

Shared Energy Savings Contract Optional Clauses



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A. INTRODUCTION

This document contains additional optional clauses that may be inserted in the standard form Shared Energy Savings Contract ("**SESC**") as required by the Parties. Brief guidance notes on when to utilise each clause have been included in the footnotes. These clauses will need to be considered on a case by case basis in light of the key drivers for each project and included accordingly.

B. ESCO'S ADDITIONAL PERFORMANCE OBLIGATIONS

This section sets out additional performance obligations that a Customer may wish to impose on an ESCO during the performance of the Project. These obligations particularly relate to the disposal of obsolete equipment and training for the use of new Equipment installed at a Premises.

9 ESCO'S GENERAL PERFORMANCE OBLIGATIONS

Services Phase¹

- 9.8A In the event that the Customer becomes aware of any defect in the performance of the ESCO's Work, the Customer shall notify the ESCO in writing of such defective performance. Upon receiving such notice, the ESCO shall rectify such defective Work as soon as is reasonably possible, and in any event within ten (10) Business Days and shall notify the Customer in writing of the remedial action it has undertaken. If the ESCO fails to commence rectification works within ten (10) Business Days of receiving written notice from the Customer, the Customer may itself, or engage another third party to, perform such rectification work at the ESCO's expense, which shall be a debt due and payable by the ESCO upon written demand from the Customer.

10 EQUIPMENT²

Obsolete Equipment

- 10.23 The ESCO shall advise the Customer in writing and with supporting particulars if any of the Customer's equipment needs to be replaced or removed from the Premises at any time (such equipment being "**Obsolete Equipment**").
- 10.24 The ESCO shall maintain a register of any Obsolete Equipment removed or replaced at the Premises.
- 10.25 Within ten (10) Business Days of **[CHOICE: (i) [receiving the Construction Completion Certificate from the Customer] or (ii) [the Operations Date]]³**, the ESCO shall provide the Customer with a final register of Obsolete Equipment removed or replaced at the Premises.
- 10.26 The Customer shall within twenty (20) Business Days of receiving the register of such Obsolete Equipment instruct the ESCO in writing to:
- (a) return the Obsolete Equipment to the Customer; or
 - (b) dispose of the Obsolete Equipment and, if in the ESCO's opinion the Obsolete Equipment is able to be sold, remit the proceeds of such disposal to the Customer.
- 10.27 If the Customer fails to provide an instruction in accordance with clause 10.26 to either return or dispose of the Obsolete Equipment, the ESCO shall provide the Customer with a notice reminding the Customer of its failure to do so and drawing the Customer's attention to this clause 10.27. If within ten (10) Business Days of this reminder notice the Customer still has not provided the ESCO with an instruction to either return or dispose of the Obsolete Equipment, the Customer shall be deemed to have instructed the ESCO to dispose of the Obsolete Equipment, in which case the ESCO may do so (including by way of sale, in which case the ESCO shall be entitled to retain all sale proceeds), or, alternatively, may retain such Obsolete Equipment for its own use and the Parties agree that title in such Obsolete Equipment will pass automatically to the ESCO without the

¹ This sub-clause may be inserted where the Customer requires an obligation to be imposed on the ESCO for timely performance in the event that it is notified by the Customer of any defective Work.

² Insert clauses 11.23 – 11.29 where the Project involves the replacement of Existing Equipment at the Premises and where the Parties require certainty in respect of the storage and disposal obligations.

³ Insert option (i) if the more detailed testing and commissioning regime will be utilised or if this will not be included in the Contract then select option (ii).

need for the execution of any further documents at that point in time. The Parties may also agree at any time prior to the **[CHOICE: (i) [issue of the Construction Completion Certificate from the Customer] or (ii) [Operations Date]]**⁴ to dispose of the Obsolete Equipment, subject to such agreement being evidenced in writing and signed by the authorised representatives of each Party.

10.28 The ESCO shall store Obsolete Equipment removed from the Premises at the Customer's cost until it receives, or is deemed to have received, instructions from the Customer to either return or dispose of the Obsolete Equipment.

10.29 The disposal of any Obsolete Equipment shall be at the ESCO's expense.

11A TRAINING⁵

11A.1 The ESCO shall conduct the training programme as set out in Schedule **[insert]** (*Training Programme*). The training shall be completed at least twenty (20) Business Days before the end of the Term.

11A.2 The ESCO shall during the Term provide a reasonable level of on-going training whenever needed or when requested by the Customer in writing with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no cost to the Customer and shall have no effect on the prior acceptance of installed Equipment.

⁴ Insert option (i) if the more detailed testing and commissioning regime will be utilised or if this will not be included in the Contract then select option (ii).

⁵ Insert this clause where the Customer will require training to use the Equipment.

C. TIMELY COMPLETION

The following clauses may be inserted into the SESC where timely completion of the Project is paramount. This section sets out additional clauses which may be included if more detailed programming obligations are required, which may be necessary when a Customer would like an opportunity to monitor the ESCO's performance more closely.

1 DEFINITIONS

"Programme"⁶ has the meaning given to it in clause 8A.

"Target Construction Completion Date"⁷ means *[insert date]*, as such date may be extended in accordance with the terms of this Contract.

8A PROGRAMME⁸

8A.1 The Programme shall be based on the preliminary programme set out in Schedule *[insert] (Preliminary Programme)*, which shows in general terms the ESCO's plan for scheduling and coordinating the performance of the Works and having due regard to the Target Construction Completion Date.

8A.2 The ESCO shall within twenty (20) Business Days of the Effective Date, submit to the Customer a programme detailing how and when the ESCO proposes to carry out each stage of the Works (this initial programme and any subsequent revision in accordance with this Contract, the "Programme").

8A.3 The Programme shall address the following at a minimum:

8A.3.1 the order in which the ESCO intends to complete the Works;

8A.3.2 the major events and activities in the procurement and installation of Equipment at the Premises;

8A.3.3 the major events and activities in respect of the maintenance services and replacement of Equipment or Existing Equipment as may be necessary over the lifecycle of such Existing Equipment or Equipment as identified in Schedule 7 (*Equipment and Existing Equipment*);

8A.3.4 the sequence and timing of the performance of the Works;

8A.3.5 [the sequence and timing of testing and commissioning]⁹;

8A.3.6 all other principal activities to be undertaken by the ESCO; and

8A.3.7 a supporting report which includes:

(a) a general description of the methods which the ESCO intends to adopt for the execution of each major stage of the Works; and

⁶ The definition of Programme should be included where the optional clause 8A programming obligation has been included in the Contract.

⁷ The definition of Target Construction Completion Date should be included where the optional clause 8A programming obligation has been included in the Contract.

⁸ Insert this clause where the Parties seek clarity on how the programming regime will operate under the Contract.

⁹ Insert this sub-clause if the Parties will be implementing testing and commissioning obligations. If this will not be included in the Contract, this sub-clause can be omitted.

- (b) the approximate number of each class of the ESCO's personnel or Sub-Contractors required for each major stage of the Works.

8A.4 The Customer shall either accept or reject (with comments) a Programme submitted by the ESCO within ten (10) Business Days of receipt of the Programme. If the Programme is rejected by the Customer, the ESCO shall incorporate any comments made by the Customer and re-submit the Programme for the Customer's approval and this process shall continue until the Customer approves the ESCO's Programme. If the Customer does not accept or reject (with comments) the ESCO's Programme within ten (10) Business Days of receipt of the Programme, it shall be deemed to have been accepted by the Customer.

8A.5 The ESCO shall proceed with the Works in accordance with the Programme and shall be required to submit an updated Programme to the Customer if the Programme becomes inconsistent with:

8A.5.1 actual progress; or

8A.5.2 the ESCO's obligations under this Contract.

14 TESTING AND COMMISSIONING AND CONSTRUCTION COMPLETION CERTIFICATE¹⁰

14.1 The ESCO shall conduct a thorough and systematic performance test of each element and the **[CHOICE: (i) [total system of the installed Equipment] or (ii) [Systems]]**¹¹ in accordance with the procedures set out in Schedule **[insert]** (*Testing and Commissioning*). The testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if the **[CHOICE: (i) [modified Premises systems, sub-systems or components] or (ii) [Systems]]**¹² are functioning properly within the new integrated environment.

14.2 The ESCO shall notify the Customer in writing at least five (5) Business Days prior to commencing any testing and commissioning in accordance with this clause 14 and the Customer shall have the right to be present during such tests.

14.3 Unless notified otherwise, the ESCO shall perform the testing and commissioning within ten (10) Business Days of the notice provided to the Customer under clause 14.2, unless agreed otherwise with the Customer in writing.

14.4 The ESCO shall be responsible for performing any remedial or rectification works if the Equipment fails to meet the minimum performance requirements set out in Schedule **[insert]** (*Testing and Commissioning*) at its own cost.

14.5 Upon successfully passing the testing and commissioning requirements in Schedule **[insert]** (*Testing and Commissioning*) the ESCO shall provide the Customer with:

14.5.1 a written report on the testing and commissioning of the Equipment and all testing documentation (including testing and commissioning certificates);

14.5.2 reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule 7 (*Equipment and Existing Equipment*); and

14.5.3 the operations manuals for the Equipment installed.

¹⁰ Insert this clause in place of clause 15 of the Contract (Operations Date) if the Parties wish to include a comprehensive testing and commissioning regime. Such a clause will be useful where complex Project delivery is involved.

¹¹ Select option (i) if the ESCO is performing energy saving services in respect of the entire Premises, or if the services are limited to a System, use option (ii).

¹² Select option (i) if the ESCO is performing energy saving services in respect of the entire Premises, or if the services are limited to a System, use option (ii).

- 14.6 The Customer shall provide the ESCO with a Construction Completion Certificate within ten (10) Business Days of the ESCO successfully passing the testing and commissioning requirements in Schedule **[insert]** (*Testing and Commissioning*) and providing the information required under clause 14.5. If the Customer fails to do so without providing the ESCO with written reasons, the Construction Completion Certificate shall be deemed to have been issued on the tenth (10th) Business Day after the ESCO provided the information under clause 14.5.
- 14.7 If any dispute arises between the Parties in respect of the issue of the Construction Completion Certificate, the matter shall be referred to an independent expert for resolution in accordance with clause 32.

27 FORCE MAJEURE¹³

- 27.2A If, as a result of an extension of the Term under clause 27.2, the Final Month is a part calendar month, then for the purposes of calculating the ESCO's share of, and entitlement to, Energy Savings for that Final Month under clause 18.2, the Monthly Energy Savings Target for that Final Month will be calculated as follows:

$$\mathbf{AM = D^n/D^o \times MEST}$$

Where:

AM = Monthly Energy Savings Target for that Final Month;

Dⁿ = the Days in the Final Month as determined in accordance with clause 27.2;

D^o = the Days in the final Month if that Month was for a full calendar month period; and

MEST = the applicable Monthly Energy Savings Target specified in Schedule 9 (*Energy Savings Targets and Reporting*).

¹³ Insert this clause if the Parties wish to include a clear payment mechanism in the Contract in circumstances where a Force Majeure Event materialises.

D. FINANCIAL ARRANGEMENTS

This section sets out clauses which may be included in the SESC if the ESCO is obtaining external financing to procure the Project and there is a requirement for the ESCO to execute a consent deed with the party providing the finance.

9 ESCO'S GENERAL PERFORMANCE OBLIGATIONS¹⁴

Financial Arrangements

- 9.12 The ESCO shall be solely responsible for financing all costs for carrying out the Works pursuant to this Contract.
- 9.13 For the avoidance of doubt, where the ESCO secures financial accommodation from a bank, Islamic financial institution or other recognised financial institution to finance the costs of performing its obligations under this Contract, such third party financing arrangements shall be arranged directly by the ESCO.

12A SECURITY¹⁵

- 12A.1 Notwithstanding any other provision of this Contract, the ESCO may, without the consent of the Customer, for the purposes of securing financial accommodation from a bank, Islamic financial institution or other recognised financial institution, mortgage, pledge or assign by way of security its rights under this Contract provided that:
- 12A.1.1 the person taking the benefit of that security (a "**Permitted Security Taker**") and any person claiming through a Permitted Security Taker shall be, or shall be made, expressly subject to the provisions of this Contract; and
- 12A.1.2 the Permitted Security Taker shall not be a competitor of the Customer.
- 12A.2 Upon request by the ESCO, the Customer shall enter into a consent deed with the Permitted Security Taker in a form reasonably required by the Permitted Security Taker.

¹⁴ Insert this clause if the ESCO will be responsible for procuring finance for the Project.

¹⁵ Insert this clause when the Customer is funding the Contract through bank financing and the bank requires security to be provided in respect of the financing provided.

E. AUDIT RIGHTS

This section sets out clauses which may be included in the SESC if the Parties would like to include a right to audit the Energy Saving statements produced over the course of the Term.

1 DEFINITIONS

"Independent Auditor" means either KPMG, Deloitte, Ernst and Young, Price Waterhouse Coopers or such other independent international firm of accountants as the Parties may agree.

20A AUDIT OF STATEMENTS¹⁶

20A.1 During the Term and for a period of twelve (12) months thereafter, each Party shall have the right to require the other Party to produce for review by an Independent Auditor, such evidence as may reasonably be necessary to verify the accuracy of any statement, report, charge or computation made pursuant to any of the provisions of this Contract. The Independent Auditor will be appointed by the Party making the request.

20A.2 If such Independent Auditor reports, or a Party discovers, an inaccuracy in any statement or computation that has resulted in an over-payment or an under-payment of an amount by a Party (a **"Payment Error"**) the amount of such Payment Error (together with interest thereon calculated at the rate of EIBOR plus one per cent (1%) per annum from and including the date on which the Payment Error occurred (which for the purpose of this clause 20A.2 means the date on which such sum was paid or the last date on which it should have been paid) up to but excluding the date of actual payment or repayment under this clause 20A.2, with monthly rests), shall be paid within ten (10) Business Days of the receipt of notification from the other Party of such Payment Error, provided that no adjustment for any Payment Error shall be made after a lapse of thirty six (36) months from the end of the year in which such Payment Error occurred.

20A.3 The cost of any review and report by an Independent Auditor shall be borne:

20A.3.1 if a Payment Error is discovered, by the Party whose records were reviewed; and

20A.3.2 if no Payment Error is discovered, by the Party which requested the review.

¹⁶ Insert this clause if the Customer requires a right to audit the statements of the ESCO to ensure that the energy saving are being correctly calculated.

F. INSURANCE

This section sets out additional insurance obligations on the ESCO in respect of the provision of insurances. These clauses may be included for high value projects where having the appropriate insurances in places at all times will be critical. One of the key clauses included in this section is the Customer's right to procure insurance at the ESCO's expense if the ESCO has failed to maintain appropriate insurance during the Term.

24 INSURANCE¹⁷

- 24.4 The ESCO shall provide certificates of currency or other documentary evidence satisfactory to the Customer upon the Customer's request to demonstrate that it has adequately discharged its obligations under this clause 24.
- 24.5 The ESCO shall not amend or make any material alterations to the terms of any insurance policy without the Customer's prior written approval.
- 24.6 If the ESCO fails to effect and keep in force any of the insurances it is required to effect and maintain under this Contract, or fails to provide satisfactory evidence that it has effected and maintained insurances, the Customer may effect the necessary insurances at the ESCO's expense, which shall be a debt due and payable by the ESCO to the Customer within ten (10) Business Days of receiving a written demand from the Customer.

¹⁷ Insert these clauses if a more robust insurance regime is required.

G. DISPUTE RESOLUTION

This section sets out an alternative dispute resolution forum to the courts of the Emirate of Dubai, which may be particularly relevant to private sector participants or where either of the Parties is a foreign participant in the market. Furthermore, an alternative dispute resolution process has been set out below if the Parties do not wish to refer a matter to a court for final resolution, as provided for in the SESC, but would prefer the final dispute forum to be arbitration.

1. DEFINITIONS¹⁸

"**DIFC Courts**" means the courts of the Dubai International Financial Centre.

[CHOICE: (I)]

[31 DISPUTE RESOLUTION¹⁹

31.3 Subject to the terms of clause 33, if the Parties are unable to resolve the dispute within the twenty (20) Business Day period referred to in clause 31.2, the Parties hereby agree that the dispute shall be subject to the exclusive jurisdiction of the DIFC Courts.^{20]}

OR (II)

[31 DISPUTE RESOLUTION²¹

31.3 If the Parties are unable to resolve the dispute within the twenty (20) Business Day period referred to in clause 31.2, then either Party may refer the matter to arbitration as set out in clause 31.4.

31.4 Where a Party wishes to refer a matter to arbitration in accordance with this Contract, it shall serve a written notice on the other Party to that effect. The arbitration shall be governed by the arbitration rules of the Dubai International Arbitration Centre (the "**DIAC Rules**")²² and shall be:

31.4.1 heard by three (3) arbitrators appointed in accordance with the DIAC Rules;

31.4.2 in the English language, including all arbitral proceedings, correspondence and hearings; and

31.4.3 heard in, and the seat of the arbitration shall be the Emirate of Dubai, UAE.

31.5 The award in any arbitration proceeding shall be final and binding upon the Parties and shall be enforceable in, and judgments upon any award may be entered in, any court having jurisdiction over one or more of the Parties.

31.6 The arbitral tribunal shall have the power and authority to make an award in respect of the costs incurred by the Parties (including legal fees) arising out of or in connection with an arbitration commenced by the Parties in accordance with this clause 31.

¹⁸ Insert the definition of "DIFC Courts" if the preferred forum for resolving disputes is the DIFC Courts rather than the courts of the Emirate of Dubai.

¹⁹ Replace clause 33.3 in the SESC with this sub-clause if the Parties would prefer the DIFC as the dispute resolution forum.

²⁰ If this option is selected, references to "courts of the Emirate of Dubai" will need to be replaced with "DIFC Courts" throughout the Contract.

²¹ Replace clause 33.3 and 33.4 in the Contract with the following clauses if the Parties decide to use arbitration as their dispute resolution forum. Clause 32.7 will also need to be amended to make reference to the resolution by way of arbitration proceedings rather than the courts of the Emirate of Dubai.

²² The Parties are free to nominate any arbitral body they wish to oversee the arbitral proceedings such as the arbitration rules of the Dubai International Financial Centre – London Court of International Arbitration or the arbitration rules of the International Chamber of Commerce. If so, consequential changes to this clause will be required.

31.7 Subject to the terms of this Contract, the Parties shall continue to discharge their duties and obligations under this Contract notwithstanding the commencement of any arbitral proceedings.]]

H. MISCELLANEOUS

This section sets out additional clauses that the Parties may wish to include in the SESC, which will need to be assessed on a case by case basis.

1 DEFINITIONS

"ESCO'S Proposal"²³ means the ESCO's proposal set out in Annexure B (*ESCO's Proposal*).

"RFP for ESCO Services"²⁴ means the request for proposal issued by the Customer for ESCO services as provided for in Annexure A (*RFP for ESCO Services*).

4 CONTRACT DOCUMENTS²⁵

4.1 The following documents shall form part of and comprise this Contract:

4.1.1 Clauses 1 - 48;

4.1.2 Schedules 1 – *[insert as applicable]*;

4.1.3 Annexure A (ESCO's Proposal); and

4.1.4 Annexure B (RFP for ESCO Services).

16 NOTICE OF MATERIAL CHANGES AND NEW SUB-METERS FOR EXTENSIONS²⁶

16.1 The Customer shall use its best endeavours to provide the ESCO with written notice identifying all actual or proposed Material Changes at least ten (10) Business Days before any actual or proposed Material Change is implemented or occurs. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which prevents advanced notification shall be deemed to be sufficient if the Customer provides such notice within twenty four (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Customer to have occurred.

16.2 The Customer shall provide and install utility sub-meters on all new construction and/or additions to the Premises during the Operations Period as recommended by the ESCO or, alternatively, pay the ESCO the applicable fee notified by the ESCO in writing for the cost incurred by the ESCO in calculating the necessary adjustments to the Energy Savings as a result of the new construction and/or addition to the Premises.

²³ The definition of ESCO Proposal should be included where the ESCO has submitted a proposal to perform the Works and the Parties require this document to form a 'Contract Document'.

²⁴ The definition of RFP for the ESCO Services should be included where the Customer has issued a request for proposal for the performance of the Works and the Parties require this document to form a 'Contract Document'.

²⁵ When the Parties require the ESCO's Proposal and the RFP to form part of the Contract Documents, then insert the above replacement clause 4.1 and insert as new Appendices after the Schedules.

²⁶ Insert this clause where the Energy Savings measures relate to the Premises and not merely discrete Systems.

36A PROHIBITED ACTS²⁷

36A.1 Each Party represents and warrants to the other that at the time of entering into this Contract it has not done any of the following:

36A.1.1 offered, given or agreed to give any officer or employee of any entity (without limitation, whether it be a Party to this Contract, another commercial entity or a Government Instrumentality) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other contract with the Party, or for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Party; and

36A.1.2 in connection with this Contract paid or agreed to pay any commission, other than payment particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Party

("Prohibited Acts").

36A.2 If any of the Parties, its employees or agents (or anyone acting on its or their behalf) has on or before the Effective Date done any of the Prohibited Acts (the "**Defaulting Party**") with or without the knowledge of the other Party (the "**Innocent Party**") in relation to this or any other contract with the Defaulting Party, the Innocent Party shall be entitled to:

36A.2.1 terminate this Contract and recover from the Defaulting Party the amount of any loss resulting from the termination;

36A.2.2 recover from the Defaulting Party the amount or value or any gift, consideration or commission concerned; and

36A.2.3 recover from the Defaulting Party any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

37A SOVEREIGN IMMUNITY²⁸

37A.1 The Parties unconditionally and irrevocably agree not to claim, invoke or permit to be invoked on its behalf or for its benefit any right it may have under the Laws, or of any other state or jurisdiction, to prevent, delay, hinder, nullify or in any other way obstruct the submission of any dispute to **[CHOICE: (i) [CHOICE: (i) [the courts of the Emirate of Dubai] or (ii) [DIFC Courts]²⁹ or (ii) [arbitration]]³⁰** in accordance with clause 37A. The Parties unconditionally and irrevocably agree **[CHOICE: (i) [to accept any award rendered by the arbitral tribunal as set out in clause 31 and any judgement entered thereon by a court of competent jurisdiction as final and binding, and,] or (ii) [to any [CHOICE: (i) [the courts of the Emirate of Dubai] or (ii) [DIFC Courts]]³¹ judgment]]³²** not to claim, invoke or permit to be invoked on its behalf or for its benefit any right it may have under the Laws, or of any other state or jurisdiction, to prevent, delay, hinder, nullify or in any other way obstruct the enforcement or execution of any **[CHOICE: (i) [judgment of the [CHOICE: (i) [the courts of the Emirate of Dubai] or (ii) [DIFC Courts]]³³ or (ii) [award**

²⁷ Insert this clause if the Parties wish to include anti-bribery terms.

²⁸ Insert this clause where the Customer is the government or a government related entity that may be afforded sovereign immunity under the relevant Laws.

²⁹ The Parties may select either dispute resolution forum as they see fit.

³⁰ Insert (i) if the dispute resolution forum selected by the Parties is the DIFC Court, otherwise select option (ii) if arbitration is the preferred dispute resolution forum.

³¹ The Parties may select either dispute resolution forum as they see fit.

³² Insert these words if the preferred dispute resolution form is arbitration rather than the DIFC Court.

³³ The Parties may select either dispute resolution forum as they see fit.

given by an arbitral tribunal]]³⁴ in accordance with clause 37A and any judgement entered thereon by a court of competent jurisdiction.

- 37A.2 To the extent that the Customer or any of its properties may in any state or jurisdiction claim or benefit from any immunity (whether characterised as state immunity, sovereign immunity, act of state or otherwise) from jurisdiction, suit, action, service, execution, attachment, set off, provisional measures or orders, or other legal process (whether in aid of execution, before award or judgement or otherwise), or to the extent that there may be attributed to the Customer or any of its properties any such immunity (whether or not claimed), the Customer hereby expressly, unconditionally and irrevocably agrees not to claim, invoke, or permit to be invoked on its or its properties' behalf or for its or its properties benefit, and hereby expressly, unconditionally and irrevocably waives, any such immunity.
- 37A.3 The Customer acknowledges that all of the transactions and actions contemplated and effected by this Contract are commercial transactions.

³⁴ Insert (i) if the dispute resolution forum selected by the Parties is the DIFC Court, otherwise select option (ii) if arbitration is the preferred dispute resolution forum.

I. LIST OF ADDITIONAL SCHEDULES AND ANNEXURES

1. PRELIMINARY PROGRAMME
2. TRAINING PROGRAMME
3. TESTING AND COMMISSIONING
4. RFP FOR ESCO SERVICES
5. ESCO'S PROPOSAL