report health, safety and welfare, and damage to property, upon the request of the Project Manager.

### **19.3 Staff Dismissal**

Upon a well-justified and substantiated request of the Project Manager, the Contractor shall remove any staff including the Contractor's key staff. Hence, the Contractor shall ensure that the concerned staff leaves the Site within seven days and has no further connection with the work. The contractor shall be responsible of severance and indemnities related to the dismissal whenever applicable.

### **19.4 Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel

## **Part D. Allocation of Risks**

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### **20. SLWE's Risks**

20.1 As of the Start Date until the Defects Correction Certificate is issued, the following are SLWE's risks insofar as they directly affect the execution of the Services included in this Contract:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, revolution, insurrection, military or usurped power, or civil war;
- (c) ionizing radiations, contamination by radioactivity from any nuclear fuel, or any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

- (d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Services;
- (f) loss or damage due to the use or handing over to SLWE of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (g) any operation of the forces of nature against which an experienced Contractor could not reasonably have been expected to take precautions.

## 21. Contractor's Risks

21.1 SLWE carries the risks that this Contract states are SLWE's risks, and the remaining risks are the Contractor's risks.

## 22. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

22.1 In the case of death or injury or loss of or damage to any property arising throughout the execution phase and due negligence of the Contractor or its Subcontractors, or their employees, officers or agents, the Contractor shall not hold SLWE and its employees and officers accountable. The contractor will not take any legal suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses. Except if any injury, death or property damage is caused by negligence of SLWE, its Contractors, employees, officers or agents

22.2 If any proceedings brought or any claim made against SLWE that might subject the Contractor to liability under CC Sub-Clause 22.1. SLWE shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in SLWE's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify SLWE within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then SLWE shall be free to conduct the same. Unless the Contractor has so failed to notify SLWE within the twenty- eight (28) day period, SLWE shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

SLWE shall, at the Contractor's request, provide all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed/deducted by the Contractor for all reasonable expenses incurred in so doing.

22.3 The party entitled to the benefit of an indemnity under this CC Clause 22 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

## 23. Insurance

23.1 The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below and any additional insurance required by law in the jurisdiction(s) where the Services are undertaken. The identity of the insurers and the form of the policies shall be subject to the approval of SLWE, who should not unreasonably withhold such approval.

- (a) Loss of or damage to the Plant and Materials: Covering loss or damage occurring prior to Completion.
- (b) Third Party Liability Insurance: Covering bodily injury or death suffered by third parties (including SLWE's personnel and occasional visitors) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.
- (c) Automobile Liability Insurance: Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.
- (d) Workers' Compensation: In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.
- (e) Employer's Liability: In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.
- (f) Other Insurances: Such other insurances as may be specifically agreed upon by the parties.

23.2 SLWE shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to CC Sub-Clause 23.1, except for the Third-Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to CC Sub-Clause 23.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances.

23.3 The Contractor shall deliver to SLWE certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to SLWE by insurers prior to cancellation or material modification of a policy.

23.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

23.5 If the Contractor fails to issue and/or maintain in effect the insurances referred to in CC Sub-Clause 23.1, SLWE may issue and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that SLWE shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.

23.6 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this CC Clause 23, and all payable by any insurers shall be paid to the Contractor. SLWE shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which SLWE's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of SLWE. With respect to insurance claims in which the Contractor's interest is involved, SLWE shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.



## 24. Unforeseen Conditions

24.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced Contractor. If those conditions were not identifiable on the basis of reasonable examination of the data provided by SLWE, and on the basis of information that it could have obtained from a visual inspection of the Site or other data readily available. And if the Contractor determines that additional cost and expense or additional time will be incurred by performing its obligations under the Contract in consequence of such conditions or obstructions. if such physical conditions or artificial obstructions had not been encountered. The Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
- (b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- (c) the extent of the anticipated delay;
- (d) the additional cost and expense that the Contractor will most likely be incurred.

On receiving any notice from the Contractor under this CC Sub-Clause 24.1, the Project Manager shall decide upon the course of actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to SLWE, of the actions to be taken.

24.3 Any reasonable additional cost and expense incurred by the Contractor by following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in CC Sub-Clause 24.1. And if SLWE deem the claim convenient only then SLWE cover the costs incurred by the Contractor as an addition to the Contract Price.

24.4 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in CC Sub-Clause 24.1, the Time for Completion shall be extended in accordance with CC Clause 45.

24.5 Incorrect information on the condition of the Facilities, like incorrectness of flow, specifications or capacities is expressly excluded from being considered Unforeseen Conditions and thus the entire CC clause 24 is not applicable.

## 25. Change in Laws and Regulations

25.1 If after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of

any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions.

## 26. Force Majeure

26.1 "Force Majeure" shall mean any event beyond the reasonable control of SLWE or of the Contractor, as the case may be, insofar as they directly affect the execution of the Services and Works included in this Contract and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering, requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;
- (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

26.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

26.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with CC Clause 45.

26.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon his or their performance of the Contract and to fulfill his or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under CC Clause 26.6.

26.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall not:

- (a) constitute a default or breach of the Contract;
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby;

- (c) if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

26.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days due to one or more events of Force Majeure. The parties will attempt to develop a mutually satisfactory solution. If the such solution is deemed failing, then either party may terminate the Contract by issuing a notice, but without prejudice to either party's right to terminate the Contract under CC Clause 41.

26.7 In the event of termination pursuant to CC Sub-Clause 26.6, the rights and obligations of SLWE and the Contractor shall be as specified in CC Sub-Clauses 41.1 (b) and 41.1 (c).

26.8 Notwithstanding CC Sub-Clause 26.5, Force Majeure shall not apply to any obligation of SLWE to make payments to the Contractor herein.

## Part E. Guarantees and Liabilities

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### 27. Completion Time Guarantee and Liability

27.1 The Contractor guarantees that he shall attain Completion of the Services within the Time for Completion specified in CC Clause 9.1, or within such extended time to which the Contractor shall be entitled under CC Clause 43 hereof.

27.2 If the Contractor fails to attain Completion of the Services or any part thereof within the Time for Completion or any extension thereof under CC Clause 43, the Contractor shall pay to SLWE liquidated damages, or shall receive reduced payments. In the case of such default the dues shall not stand as a penalty (which sum shall be only be dues from the Contractor for such default). The dues will be accounted for through every day or part of the day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Services or the relevant Section. The aggregate amount of such liquidated damages and payment reductions, including all payment reductions under CC Clause 30, shall not exceed per event the "aggregate liability" in accordance with CC Clause 27.3. Once the "aggregate liability" is reached, SLWE may consider termination of the Contract, pursuant to CC Sub-Clause 41.2. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Services, or from any other of his obligations and liabilities under the Contract.

#### **27.3 Limitation of Liability**

Except in cases of criminal negligence or willful misconduct,

- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed 15% of the total value of the Contract, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

#### **27.4 Indemnities**

The Contractor shall indemnify and hold harmless SLWE, SLWE's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Services, unless attributable to any negligence, willful act or breach of the Contract by SLWE, the SLWE's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's performance or non-performance of the Services and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the SLWE, the SLWE's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

SLWE shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by SLWE, SLWE's Personnel, or any of their respective agents.

#### **28. Defect Liability**

28.1 The Contractor warrants that the Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Services executed.

28.2 The Defect Liability Period shall be eighteen (18) months from the Completion Date of the Contract (or any part thereof).

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Services executed by the Contractor, the Contractor shall promptly perform all appropriate remediation and corrective measures, in consultation and agreement with SLWE. Measures, such repair, replacement, adjustment or any other requirement shall be performed at the Contractor's own expense and liability. The Contractor will provide an appropriate remediation plan (determined at his own discretion and responsibility) for approval of SLWE. The Contractor shall not be responsible for the repair, replacement or remediation of defect or any other damage resulting from improper operation or maintenance of the wastewater system by SLWE following the substantial completion and handing over.

28.3 The Contractor's obligations under this CC Clause 28 shall not apply to:

- (a) any materials that are supplied by SLWE, or materials that are normally consumed through operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of SLWE or any matters for which the Contractor has mutual agreed with SLWE to be disclaimed of his responsibility herein;
- (c) any other materials supplied or any other work executed by or on behalf of SLWE, except for the work executed by SLWE under CC Sub-Clause 28.6;

28.4 SLWE shall give the Contractor a notice stating the nature of the defect together with all available evidence thereof, promptly following the discovery thereof. SLWE shall provide all reasonable opportunities for the Contractor to inspect any of such defects.

28.5 SLWE shall provide the Contractor the necessary access to the Facilities to perform his obligations under this CC Clause 28.

The Contractor may remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, if the repairs cannot be promptly carried out at the Facilities while making sure not to disrupt the regular water supply.

28.6 If the Contractor fails to initiate the required work to remedy such defect or any damage caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days). Upon a notification issued by SLWE to the contractor, SLWE hold the rights to proceed to implement such works, and hold the Contractor accountable of all reasonable costs incurred. Such costs will be paid to SLWE or deducted from the defect liability guarantee.

28.7 Except as provided in CC Clauses 27 and 28, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect to defects in the wastewater system or any part thereof, the Plants and Stations, design or engineering or work executed that appear after Completion of the Services. Exceptions apply where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

## PART F. Payment

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### 29. Contract Price

29.1 In consideration of the performance by the Contractor of its obligation under the present Contract, SLWE shall pay to the Contractor the applicable Quarterly Operating Fee pursuant the terms of the Contract and in accordance with Table 1 of Schedule C (Bill of Quantity and Quarterly Operating Fee).

29.2 Except in the event of a Variation in the Services or as otherwise provided in the Contract, the Contract price, stated in Schedule C (Bill of Quantity and Quarterly Operating Fee) shall be:

- (a) An operating fee paid quarterly covering for the provision of the Contractor's key personnel and support staff, as detailed in Tables 1 and 2, Schedule C (Bill of Quantity and Quarterly Operating Fee)
- (b) The operating expenses paid quarterly and covering all the costs incurred by the Contractor for the operation and management of the facilities under the management of the Contractor
- (c) A Training and Know-How Transfer fee, covering for the provision of know-how transfer and training of SLWE staff, paid after the successful delivery of the training and know-how transfer program

29.3 The Quarterly Operating Fee shall be a firm lump sum not subject to any alteration, except in the event of a Variation in the Services or as otherwise provided in the Contract

and shall be inclusive of all costs incurred by the Contractor in relation to the Contractor Personnel carrying out the Services.

29.4 The Quarterly Operating expenses shall be a lump sum subject to price adjustment as stated in CC 32, and shall be inclusive of all costs incurred by the Contractor in relation with the management, operation and maintenance of the facilities under the management of the Contractor.

29.5 The Training and Know-How Transfer fee shall be a firm lump sum not subject to any alteration, except in the event of a Variation in the Services or as otherwise provided in the Contract and shall be inclusive of all costs incurred by the Contractor in relation to the delivery of the Approved Training and Know-How Transfer Plan.

## 30. Withheld Sums

30.1 The Contractor's entitlement to receive payment under the provision of this Contract shall be reduced by any Target Withheld Sum as calculated in accordance with clause C.2.3 of Schedule B (Scope of Services).

### 30.2 Performance targets

The Performance Targets will be the targets for key indicators set out in Schedule B (Scope of Services), Appendix 1.

30.3 In performing the Services and exercising its Delegated Management Authority, the Contractor shall use its best endeavors to achieve or exceed the Performance Targets. Achieving the Performance Targets is not to result in any additional remuneration to the Contractor.

30.4 Failure to achieve the Performance Targets shall result in the accumulation of performance points for any KPI if the annual performance assessment carried out in accordance with Clause C.2. of Schedule B (Scope of Services) determines that the Contractor has failed to achieve the values set out in Schedule B, Appendix 1 (Performance Standards Table).

### 30.5 Delivery of Principal Plan Outputs

Late submission of Principal Plan Outputs, or submission to an unacceptable standard to SLWE shall accrue Performance Points as set out in Schedule B, Appendix 2 (Principal Plan Outputs Delivery Table).

## 31. Advance Payment

31.1 SLWE shall the date falling ten Business Days after the satisfaction of all other conditions (except for the payment of the advance payment) set out in Clause 2.2 of the Agreement and on receipt of an invoice for such amount, pay to Contractor, as an advance payment, an amount equal to *[to be inserted once Quarterly Operating Fee agreed]*, being 25% of the aggregate of the Monthly Operating Fee in respect of the first twelve months during the Term. Such advance payment shall be credited against future payments due from SLWE in accordance with CC 12.1(b).

31.2 As a credit against the payment of the advance payment under CC 31.1, SLWE shall deduct, and withhold payment of, 25% of each invoice issued under CC 29.1 in respect of the Quarterly Operating Fee until such advance payment is recovered in full.

31.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

## 32. Price Adjustments

32.1 Prices shall be adjusted for fluctuations in the cost of inputs. The amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \times (I_{mc}/I_{oc})$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

The coefficient for the adjustment of prices are:

- (a) For Lebanese Pound:
  - i) 15 percent non-adjustable element (coefficient A)
  - ii) 85 percent adjustable element (coefficient B)
- (b) For US dollars:
  - i) 15 percent non-adjustable element (coefficient A)
  - ii) 85 percent adjustable element (coefficient B)

32.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

32.3 The index to be used for Lebanese Pound is [tbd]. The indices for US dollars shall be [tbd, according to the proposed bid and contract negotiations].

## 33. Quarterly Statements and Payments

33.1 The Contractor shall submit to the Project Manager quarterly statements in the format indicated in Schedule B (Scope of Services), covering the Services for the corresponding quarter.

33.2 The value of Services executed shall be certified by the Project Manager.

33.3 Payment of the Remuneration shall be the responsibility of SLWE, in accordance with the terms of this Contract.

33.4 Payments shall be adjusted for deductions for advance payments and retention. SLWE shall pay the Contractor the amounts certified by the Project Manager within [forty-two (42)] days of the date of each certificate. If SLWE makes a late payment, the Contractor shall

be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made. The prevailing rates of interest for Lebanese Pound and US dollar will be officially obtained from the Central Bank of Lebanon.

33.5 If an amount certified is increased in a later certificate or as a result of variation order issued by SLWE or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per Sub-Clause 33.4.

33.6 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.

33.7 Items of the Services for which no rate or price has been entered in the Bill of Quantities will not be paid for by SLWE and shall be deemed covered by other rates and prices in the Contract except it is a Variation ordered by the Project Manager (see 34.5).

33.8 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered. If the work in the Variation corresponds with an item description in the Bill of Quantities the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

## 34. Taxes and Duties

34.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed by the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Services in and outside of the country where the Site is located.

34.2 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, SLWE shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

34.3 For the purpose of the Contract, it is agreed that the Contract Price specified in the Form of Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this CC Sub-Clause 34.3). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the



Contract Price or deduction therefrom, as the case may be, in accordance with CC Clause 25 hereof.

## 35. Securities

### 35.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of SLWE at the times, and in the amount, manner and form specified below.

### 35.2 Advance Payment Security

- (a) The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with CC clause 31, and in the same currency or currencies.
- (b) The security shall be in the form provided in the bidding documents or in another form acceptable by SLWE. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by SLWE. The security shall be returned to the Contractor immediately after its expiration.

### 35.3 Performance Security

- (a) The Contractor shall, within [twenty-eight (28)] days of the notification of contract award, provide a security for the due performance of the Contract in the amount of [10% of the value of the Contract].
- (b) The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to SLWE, and shall be in one of the forms of unconditional Bank Guarantee provided in the bidding documents, or in another form acceptable to SLWE.
- (c) The security shall automatically be reduced by half on the date of the Substantial Completion and shall become null and void, [eighteen (18)] months after Substantial Completion or [six (6)] months after Taking Over, whichever occurs first, provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to CC Sub-Clause 28.7 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration.

## 36. Statement of Completion

36.1 The Contractor shall request the Project Manager to issue a Certificate of Completion for all Services, and the Project Manager will do so upon deciding that the work is completed.

## 37. Final Statement

37.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the

Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

## 38. Discharge

38.1 Upon submission of the Final Statement, the Contractor shall give to the Project Manager, a written discharge confirming that the total of the Final Statement represents full and final settlement of all dues to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 36 has been made and the performance security referred to in Sub-Clause 35.3, has been returned to the Contractor.

## 39. As Built Drawings and Manuals

39.1 The Contractor shall provide to SLEW as-built drawings and/or manuals not later than 30 days after the completion of the respective works.

39.2 If the Contractor does not supply the Drawings and/or manuals in accordance with CC Clause 39.1, or they do not receive the Project Manager's approval, the Contractor shall be subject to the accumulation of 50 performance points for each month of part thereof submitted late, as defined in clause 2. of Schedule B (Scope of Services).

## Part G. Remedies

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### 40. Suspension

40.1 SLWE may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that SLWE shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with CC Sub-Clause 42.1, excluding the performance of the suspended obligations from the Contract.

If the SLWE fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension as termination of the Contract under CC Sub-Clause 41.1.

40.2 If

- (a) SLWE has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Contract, or commits a substantial breach of the Contract,

the Contractor may give a notice to SLWE that requires payment of such sum, with interest thereon as stipulated in CC Sub-Clause 32.1, requires approval of such invoice or supporting documents, or specifies the breach and requires SLWE to remedy the same, as the case may be. If SLWE fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to SLWE, including but not limited to SLWE's failure to provide possession of or access to the Site, or failure to obtain any governmental permit under SLWE's responsibility and necessary for the execution and/or completion of the Services,

then the Contractor may by fourteen (14) days' notice to SLWE suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

40.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this CC Clause 40, then the Time for Completion shall be extended in accordance with CC Clause 43, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by SLWE to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

40.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment or any Contractor's Equipment, without the prior written consent of SLWE.

## 41. Termination

### 41.1 Termination for SLWE's Convenience

- (a) SLWE may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this CC Sub-Clause 41.1.
- (b) Upon receipt of the notice of termination under CC Sub-Clause 41.1 (a), the Contractor shall either immediately or upon the date specified in the notice of termination
  - (1) cease all further work, except for such work as SLWE may specify in the notice of termination for the sole purpose of protecting that part of the Services already executed, or any work required to leave the Site in a clean and safe condition,
  - (2) terminate all subcontracts, except those to be assigned to SLWE pursuant to paragraph (4) (ii) below,
  - (3) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition.
  - (4) In addition, the Contractor, subject to the payment specified in CC Sub-Clause 41.1 (c), shall

- (i) deliver to SLWE the parts of the Works executed by the Contractor up to the date of termination,
  - (ii) to the extent legally possible, assign to SLWE all right, title and benefit of the Contractor to the Services and to the Plant and Equipment as of the date of termination, and, as may be required by SLWE, in any subcontracts concluded between the Contractor and its Subcontractors
  - (iii) deliver to SLWE all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.
- (c) In the event of termination of the Contract under CC Sub-Clause 41.1 (a), SLWE shall pay to the Contractor the following amounts:
- 1) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination,
  - 2) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel,
  - 3) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges,
  - 4) the costs incurred by the Contractor in protecting and leaving the Site in a clean and safe condition pursuant to paragraph (a) of CC Sub-Clause 41.1 (b),
  - 5) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

#### **41.2 Termination for Contractor's Default**

- (a) SLWE, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this CC Sub-Clause 41.2:
- (b) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
- (c) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of CC Clause 12;
- (d) If SLWE determines that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then SLWE may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 41 shall apply as if such expulsion had been made under Sub-Clause 41.2 [Termination for Contractor's Default].

Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the

Works, then that employee shall be removed in accordance with Clause 19.3 [Staff Dismissal].

For the purposes of this Sub-Clause:

- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to Influence improperly the actions of another party;
- (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party

(e) If the Contractor

- (1) has abandoned or repudiated the Contract
- (2) has without valid reason failed to commence works promptly or has suspended (other than pursuant to CC Sub- Clause 41.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from SLWE to proceed,
- (3) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause,
- (4) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Services in the manner specified in the program furnished under CC Clause 16 at rates of progress that give reasonable assurance to SLWE that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then SLWE may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then SLWE may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this CC Sub-Clause 41.2.

(f) Upon receipt of the notice of termination under CC Sub-Clauses 41.2 (a) or 41.2 (b), the Contractor shall, either immediately or upon such date as specified in the notice of termination,

- (1) cease all further work, except for such work as SLWE may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (2) terminate all subcontracts, except those to be assigned to SLWE pursuant to paragraph (4) below,

- (3) deliver to SLWE the parts of the Facilities executed by the Contractor up to the date of termination,
  - (4) to the extent legally possible, assign to SLWE all right, title and benefit of the Contractor to the Services and to the Plant and Equipment as of the date of termination, and, as may be required by SLWE, in any subcontracts concluded between the Contractor and its Subcontractors,
  - (5) deliver to SLWE all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Services.
- (g) SLWE may enter upon the Site, expel the Contractor, and complete the Services itself or by employing any third party. SLWE may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of SLWE and with an indemnification by SLWE for all liability including damage or injury to persons arising out of SLWE 's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Services for such reasonable period as SLWE considers expedient for the completion of the Services.

Upon completion or at such earlier date as SLWE considers appropriate, SLWE shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

- (h) Subject to CC Sub-Clause 41.2 (f), the Contractor shall be entitled to be paid the Contract Price attributable to the Services executed as of the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of CC Sub-Clause 41.2 (c). Any sums due SLWE from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.
- (i) If SLWE completes the Facilities, the cost of completing the Facilities by SLWE shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to CC Sub-Clause 41.2 (h), plus the reasonable costs incurred by SLWE in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under CC Sub-Clause 41.2 (e), the Contractor shall pay the balance to SLWE, and if such excess is less than the sums due the Contractor under CC Sub-Clause 41.2 (h), SLWE shall pay the balance to the Contractor.

SLWE and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

### **41.3 Termination by Contractor**

(a) If

- (1) SLWE has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to CC Clause 29, or commits a substantial breach of the Contract, the Contractor may give a notice to SLWE that requires payment of such sum, with interest thereon as stipulated in CC Sub-Clause 33.4, requires approval of such invoice or supporting documents, or specifies the breach and requires SLWE to remedy the same, as the case may be. If SLWE fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or
- (2) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to SLWE, including but not limited to SLWE failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit under SLWE 's responsibility and necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to SLWE thereof, and if SLWE has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to SLWE within twenty-eight (28) days of the said notice, the Contractor may by a further notice to SLWE referring to this CC Sub-Clause 41.3, forthwith terminate the Contract.

- (b) The Contractor may terminate the Contract forthwith by giving a notice to SLWE to that effect, referring to this CC Sub-Clause 41.3, if SLWE becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if SLWE takes or suffers any other analogous action in consequence of debt.
- (c) If the Contract is terminated under CC Sub-Clauses 41.3 (a) or 41.3 (b), then the Contractor shall immediately
  - (1) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the works already executed, or any work required to leave the Site in a clean and safe condition,
  - (2) terminate all subcontracts, except those to be assigned to SLWE pursuant to paragraph (4) (ii),
  - (3) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.
  - (4) In addition, the Contractor, subject to the payment specified in CC Sub-Clause 41.3 (d), shall
    - (i) deliver to SLWE the parts of the works executed by the Contractor up to the date of termination,

- (ii) to the extent legally possible, assign to SLWE all right, title and benefit of the Contractor to the Road and to the Plant and Equipment as of the date of termination, and, as may be required by the SLWE, in any subcontracts concluded between the Contractor and its Subcontractors,
  - (iii) deliver to SLWE all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.
- (d) If the Contract is terminated under CC Sub-Clauses 41.3 (a) or 41.3 (b), SLWE shall pay to the Contractor all payments specified in CC Sub-Clause 41.1 (c), and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.
- (e) If the Contract is terminated under CC Sub-Clauses 41.3 (a) or 41.3 (b), SLWE shall pay to the Contractor all payments specified in CC Sub-Clause 41.1 (c), and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.
- (f) Termination by the Contractor pursuant to this CC Sub-Clause 41.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by CC Sub-Clause 41.3.

43.4 In this CC Clause 41, in calculating any dues from SLWE to the Contractor, account shall be taken of any sum previously paid by SLWE to the Contractor under the Contract, including any advance payment paid pursuant to the Contract.

## Part H. Change in Contract Element

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### 42. Change in Assignments to Contractor

#### 42.1 Introducing a Change

- (a) SLWE shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Assignments to the Contractor (hereinafter called "Change"), provided that such Change falls within the general scope of the Assignment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Services and the technical compatibility of the Change envisaged with the nature of the Services as specified in the Contract.
- (b) The Contractor may from time to time during its performance of the Contract propose to SLWE (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Services. SLWE may at its discretion approve or reject any Change proposed by the Contractor. SLWE shall however approve any Change proposed by the Contractor in order to ensure the safety of the Services.
- (c) Notwithstanding CC Sub-Clauses 42.1 (a) and 42.1 (b), no change made necessary because of any default of the Contractor's performance of his obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.



- (d) The procedure on how to proceed with and execute Changes is specified in CC Sub-Clauses 42.2 and 42.3, further details and sample forms are provided in the Sample Forms and Procedures section in the bidding documents.

#### **42.2 Changes Originating from SLWE**

- (a) If SLWE proposes a Change pursuant to CC Sub-Clause 42.1 (a), it shall send to the Contractor a "Request for Change Proposal" requiring the Contractor to prepare and furnish to the Project Manager, as soon as reasonably practicable, a "Change Proposal" which shall include the following:
  - (1) brief description of the Change
  - (2) effect on the Time for Completion
  - (3) estimated cost of the Change
  - (4) effect on Functional Guarantees (if any)
  - (5) effect on any other provisions of the Contract
- (b) Prior to preparing and submitting the "Change Proposal", the Contractor shall submit to the Project Manager an "Estimate for Change Proposal" which shall be an estimate of the cost of preparing and submitting the Change Proposal. Upon receipt of the Contractor's Estimate for Change Proposal, SLWE shall perform one of the following:
  - (1) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
  - (2) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review the proposed estimate,
  - (3) advise the Contractor that SLWE does not intend to proceed with the Change.
- (c) Upon receipt of SLWE's instruction to proceed under CC Sub-Clause 42.2 (b), the Contractor shall expedite the preparation of the Change Proposal, in accordance with CC Sub-Clause 42.2 (a).
- (d) The pricing of any Change shall be practically be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.
- (e) If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith, and with all other Change Orders that have already become binding upon the Contractor under this CC Clause 42, would be to increase or decrease the Contract Price as originally set forth in the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If SLWE accepts the Contractor's objection, SLWE shall withdraw the proposed Change and shall notify the Contractor in writing thereof. The Contractor's failure to so object shall neither affect the right to object to any subsequent requested Changes or Change Orders herein, nor affect the right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected by the Contractor represents.
- (f) Upon receipt of the Change Proposal, SLWE and the Contractor shall mutually agree upon all matters therein contained. If SLWE intends to proceed with the Change, a change order should be issued within fourteen (14) days after such agreement,

SLWE shall issue the Contractor with a Change Order.

If SLWE is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If SLWE decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with CC Sub-Clause 42.2 (b).

- (g) If SLWE and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, SLWE may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order".
- (h) Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes incurred by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.
- (i) If the parties cannot reach agreement within sixty - (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Adjudicator in accordance with the provisions of CC Sub-Clause 6.1.

### **42.3 Changes Originating from Contractor**

If the Contractor proposes a Change pursuant to CC Sub-Clause 42.1 (b), the Contractor shall submit to the Project Manager a written "Application for Change Proposal" including reasons for the proposed Change and information specified in CC Sub-Clause 42.2 (a).

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in CC Sub-Clauses 42.2 (f) and 42.2 (g). However, should SLWE choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

## **43. Completion Time Extension**

43.1 The Time(s) for Completion specified in the CC clause 9 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (1) any Change in the Services as provided in CC Clause 42,
- (2) any occurrence of Force Majeure as provided in CC Clause 26 and unforeseen conditions as provided in CC Clause 24,
- (3) any suspension order given by SLWE under CC Clause 40,
- (4) any changes in laws and regulations as provided in CC Clause 25, or
- (5) any default or breach of the Contract by SLWE, or any activity, act or omission of any other Contractors employed by SLWE, or
- (6) any other matter specifically mentioned in the Contract

by such period extension shall be fair and reasonable in all circumstances and shall fairly reflect the delay or impediment sustained by the Contractor.

43.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a Completion Time extension notice, to include the circumstances justifying such extension as soon as possible. As soon as reasonably applicable after receipt of such notice and supporting specificities of the claim, SLWE and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept SLWE's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to the Dispute Review Board, pursuant to CC Sub-Clause 6.1.

43.3 The Contractor shall at all times use reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

#### 44. Performance Release

44.1 If the Contract progress is discontinued due to outbreak of war or by any other event entirely outside the control of either SLWE or the Contractor, the Project Manager shall certify that the Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

#### 45. Contract Extension

45.1 This Clause only applies if the Contract was substantially and successfully completed and the performance targets achieved at the end of the contract are met or exceeded.

45.2 SLWE and the Contractor may negotiate an extension of the Contract to continue with maintenance of leakage levels in the contract area.

## Appendix A

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### Disputes Review Board's Rules and Procedures

1. Except for providing the services required hereunder, the Board Members shall not give any advice to either party concerning conduct of the Services. The Board Members:
  - (a) shall have no financial interest in any party to the Contract, or a financial interest in the Contract, except for payment for services on the Board;
  - (b) shall have had no previous employment by, or financial ties to, any party to the Contract, except for fee-based consulting services on other projects, all of which must be disclosed in writing to both parties prior to appointment to the Board;
  - (c) shall have disclosed in writing to both parties prior to appointment to the Board any and all recent or close professional or personal relationships with any director, officer, or employee of any party to the Contract, and any and all prior involvement in the project to which the Contract relates;
  - (d) shall not, while a Board Member, be employed whether as a consultant or otherwise by either party to the Contract, except as a Board Member, without the prior consent of the parties and the other Board Members;
  - (e) shall not, while a Board Member, engage in discussion or make any agreement with any party to the Contract, regarding employment whether as a consultant or otherwise either after the Contract is completed or after service as a Board Member is completed;
  - (f) shall be and remain impartial and independent of the parties and shall disclose in writing to SLWE, the Contractor, and one another any fact or circumstance that might be such as to cause either SLWE or the Contractor to question the continued existence of the impartiality and independence required of Board Members; and
  - (g) shall be fluent in the language of the Contract.
2. Except for its participation in the Board's activities as provided in the Contract and in this Agreement none of SLWE, the Contractor, shall solicit advice or consultation from the Board or the Board Members on matters dealing with the conduct of the Services.
3. The Contractor shall
  - (a) Furnish to each Board Member one copy of all documents that the Board may request including Contract documents, progress reports, variation orders, and other documents pertinent to the performance of the Contract.
  - (b) In cooperation with SLWE, coordinate the Site visits of the Board, including conference facilities, and secretarial and copying services.
4. The Board shall begin its activities following the signing of a Board Member's Declaration of Acceptance by all three Board Members, and it shall terminate these activities as set forth below:
  - (a) The Board shall terminate its regular activities when either (i) the Defects Liability Period referred to in Sub-Clause 28.2 (or, if there are more than one, the Defects Liability Period expiring last) has expired, or (ii) SLWE has expelled the Contractor from the Site pursuant to Sub-Clause 41.1, and when, in either case, the Board has

communicated to the parties its Recommendations on all disputes previously referred to it.

- (b) Once the Board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by either party. In case of such a referral, Board Members shall receive payments as provided in paragraphs 7 (a) (ii), (iii), and (iv).
5. Board Members shall not assign or subcontract any of their work under these Rules and Procedures. However, the Board may in its discretion decide to seek independent expert advice on a particular specialized issue to assist in reaching a Recommendation, and the cost of obtaining any such expert opinion(s) shall be shared equally by SLWE and the Contractor in accordance with the procedure specified in paragraph 7 (d) below.
6. The Board Members are independent Contractors and not employees or agents of either SLWE or the Contractor.
7. Payments to the Board Members for their services shall be governed by the following provisions:
  - (a) Each Board Member will receive payments as follows:
    - (i) A retainer fee per calendar month equivalent to two times the daily fee established from time to time for arbitrators under the Administrative and Financial Regulations of the International Centre for Settlement of Investment Disputes (the ICSID Arbitrator's Daily Fee), or such other retainer as SLWE and Contractor may agree in writing. This retainer shall be considered as payment in full for:
      - (A) Being available, on seven days' notice, for all hearings, Site visits, and other meetings of the Board.
      - (B) Being conversant with all project developments and maintaining relevant files.
      - (C) All office and overhead expenses such as secretarial services, photocopying, and office supplies (but not including telephone calls, faxes, and telexes) incurred in connection with the duties as a Board Member.
      - (D) All services performed hereunder except those performed during the days referred to in paragraph (ii) below.
    - (ii) A daily fee equivalent to the ICSID Arbitrator's Daily Fee, or such other daily fee as SLWE and Contractor may agree in writing. This daily fee shall only be payable in respect of the following days and shall be considered as payment in full for:
      - (A) Each day up to a maximum of two days of travel time in each direction for the journey between the Board Member's home and the Site or other location of a Board meeting.
      - (B) Each day on Site or other locations of a Board meeting.
    - (iii) Expenses. In addition to the above, all reasonable and necessary travel expenses (including less than first-class air fare, subsistence, and other direct travel expenses) as well as the cost of telephone calls, faxes, and telexes incurred in connection with the duties as Board Member shall be reimbursed against invoices. Receipts for all expenses in excess of [AMOUNT AND CURRENCY] shall be provided.

- (iv) Reimbursement of any taxes that may be levied in the country of the Site on payments made to the Board Member (other than a national or permanent resident of the country of the Site) pursuant to this paragraph 8.
- (b) Escalation. The retainer and fees shall remain fixed for the period of each Board Member's term.
- (c) Payments to the Board Members shall be shared equally by SLWE and the Contractor. The Contractor shall pay Members' invoices within 30 calendar days after receipt of such invoices and shall invoice SLWE (through the quarterly statements to be submitted in accordance with Clause 33 of the Conditions of Contract) for one-half of the amounts of such invoices. SLWE shall pay such Contractor's invoices within the time period specified in the Construction Contract for other payments to the Contractor by SLWE.
- (d) Failure of either SLWE or the Contractor to make payment in accordance with this Agreement shall constitute an event of default under the Contract, entitling the non-defaulting party to take the measures set forth in the Contract.
- (e) Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either SLWE or the Contractor fails to make payment in accordance with these Rules and Procedures, the other party may pay whatever amount may be required to finance the operation of the Board. The party making such payments, in addition to all other rights arising from such default, shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums.

8. Board Site Visits

- (a) The Board shall visit the Site and meet with representatives of SLWE and the Contractor at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than two times in any period of 12 months. The timing of Site visits shall be as agreed among SLWE, the Contractor, and the Board, but failing agreement shall be fixed by the Board.
- (b) Site visits shall include an informal discussion of the status of the Works and Services, an inspection of the Works and Services, and the review of any Requests for Recommendation made in accordance with paragraph 10 below. Site visits shall be attended by personnel from SLWE and the Contractor.
- (c) At the conclusion of each Site visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the parties

9. Procedure for Dispute Referral to the Board:

- (a) If either party objects to any action or inaction of the other party, the objecting party may file a written Notice of Dispute to the other party stating that it is given pursuant to Clause 6 and stating clearly and in detail the basis of the dispute.
- (b) The party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 7 days after receiving the response. Both parties are encouraged to pursue the matter further to attempt to amicably settle the dispute.

- (d) When it appears that the dispute cannot be resolved without the assistance of the Board, or if the party receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice, either party may refer the dispute to the Board by written Request for Recommendation to the Board. The Request shall be addressed to the Chairman of the Board, with copies to the other Board Members, the other party and it shall state that it is made pursuant to Clause 6.
- (e) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- (f) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board shall decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
- (g) During the hearing, the Contractor and SLWE shall each have ample opportunity to be heard and to offer evidence. The Board's Recommendations for resolution of the dispute will be given in writing to SLWE and the Contractor as soon as possible, and in any event not more than 56 days after receipt by the Chairman of the Board of the written Request for Recommendation

#### 10. Conduct of Hearings

- (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private sessions of the Board may be held at any cost- effective location convenient to the Board.
- (b) SLWE and the Contractor shall be given the opportunity to have representatives at all hearings.
- (c) During the hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the Board shall meet privately to formulate its Recommendations. All Board deliberation shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's Recommendations, together with an explanation of its reasoning, shall be submitted in writing to both parties. The Recommendations shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.
- (e) The Board shall make every effort to reach a unanimous Recommendation. If this proves impossible, the majority shall decide, and the dissenting Member may prepare a written minority report for submission to both parties.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Site visits, and conduct of hearings, the Board shall have full and final authority. If a unanimous decision on any such matter proves impossible, the majority shall decide.

12. After having been selected and, where necessary, approved, each Board Member shall sign two copies of the following declaration and make one copy available each to SLWE and to the Contractor:

## **BOARD MEMBER'S DECLARATION OF ACCEPTANCE**

### WHEREAS

- (a) A Performance-Based Non-Revenue Water Reduction and Control Contract (the Contract) for the [name of project] project has been signed on [fill in date] between SLWE and [name of Contractor] (the Contractor);
- (b) Clause 6 of the Conditions of Contract provides for the establishment and operation of a Disputes Review Board (the Board);
- (c) the undersigned has been selected (and where required, approved) to serve as a Board Member on said Board;

NOW THEREFORE, the undersigned Board Member hereby declares as follows:

1. I accept the selection as a Board Member and agree to serve on the Board and to be bound by the provisions of Clause 6 of the Conditions of Contract and the Disputes Review Board's Rules and Procedures attached to the Conditions of Contract.
2. With respect to paragraph 1 of said Disputes Review Board's Rules and Procedures, I declare
  - (a) that I have no financial interest of the kind referred to in subparagraph (a);
  - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both parties any disclosures that may be required by subparagraphs (b) and (c)

BOARD MEMBER

Date:



# Schedule B Scope of Services

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## A. Overall Description of Services

### 1. Overview of Services

The main objective of this contract is to support SLWE's operational performance and asset maintenance and to address environmental issues by carrying out the operation and maintenance of the following wastewater preliminary treatment plant, collectors and associated lift stations (the Service Area):

- Saida Preliminary Treatment Plant (design capacity: 70,000 m<sup>3</sup>/day), including sea outfall
- 8 lift stations
- 126 km of wastewater collectors (diameters ranging between 300 and 1,200 mm)

The main elements of the contract are: **asset management, rehabilitation and repair/upgrade planning and implementation, wastewater preliminary treatment and disposal. The Contractor will also be responsible to design and perform public awareness and outreach to educate the public and served communities of domestic wastewater disposal and environmental protection.**

The contract shall be structured to address both output performance and capacity building and will be paid partly on a performance basis.

The Contractor shall manage, operate and maintain the WWTP facilities and associated lift stations to achieve performance standards set out in the contract, to meet environmental and other statutory compliance requirements, to develop processes and procedures in accordance with good utility management practices.

The Contractor's obligations include the following key aspects:

- Conduct an initial assessment of the condition of the plants and stations (civil structures and electromechanical equipment) to establish a baseline condition at the commencement date of the contract
- Prepare an asset management plan, covering the rehabilitation and upgrading needs of all the facilities under its direct management
- Implement and manage the rehabilitation and upgrade works, including work planning and design, procurement, and commissioning
- Perform the management, operation and maintenance of the preliminary treatment facilities and associated lift stations based on performance standards set out in the contract in order to optimize the utilization of the existing assets
- Collect, pump and transport wastewater to the existing preliminary treatment facilities
- Carry-out pipe breaks, infiltration detection and repair in the wastewater collection network and day-to-day responsibilities for infiltration reduction
- Transfer the know-how to SLWE managers and staff; this includes the development and implementation of procedures and procurement of tools, and the preparation and delivery of a specific training program and manual related to wastewater O&M.

- Establish an on-site laboratory or upgrade existing laboratories and conduct regular monitoring of key wastewater performance indicators
- Perform public awareness and outreach to educate the public and served communities on the proper disposal of wastewater, domestic wastewater management, environmental protection and other health-related issues.

The contract duration is 5 (five) years, including the initial assessment of the condition of the plants and stations. The know-how transfer and capacity building of SLWE personnel shall be implemented not later than six months prior to the completion date.

## 2. Detailed Scope of Service

### 2.1 Initial Assessment of the Conditions of the Plant, Network and Stations

At the beginning of the project, the Contractor shall perform a complete assessment of the baseline conditions of the wastewater treatment plants, collectors (including manholes) and lift stations. The Contractor shall determine the status of assets within the Service Area, through physical inspection where necessary, for determining the serviceability of all assets to enable efficient planning of rehabilitation and renewal program. The following activities are part of this scope of work:

- Acquisition and storage of data related to assets: asset identification (attributes - capacity, power of pumps, etc., location) and replacement or repair cost valuation
- Development of asset management procedures intended for the management of operations and maintenance to include preventive maintenance procedures and schedule
- Define the critical assets
- Define the serviceability e. g. performance versus expectations
- Define maintenance level required by O&M: corrective – repair; predictive – inspection and maintenance; preventive; renewal and/or decommissioning
- Perform the required amendments for a complete integration with the existing asset management software [alternative: develop an asset management software and upgrade the existing SLWE Geographical Information System in relation with the asset inventory]
- Preparation of O&M manuals: these are very detailed manuals intended to guide technicians and other operators in operating specific assets. Typically, for each plant and stations there will be a comprehensive manual dealing with all aspects of the operating and maintenance practices necessary to produce and sustain the desired level of performance of the plants and stations

### 2.2 Asset Management Plan

Based on the initial assessment of plants and stations, the Contractor shall prepare and submit for SLWE's approval a realistic **Asset Management Plan**. The Asset Management Plan shall describe the Contractor's detailed approach to the provision and management of the Services.

The plan shall cover the needs for rehabilitation and upgrade of all the facilities included in the service area. The plan shall describe the methodology, procedures and deliverables that the Contractor intends to implement to meet the requirements of the contract. The plan shall include an anticipated budget for the repair and renewal of facilities that will allow SLWE to prioritize and make decisions on asset renewal and investment. The asset management plan shall include the following elements:

- wastewater flow and forecast
- process capacity assessment
- assessment of essential capital maintenance requirements consistent with the expected remaining life of the WWTP facilities
- assessment of optimal balance between WWTP capital expenses and WWTP operating expenses and performance
- future investment plans considered by SLWE to upgrade the existing preliminary treatment plant
- capital investment plan: the aim is to determine an efficient level of capital expenditure for replacement and rehabilitation of existing assets

The Contractor shall develop a Draft Asset Management Plan that shall be submitted to SLWE for approval. The Draft Asset Management Plan shall (if approved by SLWE) become the Approved Asset Management Plan to be implemented by the Contractor

### 2.3 Implementation of the rehabilitation and upgrade works

The Contractor shall implement the Approved Asset Management Plan and carry out the rehabilitation and upgrade works. This includes the following activities:

- Work design and planning: Once the Asset Management Plan is approved by SLWE, the Contractor shall prepare a list of priority investment activities for which preliminary cost estimates have been prepared. Once validated by the Project Manager, this list will be converted into an investment action plan, a detailed procurement plan and an implementation schedule.
- Procurement: The Contractor shall manage the tendering of contracts for the works that have been approved by the Project Manager. The Contractor shall be responsible for coordination of the tendering and contracting all services, supplies and works necessary for project implementation. This includes preparation of tender documents, supervision of bidding period, participation in evaluation of bids and award of contract and participation in negotiations before contract signature. Tender documents shall be based on FIDIC practice documents and be developed in close cooperation with SLWE. The Contractor shall produce comprehensive procedure for bid evaluation and awarding procedures in which roles and responsibilities are clearly defined.
- Works supervision and commissioning: The Contractor shall be responsible for supervising the implementation of each works project under his authority, including overseeing all site activities of the contracted companies. The main works supervision activities of the Contractor are to ensure property acquisition and to set all administrative procedures including consents and licenses. The Contractor shall provide state of the art management tools in term of technical and financial control, risk management, progress reporting quality control and Health, Safety & Environment.

## 2.4 Operation and Maintenance of Facilities

The Contractor shall produce Operation & Maintenance manuals intended to guide technicians and other operators in operating specific assets. Typically, for each plant and station, there will be a comprehensive manual dealing with all aspects of the operating and maintenance practices necessary to produce and sustain the desired level of performance of the plants and stations.

The Contractor shall be responsible to prepare or update the operational procedures on all aspects of preliminary wastewater process, including the process units and the mechanical, electrical and instrumentation equipment. The contractor's staff shall be trained to implement the operating procedures that entail the preliminary treatment, process units, mechanical, electrical and instrumentation equipment. On the Job training shall be performed by qualified and experienced trainers, as an initial start-up. All mechanical, electrical and instrumentation staff shall be appropriately and substantially trained to ensure the sustainability of the WWTP operations.

The Contractor shall ensure that all operations are attended 24-hour per day and 7-day per week, that all process units and equipment are fully operational at all time and that the preliminary treatment process is performing according to specifications. All preliminary treatment refuse (solid waste, grit and grease) shall be hauled off site on a regular basis and disposed of as per approved refuse disposal plan.

The Contractor shall be responsible to monitor all process units on a regular basis, e.g. hourly readings by Contractor's staff and continual monitoring and trending by SCADA system. Daily samples of influent and effluent, by automatic samplers, and other processes to be analyzed by the on-site laboratory staff and weekly check samples to be analyzed by SLWE's central laboratory. Contractor' staff shall carry out visual inspections of all process units on a regular basis.

## 2.5 Training and Know-How Transfer

At least six months before the term of the Contract, the Contractor shall train the SLWE staff and transfer all know-how in order to secure an efficient handing over of the preliminary treatment operations, the operation and maintenance of electrical and mechanical equipment and instrumentation and the maintenance of the wastewater collection system. Training shall also include safety at work.

The scope of work includes (but is not limited to):

- Write all procedures and manuals related to the operation and maintenance of the preliminary treatment plant, collectors and stations, as described in section 2.4
- Prepare and implement a training plan for all main activities related to wastewater operations. The plan shall provide details of specific types and levels of training, including classroom training and on-the-job training
- Conduct training session for SLWE's staff

SLWE might decide to second wastewater staff to work jointly with the Contractor's staff on a daily basis. SLWE will continue to pay salaries of seconded staff but the Contractor may pay incentive bonuses that are in accordance with bonuses paid to his own staff. The details of

bonus disbursement procedures shall be agreed upon with SLWE. Seconded staff shall follow the Contractor's instructions and shall work as part of the Contractor's team. If the Contractor is unsatisfied with the performance of a seconded staff member, he shall inform SLWE. If the unsatisfactory situation continues, the Contractor is allowed to reject the services of the seconded individual concerned and SLWE may nominate a replacement. All activities in respect to training, know-how transfer and development of the procedures are included in the management fees of the Contract.

At the end of year 4 of the Contract, the Contractor shall submit a detailed Training and Know-How Transfer Plan that shall be based on the respective section of the Contractor's Technical Proposal but shall also take the experience into account that was made in the course of the contract. The Plan shall detail specific types and level of training, including classroom and on-the-job training. The Plan shall be approved by the Project Manager.

All activities in respect to training, know-how transfer and development of the procedures are included in the fixed and performance fee for asset management services.

## 2.6 Public Awareness and Outreach

The Contractor shall perform public awareness and outreach to educate the public and served communities on domestic wastewater management, environmental protection, impacts of the improper disposal of wastewater and other health-related issues. The Contractor shall prepare a leaflet presenting the updated organization of the wastewater management that will be distributed to all SLWE's customers. The Contractor shall also prepare messages and issue the messages in local media related to natural resources protection. These communication actions shall be developed in close collaboration with SLWE's Customers Relations department.

The Contractor shall also inform various industries, restaurants and shops about the harm caused to the wastewater process by dumping vegetable oils, fat and other organic waste into the sewage network. It shall advise those industries, restaurants and shops on the usage and maintenance of grease traps.

The Contractor shall inform as well municipalities, local authorities and customers of harm caused by the sewage and storm water mixing.

The Contractor shall assess industries and workshops rejecting toxic products into the sewage system without any pretreatment. The Contractor shall establish a cadaster of those industries and workshops and monitor the quality of the influents to detect any industrial pollution. He shall prepare specific pretreatment recommendation for those industries and workshops. In case of industrial pollution reaching the preliminary treatment plants, the Contractor shall attempt to identify the source of pollution and denounce the polluters to SLWE.

## 2.7 Asset Handover at Contract Expiry

At the expiration date of the Contract, the assets under management by the Contractor shall be handed-back to SLWE in good working condition. The Contractor shall be responsible to maintain the integrity of the buildings and equipment, the performance standards and to rectify any defects in the building, civil structure and equipment until the last day of the Contract.

Before handing over the managed assets to SLWE, the Contractor shall verify and provide evidence to SLWE that:

- the electromechanical equipment is working according to their specifications
- the electric connections are safe and functioning
- the building and civil structure are exempt of any damages or defects
- the analytical and monitoring instruments are fully operational

The only exceptions are minor omissions or defects which:

- (a) individually or in aggregate, do not prevent the facilities from being used for their intended purposes;
- (b) do not have to be rectified in order for Completion to be achieved; and
- (c) can be corrected without compromising the safe, efficient and continuous use of the facility.

### 3. Standards of Service

The standards of service are primarily defined by the legal framework of Lebanon, especially:

- The national standards for environmental quality (2001), especially the part three: environmental limit values for wastewater discharged into surface water
- The sewage sludge ordinance 01-2004, related to the utilization and disposal of sewage sludge from urban wastewater treatment plants

For the aspects that are not covered by Lebanese regulatory framework, the Contractor shall refer to the European Commission directive 91/271/EEC concerning urban wastewater treatment (1991), and the European Commission directive 86/278/EEC of 12 June 1986 on the protection of the environment, and particularly of the soil, when sewage sludge is used in agriculture.

The characteristics of wastewater services, its quality and its performance are defined by the standard **ISO 24511:2007**: *Activities relating to drinking water and wastewater services -- Guidelines for the management of wastewater utilities and for the assessment of wastewater services*, which provides guidelines for the management of wastewater utilities and for the assessment of wastewater services

The technical guidelines to which the Contract refers as best practice is the "Operation of Municipal Wastewater Treatment Plants" (2008 Water Environment Federation), which represents the most complete package of information available to the wastewater treatment industry.

The above-mentioned standards apply to the pretreatment operations, operation and maintenance of the wastewater collection system, lift and pumps stations and electrical equipment. They do not apply to the disposal of preliminary treated wastewater and sludge, owe to the absence of treatment units in the plant.

## 4. Contractor Internal Control Unit

The Contractor is obliged to establish, within his own organizational structure, a specific Unit staffed with qualified personnel, whose task is to verify continuously the efficiency of the operation of the plant, the maintenance of the wastewater collectors and the availability of the lift stations that are the object of the present contract. That Unit will also be responsible for the generation and presentation of the information needed by the Contractor for the documentation required for the Quarterly Reports. In general, the Unit will be responsible to maintain at all times a detailed and complete knowledge of the treatment processes. The unit will monitor the overall performance indicators and parameters, including the quality of influent and effluent, the production of sludge, and the functioning of electromechanical equipment and monitoring instruments. The unit will provide the management of the Contractor with all the information needed in order to efficiently manage the plant and stations and to ensure the attainment of the contractual performances.

The compliance (or non-compliance) of the Contractor will be reported by the Unit to the Project Manager in the form of tables. The mandatory standard format table will be provided by the Project Manager. The tables are part of the Contractor's quarterly report, and they may be complemented by comments for which a specific format is not required. The tables should include as a minimum the following information to be benchmarked with the set performance standards when applicable:

- Volumes of wastewater received and treated (daily and monthly)
- Volumes of water bypassed (i.e. not disposed through the sea outfall, daily and monthly)
- Refuse (solid waste, grit and grease) production (monthly)
- Number and function of personnel employed (monthly)
- Pump power utilized in lift and pump stations, presented separately for each station (monthly)
- Total energy consumption in the plant and related pumping stations, (monthly)
- Number of inspections to pumping stations (monthly)
- Equipment failures (blockages, pump failures, power failures) (monthly)
- Rehabilitation and replacement works (monthly)
- COD inflow and outflow (daily)
- Health and safety indicators (number and description of incidents/accidents, number of days of incapacitated works) (monthly)
- Odors H<sub>2</sub>S concentration at key locations at the facility (daily)

## 5. Reporting

Reports shall provide a summary of the Contractor's performance in compliance with his obligations under the contract having particular reference to the delivery of the scope of service, production of deliverables, supervision of rehabilitation, works and performance against performance standards.

Reporting will consist of quarterly, annual, and final reports.



Quarterly reports shall be submitted within 30 days from the end of the previous quarter, for each contract year. Quarterly reports shall comprise the standard tables described above, a summary of all the services carried out during the last quarter, a work program for the quarter ahead and all other information that requested by the Project Manager.

Annual reports shall be submitted within 45 days from the end of each contract year and shall include reporting for the fourth quarter period. Annual reports shall provide the following information:

- descriptive summary of services provided and problems encountered
- descriptive summary of rehabilitation and repair works carried out and problems encountered
- performance achieved and performance points calculations
- annual summary of standard tables described above

The final completion report should be submitted 45 days before the contract completion date. It shall provide the following information:

- descriptive summary of services provided and problems encountered
- descriptive summary of rehabilitation and repair works carried out and problems encountered
- final performance points calculations
- summary tables of system expansion and unforeseen works carried out during the whole contract period
- summary of standard tables described above
- as-built drawings for all rehabilitation and expansion works

## 6. Contractor's Personnel

### 6.1 Contractor's Key Personnel

There shall be a minimum of four key personnel positions:

- Team leader
- Sewage network manager
- Electromechanical engineer
- HR officer

These four positions shall be full-time and for the term of the contract. One of the post-holders for full-time positions shall be nominated as deputy team leader.

A minimum of a further four key personnel shall be proposed by the Contractor:

- Procurement officer
- Mechanical technician

- Electrical technician
- Instrument technician

The Contractor shall propose specific job description for each of the key personnel positions, ensuring that responsibility for the implementation of the full scope of service is delegated to the post-holders of these position, under the overall direction of the team leader.

The Contractor shall nominate candidates for each key position and provide the name of the persons proposed and their CV (maximum three sides A4).

The Team leader shall remain in post for not less than 3 years prior to any proposed change. The deputy Team leader shall be in-country whilst the Team leader is on leave.

Evidence of the physical presence of key personnel has to be provided in the quarterly progress reports.

The qualifications and number of staff-months for each key-personnel position are presented in the table hereafter. The proposed number of staff-months for each position is considered to be as the absolute minimum requirement.

<b>Position</b>	<b>Minimum experience requirements</b>	<b>Minimum number of staff-months</b>
Team leader	20 years' experience with water/wastewater services management Master degree or equivalent in engineering-related sciences and technologies Proven experience in management and team leadership 10 years' experience in wastewater operations	60
Sewage network manager	10 years' experience with wastewater operations Bachelor degree or equivalent in engineering-related sciences and technologies 5 years' experience in wastewater operations, particularly with sewage network maintenance	60
Electromechanical engineer	10 years' experience with pumping stations operations Bachelor degree or equivalent in engineering-related sciences and technologies 5 years' experience in wastewater pumps O&M	60
HR Officer	10 years' experience in HR management Bachelor degree or equivalent in psychology, social sciences, or business administration 5 years' experience in utility operations	60
Procurement officer	10 years' experience in project management and procurement Bachelor degree or equivalent in engineering-related sciences and technologies, or administration and finance 5 years' experience in water/wastewater infrastructure projects	48

Position	Minimum experience requirements	Minimum number of staff-months
Mechanical technician	5 years' experience with operation and maintenance of water/wastewater plants and lift stations Technical university degree or equivalent in engineering-related sciences and technologies	60
Electrical technician	5 years' experience with operation and maintenance of water/wastewater plants and lift stations Technical university degree or equivalent in engineering-related sciences and technologies	60
Instrument technician	5 years' experience in water and wastewater monitoring and instrumentation Bachelor degree or equivalent in engineering-related sciences and technologies	60

## 6.2 Contractor's Support Personnel

The Contractor shall propose support personnel as deemed appropriate to provide support to key personnel. Support personnel shall be of adequate quality, quantity, and specialty to support key personnel in delivering services.

The support personnel shall consist of short-term experts (i.e. planning and design experts, environmental experts, communication specialists) and long-term employees (supervisors, store keepers, plumbers, administrative employees, etc.).

The Contractor is encouraged to hire Support Personnel from the South Lebanon region.

## 6.3 Contractor's Sub-Contractors

The Contractor shall not subcontract all or substantially parts of the services. The Contractor shall not subcontract parts of the Services without the prior written consent of SLWE (such consent shall however not to be unreasonably withheld or delayed).

The Contractor shall remain fully responsible for the acts, omissions, defaults and neglect of any Subcontractor as if they were the acts, omissions, defaults or neglect of Contractor notwithstanding that SLWE has given its approval of such subcontracting. Refer to CC Clause 11.

## 7. Responsibility Assignment Matrix

The following matrix presents in a simplified manner some of the essential rights and responsibilities of the Contractor, the Employer and the Project Manager:

Description	Contractor	SLWE	Project Manager
Initial Assessment of the Conditions of the Plants and Stations	To be done by the contractor at the beginning of the contract	SLWE shall provide any information available related to the construction, operational data, energy consumption, repair works, etc.	Monitoring and oversight
Implementation of the rehabilitation and upgrade works	Under the responsibility of the Contractor	SLWE shall approve and provide the budget for the capital investment plan	Monitoring and oversight

Description	Contractor	SLWE	Project Manager
Operation and maintenance of facilities	Exclusively to be done by the Contractor	Monitoring and oversight	Monitoring and oversight
Establishment of an On-Site Laboratory	Exclusively to be done by the Contractor	SLWE shall approve and provide financing of the budget for the equipment of the laboratory	Monitoring and oversight
Public Awareness and Outreach	Exclusively to be done by the Contractor	SLWE shall review and approve Public Awareness and Outreach plan	Monitoring and oversight
Approval of quarterly reports	Revise as per PM comments	Approval of quarterly statements by SLWE and/or PM	Approval of quarterly statements by the Project Manager
Approval of annual reports, including performance points calculation	Revise as per PM comments	SLWE's PPP unit shall validate the calculation of the performance points	Approval of annual reports shall be done by the Project Manager
Payment of quarterly operating fee		SLWE shall pay the amounts approved by the Project Manager.	

## B. Facilities

### 1. General

For the purpose of the Contract, the “Facilities” shall include:

- The wastewater preliminary treatment plant of Saida
- 126 km of collectors of different diameters (300-1,200 mm)
- Eight lift stations that convey urban effluents to the Saida preliminary treatment plant.

The schematic layout of the wastewater collection and treatment system is provided in appendix 5.

#### 1.1. Saida Preliminary Treatment Plant

Saida WWTP was commissioned in 2007, but its operations started actually in 2013. The plant is designed to receive 70,000 m<sup>3</sup>/d, but the average daily flow is currently around 40,000 m<sup>3</sup>. The plant is currently operated by a private contractor, Saba Makhoulouf Company, under a 5-year O&M contract signed in 2016.

The WWTP includes an inflow pumping station with bar screens (T1, five pumps of 55 kW), a grit and grease removal unit, and outflow pumping station (T2, three pumps 183 kW) and sea outfall (2 km of 900 mm glass fiber reinforced plastics with 37 diffuser nozzles at the end portion). The visit of the plant identified in 2017 serious signs of asset deterioration.

The effluents are disposed into the Mediterranean Sea.

## 1.2. Lift stations

The following table presents the main characteristics of the lift stations to be operated under the present contract:

Station	Number of pumps	Power (kW)	Daily flow (l/s)	Head (m)
M1	3	64	354	9
M2	3	29.5	147	11.3
M3	3	35	242	6.6
M5	3	n/a	65	n/a
L1	2	26	30	n/a
L2	2	13.1	6	31
L3	2	7.5	12	n/a
L5	3	75	80	12

Electric generators are installed in each pumping station to serve as a backup for electricity production in case of power failure.

The data included in the above table are indicative. It is the responsibility of the Contractor to verify and validate this information.

## 1.3. Sewage network

The wastewater collection network is 126 km long with diameter between 300 and 1,200 mm. Service connections and tertiary sewers are managed by the Municipality and are out of the scope of this contract. The following table presents the lengths, in meters, of the different sections of the wastewater collectors to be maintained under the present contract.

DN (mm)	300	400	500	600	700	900	1200	Total
L1	9,740	271	1,800					13,192
L2	2,177	960	773					3,190
L3	1,363	810	835	1,433				4,441
L4	4,189	1,812	204	100	1,124			7,429
L5	30,214	3,199	3,828					37,241
L6	335							335
L7	887							887
L8	18,450	2,401	538					21,389
L9	26,589	855	2,245	1,376	2,195			6033,2
Costal collector					2,195	2,091	114	4,400
<b>Total</b>	<b>93,944</b>	<b>10,308</b>	<b>10,223</b>	<b>2,909</b>	<b>6,895</b>	<b>2,091</b>	<b>114</b>	<b>126,484</b>

The data included in the above table are indicative. It is the responsibility of the Contractor to verify and validate this information.

## C. Performance standards

### 1. Normal Operating Standards

Where the term “Normal Operating Standard” is used in the Contract, it means a standard of performance that:

- (a) is duly diligent, competent, efficient, economical and in accordance with internationally accepted techniques used in the water supply and wastewater collection industry;
- (b) is in accordance with professional engineering, accounting and consulting standards, as applicable, recognized by international professional bodies and including the standards and indicators of the IWA;
- (c) is in accordance with sound management, commercial, technical and engineering practices;
- (d) with respect to equipment, to be operated in accordance with the manufacturer’s instructions;
- (e) employs appropriate advanced technology and safe and effective equipment, machinery and methods;
- (f) protects the interests of SLWE and the general public;
- (g) fulfils the Contractor’s obligations under the Contract;
- (h) is in accordance with the applicable Laws;

If the Contractor fails to meet the Performance Standards, he may be subject to accumulation of Performance Points, as described in Section 2

The Contractor shall (in respect of each part of the Services for which a KPI is applicable) monitor and record the performance of the Services against the Performance Standards over a set period (the **Performance Period**) shown shaded in the Performance Standards Table in Appendix A.

The Performance Period will commence at the start of Contract Year 2 and conclude at the earlier of (i) the end of Contract Year 5; and (ii) the end of the Term.

The Performance Standards Table, which sets out the Performance Standards with reference to the applicable sections of the Scope of Services, is provided in Appendix 1.

## 2. Retention and Performance Points

### 2.1 Performance Points on Performance Standards

The Contractor shall be subject to accumulation of Performance Points for any KPI if the annual performance assessment of the Services determines that the Contractor has failed to achieve the values set out in Columns 3 to 7 of the Performance Standards Table in Appendix 1 in any relevant Contract Year in accordance with the following procedure:

- for each PP unit (the PP unit being specified in Column 10 of the Performance Standards Table) worse than the values relevant to that Contract Year set out in

Columns 3 to 7 of the Performance Standards Table, the number of Performance Points accumulated will be as set out in Column 9 of the Performance Standards Table.

## 2.2 Performance Points on Principal Plan Outputs

The Contractor shall submit Principal Plan Outputs to PM (SLWE) for approval, in form and substance that shall be agreed in writing in advance between the Contractor and PM (SLWE), in accordance with the following procedure;

- (a) The Contractor shall submit to SLWE for approval each Principal Plan Output by the due date set out in Column 2 in the Principal Plan Outputs Delivery Table provided in Appendix 2.
- (b) SLWE shall review the Principal Plan Outputs, and within 14 days of receipt thereof, issue to the Contractor notification of approval or rejection of the Principal Plan Output, plus any supporting comments. Where Principal Plan Outputs are challenged by SLWE, SLWE shall provide a detailed explanation for such challenge.
- (c) Where Principal Plan Outputs are challenged by SLWE, the Contractor shall attend to SLWE comments and submit a revised Principal Plan Output for SLWE approval. The provisions of paragraphs 2.2 (a) and (b) shall apply repeatedly to any subsequent Principal Plan Outputs until approved by SLWE.
- (d) Subsequent submissions are subject to accumulation of Performance Points: for every month, or part thereof, each Principal Plan Output is submitted late or to an unacceptable standard to SLWE, the Contractor shall accrue Performance Points as set out in Column 3 of the Table in Appendix 2 (the *Principal Plan Outputs Delivery Table*).

## 2.3 Calculation of Withholding on Payments

As part of its annual performance assessment carried out at the end of each Contract Year, SLWE shall review the Contractor's performance against the KPIs described in Appendix 1.

The assessment of performance shall be based on the accumulation of points during the Contract Year due to the delivery of the service being below Normal Operating Standards (**Performance Points**).

Performance Points will be accumulated during the contract performance year, in accordance with the Performance Standards Table in Appendix 1 and the Plan Outputs Delivery in Appendix 2.

The assessment of performance in each Contract Year, for the purposes of calculating the **Target Withheld Sum** for that Contract Year, shall be calculated in accordance with the following formula:

$$\text{TWS} = \frac{\text{PP}}{1,000} \times \frac{\text{AOF}}{10}$$

Where:

**TWS** means Target Withheld Sum

**PP** means, in respect of a Contract Year, the aggregate of all Performance Points accrued during that Contract Year relating to:

- (a) the failure by the Contractor to provide those elements of the Services (for which KPIs are applicable) to the relevant Performance Standards, as determined pursuant to Section C.2.1;
- (b) the failure by the Contractor to deliver the Principal Plan Outputs: (a) prior to the due date; and/or (b) to an acceptable standard, as determined pursuant to Section C.2.2.

**AOF** means the aggregate of the Monthly Operating Fees in respect of that Contract Year.

For the purposes of calculating TWS for each Contract Year, Performance Points shall be set to a starting value of zero at the start of each Contract Year. Performance Points shall not be carried over from the previous Contract Year.

SLWE may withhold from the Monthly Operating Fee that become payable following the issuance of the annual performance assessment by SLWE, an amount equal to the Target Withheld Sum. In respect of the final Contract Year, any Target Withheld Sum determined by SLWE shall be deducted from the final payment due to the Contractor.

#### 2.4 Calculation of Withholding on Payments

In respect of any Contract Year, the amount withheld pursuant to section 2.3 in respect of Performance Standards and Service Delivery Plans for such Contract Year, shall not exceed ten percent (10%) (the **Annual Percentage Cap**) of the aggregate of the Monthly Operating Fees for such Contract Year.

#### 2.5 Termination

The Parties agree that if the number of Performance Points accumulated by the Contractor, in any Contract Year other than the first Contract Year, exceed 2,000, SLWE shall be entitled to terminate the contract in accordance with CC 43 of the General Conditions of the Contract.



## Appendix 1: Performance Standards Table

KPI Ref.	KPI	Performance standards per Contract Year					Units	Performance Points (PP)	PPP units
		Year 1	Year 2	Year 3	Year 4	Year 5			
1	<b>Volume of water bypassed</b>	NA	20%	10%	5%	2%	%	50	Points per %
	Description	Volumes of water bypassed at the head of the preliminary treatment plant and not disposed through the sea outfall							
	Method of Calculation	(Volume of wastewater inlet – Volume of wastewater outlet) / Volume of wastewater inlet Volumes are expressed in cubic meters by year Volumes shall be calculated daily							
	Dependency	Approval of capital investment plan by SLWE							
	Exclusions	None							

Shading indicates Performance Period

KPI Ref.	KPI	Performance standards per Contract Year					Units	Performance Points (PP)	PPP units
		Year 1	Year 2	Year 3	Year 4	Year 5			
2	Availability of Wastewater Pumps	NA	80%	85%	90%	95%	%	50	Points per %
	Description	Availability time of all the pumps							
	Method of Calculation	Total number of hours during which any pump is available divided by the total number of hours							
	Dependency	Approval of capital investment plan by SLWE							
	Exclusions	Electricity default due to the electricity company in case of pumping station without generator							

Shading indicates Performance Period

KPI Ref.	KPI	Performance standards per Contract Year					Units	Performance Points (PP)	PPP units
		Year 1	Year 2	Year 3	Year 4	Year 5			
3	<b>Sewer Flooding Incidents</b>	NA	6	5	4	4	hours	100	Points per average hour
	Description	Average time taken to resolve sewer flooding event from time reported <b>Sewer flooding event</b> means the uncontrolled surcharge of sewerage from the sewerage system <b>Resolve</b> mean complete removal of blockage and surcharged sewage <b>Reported</b> means being observed and entered in the work management system							
	Method of Calculation	Total time to resolve all sewer flooding events reported / total number of reported events							
	Dependency	Workflow system linked to SLWE (work orders from SLWE to Contractor and reporting from Contractor to SLWE)							
	Exclusions	Sewer collapses. Surcharge caused by storm water. Pumping stoppages due to electricity failure by the electricity provider where no stand by electricity generation exists.							

Shading indicates Performance Period

## Appendix 2: Principal Plan Outputs Delivery Table

<b>Principal Plan Outputs</b>	<b>Due Date</b>	<b>Performance Points for each month or part thereof submitted late</b>
Initial assessment of the conditions of the plants and stations and baseline conditions	CD (Contract Duration) + 4 months	50
Operation and Maintenance Manuals	CD + 6 months	50
Asset Management Plan	CD + 12 months	50
Training and Know-How Transfer Plan	CD + 48 months	50

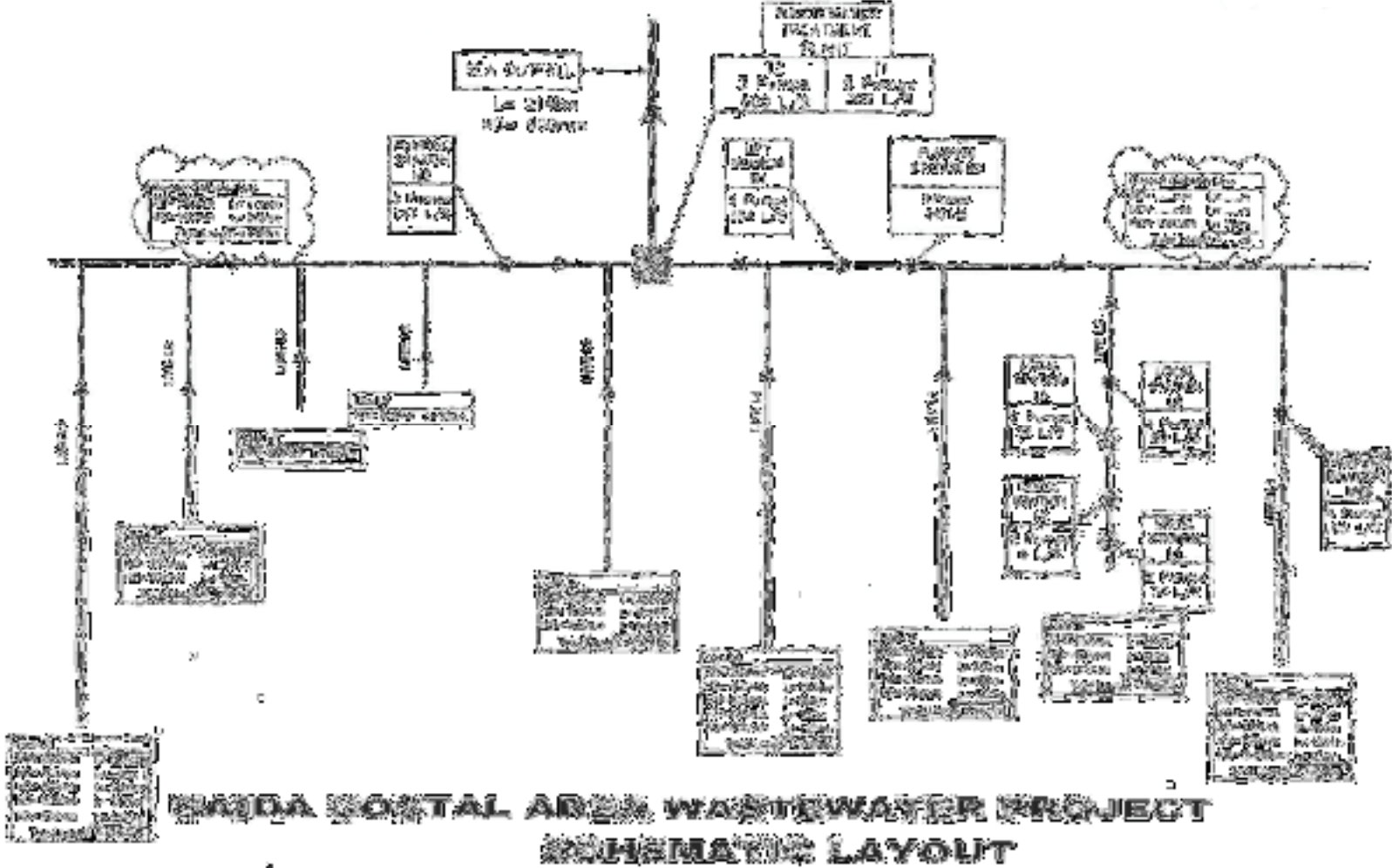
### Appendix 3: Key Management Staff Qualifications and Availability

No.	Position	Name	Age	Nationality	No. of years of experience	Main specialism	Guarantee period of availability
K1	Team leader						
K2	Sewage network manager						
K3	Electromechanical engineer						
K4	HR Officer						
K5	Procurement officer						
K6	Mechanical technician						
K7	Electrical technician						
K8	Instrument technician						

Appendix 4: Contractor's Staff Commitment in Man Days per quarter

No.	Name	Position	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20
K1		Team leader																				
K2		Sewage network manager																				
K3		Electromechanical engineer																				
K4		HR Officer																				
K5		Procurement officer																				
K6		Mechanical technician																				
K7		Electrical technician																				
K8		Instrument technician																				
<b>Total</b>																						

Appendix 5: Saida Costal Area Wastewater Schematic Layout



## Schedule C

### Bill of Quantities and Quarterly Operating Fee

Item	Description	Unit	Quantity	Price	
				USD	LBP
<b>1</b>	<b>Operating fee</b>				
1.1	The operating fee covers for the provision of the Contractor's key personnel and support staff, as detailed in Tables 1 and 2, and the expected profit margin. The Operating Fee is based on the terms and conditions of the RFP.	Lump sum	1		
<b>2</b>	<b>Monthly operating expenses</b>				
2.1	The monthly operating expenses covers all the costs incurred by the Contractor for the operation and management of the facilities under the management of the Contractor (section B of the Scope of Services) and includes the cost of energy, chemicals, preliminary treatment refuse disposal, general maintenance (spare parts, tools and equipment), vehicles, communication, general and administrative expenses and contingencies.	Lump sum	60		
<b>3</b>	<b>Training and Know-How Transfer fee</b>				
3.1	Know-how transfer and training of SLWE staff, including writing all procedures and manuals, designing training material, conducting training sessions and providing on-the-job training.	Lump sum	1		
<b>Grand Total</b>					



### Table 1: Quarterly Operating Fee

The Operating Fee shall include all taxes and duties in accordance with the Applicable Laws, and shall be a firm amount not subject to indexation.

Quarter no.	Total Amount	
	Amount in US \$	Amount in LBP
Quarter 1		
Quarter 2		
Quarter 3		
Quarter 4		
Quarter 4		
Quarter 6		
Quarter 7		
Quarter 8		
Quarter 9		
Quarter 10		
Quarter 11		
Quarter 12		
Quarter 13		
Quarter 14		
Quarter 15		
Quarter 16		
Quarter 17		
Quarter 18		
Quarter 19		
Quarter 20		
<b>Total</b>		

### Table 2: Breakdown of Operating Fee

Month	Contractor's Key Personnel	Contractor's support staff	Securities, warranties and bonds	Insurances	Expenses	Taxes & duties	Other (please specify)	Total Amount as Table 1
Month 1								
Month 2								
Month 3								
Month 4								
Month 4								
Month 6								
Month 7								
Month 8								
Month 9								
Month 10								
Month 11								
Month 12								
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Month 56								
Month 57								
Month 58								
Month 59								
Month 60								
<b>All Months Total</b>								