

**PRIVILEGED AND CONFIDENTIAL**

**NEOM COMPANY**

and

**DANIEL J. EDELMAN, INC.**

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**CONSULTANCY AGREEMENT**

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## CONTRACT AGREEMENT

This consultancy agreement is made on the last date written on the signature page(s) hereto between:

- (1) **NEOM COMPANY**, a single member closed joint stock company duly incorporated under the laws of the Kingdom of Saudi Arabia, under commercial registration number 1010504644 and having its registered address at the Information Technology and Communications Complex (ITCC), 2nd Floor Building IN-01, Al Nakheel District 12382, Riyadh, P.O. Box 10, Riyadh 11411, Kingdom of Saudi Arabia ("**Client**") (which expression will include its successors in title and permitted assignees); and
- (2) **DANIEL J. EDELMAN, INC.**, a corporation duly incorporated under the laws of the State of Delaware, under commercial registration number 3634 and having its registered address at 200 E Randolph Street, Floor 62, Chicago, Illinois, 60601 (**the "Consultant"**),

each a "**Party**" and together the "**Parties**".

### WHEREAS

- (A) The Client requires consultancy services, in the United States focused on i) strategic counsel, ii) media relations; iii) stakeholder identification and engagement; and iv) content development ("**IPR Framework**"), as part of the development of the Project. The Services are defined in detail in the Terms and Conditions.
- (B) The Client has selected the Consultant to provide the Services.
- (C) The Consultant has agreed to provide the Services on the terms set out in this Contract in consideration for the Contract Price.

### THE PARTIES HAVE AGREED AS FOLLOWS:

#### 1. DEFINITIONS

In this Contract, unless the context otherwise requires capitalised terms have the meaning given in the Terms and Conditions.

#### 2. CONTRACT DOCUMENTS

This Contract consists of the following documents and any inconsistency or discrepancy between these documents will be resolved in the following order of priority:

- (i) this Contract Agreement;
- (ii) the Terms and Conditions; and
- (iii) the Schedules.

#### 3. TERM

This Contract will have effect on and from November 1<sup>st</sup>, 2020 (**the "Effective Date"**) and will continue in full force and effect for a period of three (3) months unless otherwise terminated as provided for herein (**the "Term"**).

#### 4. SERVICES

The Consultant will perform the Services in accordance with the terms set out in this Contract. If, before the Effective Date, the Consultant performs any of the Services following written instruction to commence and proceed from the Client, those Services will be governed by this Contract and will be deemed to be performed pursuant to this Contract.

#### 5. CONTRACT PRICE

In consideration of the Consultant's satisfactory performance of the Services, the Client will pay the Consultant as set forth in Schedule 2 attached hereto (**the "Contract Price"**) in accordance with this Contract.

#### 6. DATE FOR COMMENCEMENT AND COMPLETION

The Commencement Date of the Services will be the Effective Date (**the "Commencement Date"**). The Date for Completion of the Services will be the date three (3) months following the Effective Date (**the "Date for Completion"**).

IN WITNESS WHEREOF, the Parties have signed this Contract on the last day and year written below.

**NEOM COMPANY**

Name: Nadhmi AlNasr

Signature: 

Title: CEO

Stamp:

Date: Feb 20, 2021 2020



**DANIEL J. EDELMAN, INC.**

Name: Vikram Tohan

Signature:

Title: EVP Finance

Stamp:

Date: 2/3/2021 2020

## TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Contract, unless the context otherwise requires:

**"Affiliate"** with respect to a Party means a public, private, governmental or commercial company or other entity that Controls, is Controlled by, or is under common Control with, such Party and/or a shareholder of such Party;

**"Authority"** means any government, semi or local government, statutory, public or other authority or body having jurisdiction over the Client, the Consultant, the Project or the Services (or anything in connection with any of them);

**"Background IP"** has the meaning given to it in Clause 14.1;

**"Business Day"** means any day which is an official business day of the Client;

**"Certificate of Insurance"** is the document providing evidence that required insurance coverage, endorsements and limits have been purchased by the Consultant;

**"Change in Law"** means with respect to a law governing this Contract:

(a) its introduction; or

(b) its amendment, change, modification or repeal,

after the start of the Term which has a material adverse effect on the **Consultant's** performance of its obligations under this Contract and which the Consultant could not reasonably have foreseen at the start of the Term;

**"Client Supplied Information"** means any information, documentation, data and IP Rights (including information stored or transmitted into a computer, database or any other device by electronic means) supplied or made available to the Consultant by or on behalf of the Client at any time and whether or not contained in this Contract;

**"Commencement Date"** means the date by which the Services will commence as set out in the Contract Agreement;

**"Confidential Information"** means all information, documentation, data and IP Rights (including information stored or transmitted into a computer, database or any other device by electronic means) relating to the Client, its Affiliates, agents and contractors or this Contract which is provided to or obtained by the Consultant including any document or data marked "Confidential" or any information, document or data which the Consultant has been informed is confidential or which the Consultant ought reasonably comprehend that the Client would regard as confidential;

**"Contract"** means, collectively, the Contract Agreement, Terms and Conditions, and the Schedules attached hereto, as set out under Clause 2 of the Contract Agreement;

**"Contract Agreement"** means the form of agreement signed by the Parties which forms part of this Contract;

**"Contract Price"** means the amount set out in the Contract Agreement, and in accordance with Schedule 2 attached hereto, that the Client will pay the Consultant for satisfactory performance of the Services, as amended in accordance with this Contract;

**"Control"** means the power to direct the management and policies of a company or other entity, directly or indirectly, whether through the ownership of shares, the use of voting rights, by contract or otherwise;

**"Date for Completion"** means the date by which the Services will be completed as set out in the Contract Agreement;

**"Dispute"** has the meaning given to it in Clause 23.2;

**"Documents"** means all documents including bill of quantities, drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, manuals, as build documents, models, three-dimensional works pertaining to geography or topography or other architectural works, technical and design documents and any other copyright works prepared by or on behalf of the Consultant for the benefit of the Client pursuant to this Contract;

**"Effective Date"** has the meaning given to it in the Contract Agreement;

**"Force Majeure"** has the meaning given to it in Clause 17.1;

**"GAZT"** means the General Authority of Zakat and Tax of the Kingdom of Saudi Arabia;

**"Good Industry Practice"** means the practices which are generally engaged in or observed by reputable international consultants regarding services of a similar complexity, scope, nature and purpose to the Services and acting in good faith in accordance with the requirements of the laws of the Kingdom of Saudi Arabia;

**"GOSI"** means the General Organization for Social Insurance of the Kingdom of Saudi Arabia;

**"Income Tax Law and Income Tax By-Laws"** means the relevant laws of the Kingdom of Saudi Arabia governing income tax in the Kingdom of Saudi Arabia;

**"Insurance Policies"** means the insurance policies requested by the Client mandated by law and specified in Clause 10 that the Consultant will effect with Insurers in accordance with Clause 10;

**"Insurer"** means an insurer approved by the Client, with whom the Consultant effects the Insurance Policies;

**"IP Rights"** means all intellectual property rights including, without limitation, patents, utility models, rights to and in inventions, (whether patentable or not), copyrights and neighbouring and related rights, trademarks, service marks, logos, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, know how, industrial designs, internet domain names, trade dress, URLs, social media handles and accounts, websites, fictitious business names, trade secrets and the designs contained within them and any other intellectual property rights, in each case, whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**"Materials"** has the meaning given to it in Clause 14.2;

**"Project"** means the NEOM project being developed by the Client in the Kingdom of Saudi Arabia;

**"Resources"** means equipment, materials, facilities, premises, utilities, transport, accommodation, stationery, staff, manpower, labour, professional services, administration services and research material;

**"Prolonged FM Period"** has the meaning given to it in Clause 17.9.1;

**"Schedule"** means a schedule to this Contract;

**"Security Interest"** means any bill of sale, mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as, or having effect as, security for any payment obligation or for observing any other obligation;

**"Services"** means the consultancy services to be performed by the Consultant as described in detail in Schedule 1 attached hereto;

**"Sub-Contractor"** means a sub-contractor of any tier engaged by the Consultant in connection with the performance of the Consultant's obligations under this Contract;

**"Tax"** means any tax (including any personal, Zakat (to the extent applicable), value added tax or withholding tax), levy, impost, duty (including customs duty), registration fee or other charge or withholding of a similar nature (including any penalty payable in connection with any failure to pay or any delay in paying any of the same) whether levied by the Government of the Kingdom of Saudi Arabia or any government outside the Kingdom of Saudi Arabia; and

**"Term"** will be as defined in the Contract Agreement.

## 1.2 Interpretation

In this Contract, unless the context otherwise requires:

1.2.1 reference to a 'Clause' is a reference to a Clause of this Contract;

1.2.2 headings are for convenience only and will not affect the interpretation of this Contract;

1.2.3 'include' and 'including' or similar expressions are not words of limitation;

1.2.4 any gender includes the other gender;

1.2.5 words in the singular include the plural and vice versa;

- 1.2.6 if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- 1.2.7 reference to a 'person' includes a natural person and any organisation or entity having legal capacity and vice versa;
- 1.2.8 **a particular person includes a reference to that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;**
- 1.2.9 a document includes any variation or replacement of it;
- 1.2.10 references to time will be to the time of day in the Kingdom of Saudi Arabia;
- 1.2.11 if a period of time starts on a given day or the day of an act or event, the period of time is to be calculated inclusive of that day;
- 1.2.12 reference to a 'day', 'month' or 'year' mean a day, month or year in the Gregorian calendar;
- 1.2.13 a statute, ordinance, code, decree or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.14 an indemnity, representation or warranty by two or more persons is given by them jointly and each of them individually;
- 1.2.15 an obligation to act in good faith does not create a fiduciary relationship between the Parties and does not, unless otherwise provided in this Contract, create an obligation to act against the relevant Party's commercial interests;
- 1.2.16 a 'breach' of this Contract will include any failure by a Party to perform its obligations under this Contract in accordance with any standard, code, protocol, direction or timetable as required by this Contract;
- 1.2.17 reference to 'cost' includes expense; and
- 1.2.18 wherever this Contract refers to a period of time by way of notice:
  - (A) the first day of the notice period will be the day of deemed receipt of the notice in accordance with Clause 21; and
  - (B) the effective date for the purposes of the subject of the notice will commence on the last day of the period of notice.

## 2. **THE CONSULTANT'S OBLIGATIONS**

### 2.1 **Standards of Performance**

- 2.1.1 The Consultant will perform the Services and its other obligations under this Contract in accordance with:
  - (A) this Contract;
  - (B) Good Industry Practice;
  - (C) the protocols and timelines set out in Schedule 1 attached hereto;
  - (D) the requirements of any Insurance Policies;
  - (E) any instructions and directions of the Client given from time to time in accordance with this Contract; and
  - (F) all applicable laws and the requirements of any relevant Authorities.

- 2.1.2 The Consultant will satisfy itself as to the nature and scope of the work required by the Services and that its personnel possess the appropriate skills and are sufficiently experienced, efficient and qualified to perform the tasks required of them.
- 2.1.3 The Consultant will exercise all reasonable skill, care and diligence to be expected of a properly qualified and competent professional consultant experienced in carrying out duties and services of the type comprised in the Services for projects of a similar size, scope and complexity to the Project.

## 2.2 The Services

- 2.2.1 The Consultant will:
  - (A) commence the Services on the Commencement Date and complete the Services by the Date for Completion;
  - (B) provide all Resources necessary for the proper execution of the Services;
  - (C) prepare and submit the Documents in accordance with this Contract and any other requirements of the Client; and
  - (D) interface, cooperate and coordinate with the Client and its other consultants and contractors where this is necessary or desirable for the proper performance of the Services.

## 2.3 Consents, Reports and Records

- 2.3.1 The Consultant will:
  - (A) at its own cost, apply for, obtain and maintain for the duration of the Term all consents, approvals, certificates, permits (including employment visas and work permits for foreign workers), licences, statutory agreements and authorisations required by law, any Authority or relevant third party in order to perform the Services.
  - (B) provide the Client with periodic reports, as required by the Client, which will include detailed information on the performance of the Services during the relevant period; and any other information that is reasonably required by the Client. The Consultant will immediately advise the Client of any matter of significant importance requiring prompt notification to the Client and any decision required by the Client and the deadline for providing it.
  - (C) The Consultant will maintain complete and accurate books and records in connection with the performance of the Services for periods required by law or Good Industry Practice, but not less than seven years after expiry or termination of the Contract. All such books and records will be available for inspection by the Client at all times and the Client will be entitled to take copies of all or any part of such books and records.

## 3. ACCEPTANCE OF SERVICES

- 3.1 If the Consultant considers that it has completed the performance of the Services in accordance with this Contract, it will give the Client a notice requesting a review and inspection of the Services.
- 3.2 Within ten (10) Business Days after receiving a request referred to in Clause 3.1, the Parties will, if so requested by the Client, jointly undertake a review and inspection to determine whether the Services have been completed in accordance with this Contract.
- 3.3 If, as a result of the review and inspection referred to in Clause 3.2, the Parties identify any outstanding matters to be completed by the Consultant in order to complete the performance of the Services in accordance with this Contract, the Consultant will take all measures necessary to promptly complete those outstanding matters at its cost. The Client will promptly notify the Consultant whether it requires any further outstanding matters to be completed by the Consultant in order for the Consultant to complete the performance of the Services in accordance with this Contract.

4. **CLIENT SUPPLIED INFORMATION**

- 4.1 Any Client Supplied Information has been or will be provided only for the Consultant's convenience, and has not been and will not be relied upon by the Consultant for any purpose (including entering into this Contract or performing its obligations under this Contract).
- 4.2 The Client does not assume any responsibility or duty of care with respect to the Client Supplied Information. The Consultant will make its own assessment on any Client Supplied Information received, which will **not relieve, alter, limit or change the Consultant's obligations under the Contract.**
- 4.3 Except as expressly provided by this Contract, the Consultant will not be entitled to any claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Client Supplied Information or the non-provision of any other information by the Client.
- 4.4 The Consultant obtains no IP Rights in the Client Supplied Information and hereby waives any claim to any such IP Rights and, unless otherwise agreed, the Client Supplied Information will only be used by the Consultant for the purpose of performing the Services.

5. **PERSONNEL**

- 5.1 The Consultant will provide sufficient numbers of personnel to properly and diligently complete the Services. Such personnel will be fluent in English, and suitably qualified, experienced and competent to carry out the roles assigned to them.
- 5.2 The Consultant and the Client will agree on any key personnel for the Services prior to commencing work. The Consultant will give the Client at least twenty (20) **Business Days' notice if it intends to** replace any key personnel and the Client will have the right to refuse such replacement if it is not satisfied with the ability of the replacement individual.
- 5.3 The Consultant will at all times be responsible and liable for all acts or omissions of its personnel (including any key personnel) and those of its Sub-Contractors.

6. **ENVIRONMENTAL HEALTH & SAFETY AND QUALITY ASSURANCE/CONTROL**

- 6.1 The Consultant will carry out the Services in accordance with all applicable environmental health and safety and quality assurance and quality control policies, guidelines, standards, procedures and requirements of the Client and all relevant Authorities (whether contained in applicable laws, protocols, plans, manuals or otherwise) and any other requirement which the Client may notify to the Consultant from time to time.
- 6.2 The Consultant will not be entitled to any additional compensation for complying with this Clause 6.
- 6.3 Notwithstanding any other right or remedy the Client may have under or in connection with this Contract or any law, the Consultant agrees that if it fails to comply with the requirements referred to in this Clause 6, it will pay, and indemnify the Client for and against, all monetary fines and remediation costs imposed by any person or Authority, under any law or otherwise.

7. **PAYMENT**

7.1 **Pre-Condition**

No payment of any kind will be made by the Client to the Consultant in connection with or in relation to this Contract until the Client receives a valid invoice in strict compliance with Clause 7.2 in relation to the payment to be made.

7.2 **Invoices**

7.2.1 The Consultant will issue invoices at the times and for the amounts set out in Schedule 2 attached hereto.

7.2.2 The Consultant will give the Client a correct and complete invoice which will include all details specified by the Client at the commencement of the Services. It is the responsibility of the Consultant to obtain this information and the Consultant's failure to provide such information may delay payment by the Client. In addition, the Consultant will provide to the Client the following:

- (A) the reference number for this Contract;
- (B) the invoice number;
- (C) the period or Services covered by the invoice;



- (D) each specific element of the Services covered by the invoice;
- (E) any applicable Taxes (including, but not limited to Zakat (to the extent applicable), value added tax or withholding tax, as applicable) pursuant to Clause 8, and any applicable value added tax will include all other information required under Article 53 of the Kingdom of Saudi Arabia's VAT Implementing Regulations;
- (F) the basis for and calculation of the amount claimed;
- (G) all documents and information as may reasonably be requested by the Client;
- (H) an original of the invoice addressed to the Client;
- (I) the Consultant's **bank account details (including beneficiary name, IBAN and bank name)**, or a formal letter issued by the bank within the last six (6) months stating those details;
- (J) if applicable, copies of valid commercial registration, GOSI, Saudisation, Zakat, VAT registration and practising certificates;
- (K) if applicable, where the invoice represents the final payment under this Contract, a final Zakat certificate; and
- (L) a payment certificate acceptance form signed by an authorised representative of the Client.

7.2.3 If the Client objects to any invoice (in whole or in part), it will:

- (A) notify the Consultant within ten (10) Business Days after receiving such invoice of the objection and specify the reason for the Client's objection; and
- (B) pay in accordance with this Clause 7 any part of the invoice to which the Client does not object provided that the Consultant issues a new invoice in accordance with this Clause 7.2 for that part of the original invoice to which the Client does not object.

7.2.4 If the Consultant receives an objection notice from the Client in accordance with Clause 7.2.3(A), the Consultant will amend and submit a revised invoice accordingly.

7.2.5 The Client will have no obligation to pay any invoice (in whole or in part) which it has not received from the Consultant within six (6) months after the date on which the Consultant performed the Services or incurred any cost to which such invoice relates.

7.2.6 The Client will have no obligation to pay any invoice (in whole or in part) to which it has objected in accordance with Clause 7.2.3 if the Client has not received a correct and complete revision of that invoice within six (6) months after the date on which the Client notified the Consultant of its objection to that invoice.

### 7.3 **Payment Terms**

7.3.1 The Client will make payments to the Consultant:

- (A) within forty-five (45) Business Days of receipt by the Client of an invoice that complies with this Clause 7; and
- (B) by cheque unless the Client agrees in writing in its sole discretion to a direct transfer to a bank nominated by the Consultant and acceptable to the Client; and
- (C) in Saudi riyal ("SAR").

7.3.2 If the Client makes any payment to the Consultant in accordance with this Contract by direct transfer to a bank nominated by the Consultant, the Consultant will bear all charges imposed in connection with such transfer including charges imposed by the Client's bank, the bank nominated by the Consultant and any intermediary.

7.3.3 If the Parties agree or it is determined that the Client has, for whatever reason, overpaid the Consultant with respect to any invoice, the Consultant will, at its cost, refund the relevant amount within five (5) Business Days after that agreement or determination.

### 7.4 **Set off**

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

- 7.4.1 any amount due, or which it is reasonably apparent may become due, from the Consultant to the Client under this Contract;

- 7.4.2 any amount paid by the Client to a third party where the Consultant was obliged to make such payment in accordance with this Contract but failed to do so;
- 7.4.3 any deduction or withholding Tax required by law; and
- 7.4.4 any amount due to the Client from an Insurer which is paid to the Consultant rather than directly to the Client.

**7.5 Payment of Sub-Contractors**

Upon receipt of payment under this Contract, the Consultant will promptly pay its Sub-Contractors, personnel and suppliers in accordance with their contracts any part of the payments it receives under this Contract that are attributable to the works or services performed and/or goods supplied by each Sub-Contractor, personnel and supplier in connection with this Contract.

**8. TAXES AND FEES**

- 8.1 The Consultant will be liable for and will pay in a timely manner:
  - 8.1.1 all Taxes levied (whether directly or indirectly) in connection with this Contract;
  - 8.1.2 all payments relating to sponsorship arrangements or local partnerships undertaken by the Consultant to establish and carry out its business in the Kingdom of Saudi Arabia;
  - 8.1.3 all national insurance, social security, Zakat and other such withholdings or contributions which are payable in connection with the Consultant carrying out its business and performing its obligations under this Contract; and
  - 8.1.4 all other costs, fees, commissions and royalties incurred directly or indirectly in connection with this Contract.
- 8.2 The Consultant undertakes to indemnify, defend and hold harmless the Client and its Affiliates, officers, directors, employees, agents and contractors against all claims, liabilities, actions and costs (including all legal fees and costs on a full indemnity basis) arising in connection with any Taxes and fees including those referred to in Clause 8.1.
- 8.3 The Consultant has taken into consideration its obligations under this Contract with respect to all Taxes and fees including those referred to in Clause 8.1 and has accounted for such obligations in the Contract Price. The Contract Price will be inclusive of any applicable value added Tax and the Consultant will issue an invoice with the prevailing VAT rate as applicable (where appropriate the Consultant will apply any VAT exemption or a zero rate).
- 8.4 Where the Consultant is required by this Contract to reimburse or indemnify the Client for any actual cost or expense, the Consultant will reimburse or indemnify (as the case may be) the Client for the full amount of the cost or expense, including any value added Tax on that amount.
- 8.5 Any withholding Taxes applicable under the Income Tax Law and Income Tax By-Laws on the payments to be made to the Consultant under the Contract, will be deducted at the time of the payment, from the gross amount of the payment being made to the Consultant, in accordance with the rate applicable on such payment under the Income Tax Law and Income Tax By-Laws. For the avoidance of doubt, gross payment for withholding taxes purposes includes the reimbursement of out-of-pocket expenses, if any, billed by the Consultant.
- 8.6 If the Client makes any payment under the Contract in respect of which it is required to apply applicable withholding Taxes, the Client will furnish to the Consultant a withholding Tax certificate or other evidence of such withheld taxes, upon written request by the Consultant, evidencing that such taxes have been withheld and paid. Where the Consultant requires the withholding Tax certificate to be attested by the GAZT, the Client will use reasonable endeavors to facilitate the Consultant to get the certificate attested by the GAZT provided that the Consultant will reimburse the Client for all the professional charges and other related cost incurred by the Client to secure such attestation.
- 8.7 For instances in which withholding taxes are applicable, any payment being made by the Client to the Consultant under the Contract that is subject to tax relief (i.e. zero rate or a reduced rate of tax) under the provisions of an applicable double tax treaty, the Client will apply withholding Tax in accordance with the rate applicable on such payment under the Income Tax Law and Income Tax By-Laws, unless the Consultant provides to the Client a confirmation/pre-approval from the GAZT to the effect that the income derived by the Consultant under the Contract is not subject to Tax (or subject to zero rate or a reduced rate of Tax) in the Kingdom of Saudi Arabia under the provision of the said double tax treaty.
- 8.8 At the end of each twelve (12) month period or as otherwise agreed with the Client, but not sooner than twelve (12) month intervals, the Consultant will provide to the Client: (a) a copy of the certificate issued to the Consultant by the GAZT in the Kingdom of Saudi Arabia, valid on the date of payment

which confirms that the Consultant is allowed to collect final contract payments (or retention), or a no objection letter from the GAZT to release final contract payment (or retention) under the Contract, and (b) a copy of the certificate from the GOSI evidencing that the Consultant is registered with such organization and has fulfilled all of its obligations towards GOSI during such period.

9. **WARRANTIES**

9.1 **Corporate Warranties**

The Consultant represents, warrants and undertakes that:

- 9.1.1 it is a company properly formed and incorporated, validly existing and in good standing under the laws of the state, country or jurisdiction of its formation;
- 9.1.2 it has the corporate power and authority to enter into and to exercise its rights and perform its obligations under the Contract;
- 9.1.3 it has the full power and all necessary authorisations to enter into and comply with its obligations under this Contract; and
- 9.1.4 the obligations expressed to be assumed by the Consultant under the Contract are legal, valid, binding and enforceable to the extent permitted by law.

9.2 **Non-Infringement Warranties**

The Consultant represents, warrants and undertakes that:

- 9.2.1 the IP Rights utilised, licensed or granted in connection with this Contract do not infringe any third party rights;
- 9.2.2 the entry into and performance by it of the transactions contemplated by this Contract do not and will not infringe or conflict with:
  - (A) any law, regulation, judicial or official order or similar enactment of any relevant jurisdiction; or
  - (B) the constitutional documents of the Consultant;
  - (C) the rights of any third party or cause it to be in breach of any obligations to a third party; or
  - (D) any document which is binding upon the Consultant to an extent or in a manner which has or would reasonably be expected to have a materially adverse effect on the operations of the Consultant or the performance of its obligations under this Contract; and
- 9.2.3 it will not enter into any contract or accept any obligation which is inconsistent or incompatible with the Consultant's obligations under this Contract.

9.3 **Performance Warranties**

The Consultant represents, warrants and undertakes that:

- 9.3.1 it will perform its obligations under this Contract in a competent and professional manner and in accordance with Good Industry Practice;
- 9.3.2 its deliverables will be its original work, and will not be copied wholly or substantially from any other work or material;
- 9.3.3 it will perform its obligations under this Contract in compliance with all laws, regulatory requirements, decrees, codes of practice, licences and permits and will not do or permit anything to be done which might cause or otherwise result in a breach by the Client of any of the same;
- 9.3.4 it will perform its obligations under this Contract so that all of its deliverables:
  - (A) are free from deficiencies and omissions;
  - (B) conform to all specifications and requirements agreed between the Parties or set out in this Contract; and
- 9.3.5 it will promptly re-perform or remedy, free of charge and without any extension of time, any failure to perform its obligations under this Contract or any failure of a deliverable to comply

with this Contract (including compliance with any warranty).

9.4 **No limitation**

**The Consultant's warranties in this Clause 9** will not be interpreted as a limitation upon, but are in addition to, all other warranties and guarantees expressed in this Contract or implied by law, which will apply in all respects to the performance of its obligations under this Contract.

10. **INSURANCE**

10.1 **Without limiting the Consultant's obligations and responsibilities in connection with this Contract, the Consultant will, at its own cost, insure or cause to be insured with an Insurer, the Insurance Policies for the Term and in accordance with this Contract and all applicable laws. The Consultant will maintain the following insurance policies and any other insurance policy that is deemed compulsory by law or necessary in performing the Services under this Contract:**

10.1.1 Workmen's compensation and employer's liability insurance in accordance with the applicable laws and statutory requirements.

10.1.2 Motor vehicle third party liability insurance, which will provide for an amount not less than SAR 10,000,000 for any one occurrence for bodily injury, death or damage to third party property resulting from an accident. This policy is only required if the Services involve the Consultant's use of a vehicle as part of the Services being provided.

10.1.3 Third party liability insurance, containing a cross liability clause in the joint names of the Client and the Consultant, will provide for an amount not less than SAR 3,000,000 per claim and SAR 6,000,000 in the aggregate.

10.1.4 Professional indemnity insurance, which will provide for an amount not less than 200% of the Contract Price per claim and in the aggregate with an Indemnity to Principal clause with the Client as principal, and warrant that either continuous coverage will be maintained or an extended reporting period will be exercised for a period of 3 years after the expiration or cancellation of the policy.

10.2 The Consultant will ensure that each Insurance Policy includes provisions:

10.2.1 that the Insurer has agreed to waive all rights of subrogation against the Client, its Affiliates, officers, directors, employees, agents and contractors; and

10.2.2 that requires at least thirty (30) days written notice will be given by the Insurer to the Consultant prior to any cancellation, non-renewal or material modification to such Insurance Policy.

10.3 Within fifteen (15) days after the Effective Date and before it commences performing its obligations under this Contract, the Consultant will provide the Client with the Certificates of Insurance, including all required endorsements mentioned in this Clause 10, limits, and deductible levels, evidencing that the premiums are current and that the Insurance Policies are in force.

10.4 If the Consultant fails to effect or keep in force the Insurance Policies, the Client may, at its sole discretion:

10.4.1 effect and keep in force any such Insurance Policy and deduct the cost of doing so from any money due or which may become due to the Consultant or recover the same as a debt due from the Consultant; and/or

10.4.2 stop all payments otherwise due to the Consultant until such time as the Consultant has complied with its obligations under this Clause 10.

10.5 The Consultant's insurance coverage will be primary insurance and non-contributory with respect to all other available sources.

10.6 The Consultant will submit all the claim documents to the Insurers directly and will handle all claim negotiations directly with Insurers and also notify the Client of the status of the claims associated with this Contract.

10.7 All liabilities in excess of the indemnities and all deductibles provided under the Insurance Policies will be for the account of and paid by the Consultant.

10.8 The Consultant will indemnify the Client against all claims, demands, costs and charges arising from and in respect of risks and liabilities assumed by the Consultant whether or not such claims, demands, costs and charges are covered under the Insurance Policies.

11. **INDEMNITY AND LIABILITY**

## 11.1 Indemnity

The Consultant undertakes to indemnify, defend and hold harmless the Client and its Affiliates, officers, directors, employees, agents and contractors against any loss, damage or cost (including all legal fees and costs on a full indemnity basis) arising out of or in connection with the entry into this Contract or the performance **or breach of the Consultant's obligations under this Contract (including the obligations set out in Clause 6 and Clause 10)**, or any non-compliance with or breach of any law or any infringement or alleged infringement of third party rights (including IP Rights), misrepresentation, negligence, fraud or wilful misconduct by the Consultant, its shareholders, Affiliates, officers, directors, employees, agents, contractors or Sub-Contractors.

## 11.2 Liability

11.2.1 Subject to Clause 11.2.2 and to the maximum extent permitted by law, neither Party will be liable for any indirect, exemplary, punitive or consequential loss or damage including damages or claims in the nature of lost revenue, income, profits, or anticipated profits (if any), or loss of bargain, contract, expectation or investment opportunities or losses associated with business interruption, including the cost of overheads incurred during business interruption, whether arising under claims in contract or at law, unless expressly provided for under this Contract.

11.2.2 Notwithstanding any other provision of this Contract, the Consultant's liability to the Client will not be limited with respect to:

- (A) any breach by the Consultant of Clauses 13, 14 or 18;
- (B) any expenditure the Consultant is required to make at its own cost in connection with the performance of the Services including any costs incurred in connection with remedying any defect;
- (C) any personal injury or damage to property to the extent that it is caused directly or indirectly by an act or omission by or on behalf of the Consultant;
- (D) any claim the Client has against the Consultant with respect to any misrepresentation, negligence, fraud or wilful misconduct; or
- (E) any indemnity obligations of the Consultant as set forth in this Contract.

11.2.3 Subject to Clause 11.2.2 and except to the extent determined to have resulted from the **Consultant's negligence**, misrepresentation, fraudulent behaviour or wilful misconduct, the Consultant's liability in connection with this Contract will not exceed 100% of the Contract Price.

## 12. NO SECURITY

12.1 The Consultant will:

- 12.1.1 not create, file, claim or register any Security Interest;
- 12.1.2 not do any act, deed or thing which would result in the creation of any Security Interest; and
- 12.1.3 use its best efforts to prevent any Security Interest from being created, filed, claimed or registered by a third party or any Affiliate, officer, director, employee, agent, contractor, Sub-Contractor or supplier of the Consultant,

over any real or other property of the Client and will procure that its contracts with Sub-Contractors, contractors and suppliers contain obligations on the counterparties to the same effect.

## 13. CONFIDENTIALITY

13.1 The Consultant will:

- 13.1.1 not disclose any Confidential Information;
- 13.1.2 keep the Confidential Information in safe and secure custody and protected against theft, damage, loss or unauthorised access;
- 13.1.3 not, whether during the Term or at any time thereafter, directly or indirectly:
  - (A) use, exploit, copy or modify any Confidential Information other than for the sole purpose of performing its obligations under this Contract; or

- (B) authorise or permit any third party to do the same without the prior consent of the Client; and
- 13.1.4 limit access to the Confidential Information to those of its Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or advisors who reasonably require such information for the purposes of this Contract and take reasonable steps to ensure that each of them will observe the restrictions as to confidentiality, disclosure and use as are set out in this Contract.
- 13.2 The obligations in this Clause 13.2 will not apply to any Confidential Information to the extent that the Consultant is able to demonstrate that the Confidential Information was:
  - 13.2.1 at the time of receipt by the Consultant, in the public domain, or subsequently came into the public domain through no fault of the Consultant, its Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or advisors; or
  - 13.2.2 lawfully received by the Consultant from a third party on an unrestricted basis.
- 13.3 The Consultant will not advertise, publicise or release statements regarding this Contract, or the Project, or any matters arising in relation to this Contract, or the Project, unless the Client has been furnished with a copy of the statement and approved such statement in writing.
- 13.4 The Consultant will not be in breach of this Clause 13 if it discloses Confidential Information to the extent required by law, regulation or order of a competent authority provided that to the extent practicable in the circumstances, the Client has been given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- 13.5 To the extent requested in writing by the Client, the Consultant will destroy the Confidential Information and confirm in writing to the Client that it has complied with any such request.
- 13.6 If so requested by the Client from time to time, the Consultant will sign any additional forms relating to confidentiality which the Client reasonably requires. Such forms may include obligations on the Consultant to treat certain Project specific information as Confidential Information or which extend the confidentiality obligations contained in this Contract.
- 13.7 The obligations in this Clause 13 will survive the expiry or termination of this Contract for any reason.
- 14. **INTELLECTUAL PROPERTY**
- 14.1 All IP Rights belonging to a Party (or which it uses under a licence from a third party) prior to the date of this Contract, or developed by a Party independently of this Contract ("**Background IP**"), will remain vested in that Party (or the relevant third party licensor).
- 14.2 Immediately upon creation or performance, all rights, title, interest, property and IP Rights in:
  - 14.2.1 any works and services (including deliverables);
  - 14.2.2 all documents, data, records, logs, drawings, specifications, processes, schedules, computer programs, object code, source code, network designs, notes, sketches, findings, interim and final reports, inventions, improvements, modifications, discoveries, tools, scripts and all other related documents (whether machine readable or not); and
  - 14.2.3 any items arising from or created, produced or developed by the Consultant (whether alone or jointly with others) under or in connection with this Contract,(collectively, the "**Materials**") will vest in and remain the exclusive property of the Client.
- 14.3 The Consultant irrevocably and unconditionally assigns and transfers to the Client, and will procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors assign and transfer to the Client, all rights, title, interest, property and IP Rights in and to the Materials.
- 14.4 The Consultant irrevocably and unconditionally waives (and will procure its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors to waive) in favour of the Client any IP Rights it has or may have at law or otherwise to the Materials, including any moral rights which the Consultant might be deemed to possess under any laws in respect of any Materials.
- 14.5 If any IP Rights in the Materials do not vest in the Client under Clause 14.2 or Clause 14.3, the Consultant will (and will procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors will):
  - 14.5.1 do everything reasonably necessary or requested by the Client either during the Term, or after the expiry or termination of this Contract, to enable the Client to own the IP Rights in the Materials including:

- (A) formally assigning those rights to the Client;
- (B) assisting the Client to obtain those rights; and/or
- (C) transferring (as applicable) registration of those rights to the Client; and

14.5.2 not, and not purport to, encumber, sell, license, or do anything which would otherwise be contrary to the Client's ownership of such IP Rights.

- 14.6 Until such time as the IP Rights in the Materials have fully vested in the Client in accordance with this Clause 14, the Consultant grants (and will procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors grant) to the Client an exclusive, worldwide, fully-paid, perpetual, irrevocable, royalty-free and otherwise unrestricted licence to use such IP Rights including the right for the Client to sub-licence such licence.
- 14.7 The Consultant grants (and will procure that its Affiliates, officers, directors, employees, agents, contractors and Sub-Contractors grant) to the Client a non-exclusive, worldwide, fully-paid, perpetual irrevocable, royalty-free and otherwise non-transferable licence to use any Background IP. Notwithstanding the foregoing, the Client will be granted the right to sub-licence such licence within its own organization, including Affiliates.
- 14.8 After the IP Rights in the Materials are owned by the Client, the Consultant will have the non-exclusive, non-transferable, revocable, limited, non-sub-licensable and royalty-free right during the Term to use the Materials solely in connection with its performance of its obligations under this Contract.
- 14.9 The Consultant will not use any of the Client's trademarks, brands or logos for any purpose without the Client's prior written consent.
- 14.10 Where the Client has given its consent to use the Client's **trademarks**, brands or logos, the Consultant will use those trademarks, brands and logos strictly in accordance with the Client's **consent and its** applicable policies, guidance and instructions.
- 14.11 The Consultant undertakes to indemnify, defend and holds harmless the Client and its Affiliates, officers, directors, employees, agents and contractors against all claims, liabilities, actions, loss and costs (including all legal fees and costs on a full indemnity basis) arising out of or in connection with any infringement or alleged infringement of IP Rights claimed by any third party in connection with the **Client's ownership and/or use of the Materials and/or this Contract**.
- 14.12 The obligations in this Clause 14 will survive the expiry or termination of this Contract for any reason.

## 15. **SUSPENSION**

- 15.1 At any time and for any reason, the Client may give the Consultant written notice suspending (in whole or in part) the performance of the Consultant's **obligations under this Contract**.
- 15.2 Unless the suspension is directly or indirectly due to a breach of this Contract by the Consultant, the Client will pay to the Consultant any reasonable direct costs arising from the suspension which are incurred by the Consultant in the course of performing its obligations under this Contract up to and including the effective date of the suspension.

## 16. **TERMINATION**

- 16.1 The Client may terminate this Contract, or any part thereof, at any time for its convenience by giving **at least thirty (30) calendar days' notice of termination**. **Following such termination the Client** will pay to the Consultant such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date of such termination and as are set out in an invoice issued by the Consultant in accordance with Clause 7.2.
- 16.2 The Client may terminate this Contract, or any part thereof:
- 16.2.1 by giving immediate notice of termination if:
- (A) the Consultant becomes or is deemed to be insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory (other than for solvent reconstruction), passes a resolution for its winding up, has a receiver, manager or administrator, trustee or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt;
  - (B) the Consultant is legally prohibited (or restricted) from performing its obligations under this Contract;
  - (C) there is any change in the legal or beneficial ownership or Control of the Consultant;

- (D) the Consultant or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or suppliers is convicted of any offence or is otherwise guilty of serious misconduct or any conduct that, in the Client's opinion, does or may bring the Consultant (or any of its shareholders, Affiliates, officers, directors, employees, agents, contractors, Sub-Contractors or suppliers), the Client (or any of its Affiliates, officers, directors, employees, agents, contractors or suppliers) or its or their business, products or services into disrepute; or
- (E) the Consultant breaches any of its obligations under Clause 18; or
- (F) the Consultant commits, whether directly or indirectly through others, any acts of adulteration, deception, manipulation, bribery or other acts harmful or damaging to the Client's interest;

16.2.2 by giving at least ten (10) Business Days' notice of termination if:

- (A) the Consultant commits a breach of any of its material obligations under this Contract;
- (B) the Consultant commits a breach of any of its non-material obligations under this Contract and fails to remedy such breach to the reasonable satisfaction of the Client within seven (7) days of receipt of written notice; or
- (C) the Consultant commits persistent breaches of its obligations under this Contract.

16.3 If the Client terminates this Contract on any of the grounds referred to in Clause 16.2, the Client will pay to the Consultant such sums as are due to the Consultant for its performance of its obligations under this Contract up to and including the effective date of the termination as are set out in an invoice issued by the Consultant in accordance with Clause 7.2 less all costs and damages arising from such breach and costs incurred by the Client to appoint a third party to complete the performance of **Consultant's obligations under this Contract**. The Client's deduction of such costs and damages from payments due to the Consultant will not prejudice any other right the Client has in connection with this Contract or as a result of the Consultant's breach of this Contract.

16.4 If this Contract is terminated for any reason:

16.4.1 the Parties will cease further performance of their obligations under this Contract after the effective date of the termination and the Consultant will take all such actions in this regard as reasonably directed by the Client;

16.4.2 the Parties will each retain all rights and claims which arose on or prior to the effective date of termination and the Parties will be released from any further obligations in connection with this Contract;

16.4.3 the Consultant will use its best endeavours to mitigate or minimise all damage and cost suffered or incurred by the Client, the Consultant and third parties in connection with the termination including the Consultant's costs of demobilisation;

16.4.4 the Consultant will immediately deliver to the Client or otherwise dispose of, as directed by the Client:

- (A) all Confidential Information and all items to which the Client has any right, title, interest, property or IP Rights arising in connection with this Contract or otherwise;
- (B) all deliverables (whether completed or not) and all related documents, materials and information that are reasonably required by the Client in order to be able to complete such deliverables; and
- (C) any other documents, materials and property belonging to the Client or its Affiliates, officers, directors, employees, agents or contractors,

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

16.5 The obligations in this Clause 16 will survive the expiry or termination of this Contract for any reason.

## 17. **FORCE MAJEURE**

17.1 Force Majeure means any event or circumstance not within the reasonable control of a Party and which, by the exercise of due diligence and the level of skill, prudence and foresight generally expected



of a person in the Party's position, that the Party is not reasonably able to foresee, prevent, avoid, control or overcome including:

- 17.1.1 strikes at a national or regional level, or industrial disputes at a national or regional level, or strikes or industrial disputes by labour (excluding those occurring among the employees of the Consultant or its Sub-Contractors) or other industrial disturbances of a general nature;
  - 17.1.2 acts of a public enemy, wars, terrorism, blockades, insurrections, riots, rebellion or sabotage, invasion, act of foreign enemies, hostilities, civil war, revolution, insurrection of military or usurped power (whether war be declared or not);
  - 17.1.3 epidemic or quarantine;
  - 17.1.4 landslides, earthquakes, floods, sand storms, lightning and/or other natural physical disaster; or
  - 17.1.5 civil disturbances, fire or explosions.
- 17.2 The following matters will not constitute Force Majeure under this Contract:
- 17.2.1 lack of finances or funds, or inability to borrow the same;
  - 17.2.2 an obligation to pay any amount;
  - 17.2.3 general economic conditions and exchange rate fluctuations;
  - 17.2.4 the financial condition of the Consultant or any Sub-Contractor;
  - 17.2.5 failure of any Sub-Contractor to perform its obligations; or
  - 17.2.6 equipment breakdown resulting from wear and tear, lack of maintenance or the failure to carry sufficient spare parts.
- 17.3 If there is any Dispute as to whether an event or circumstance constitutes Force Majeure or whether or to what extent a Party is affected by Force Majeure, the Party claiming to be affected by Force Majeure will bear the burden of proving that the event or circumstance constitutes Force Majeure and that it is so affected by the same.
- 17.4 **Consequences of Force Majeure**
- 17.4.1 If a Party is unable to comply with its obligations under this Contract as a result of Force Majeure, that Party's performance of the obligations affected by Force Majeure will be suspended in whole or in part to the extent that, and for the duration which, that Party's ability to perform those obligations is affected by Force Majeure.
  - 17.4.2 The Consultant may request an adjustment to the Date for Completion if its performance of the Services has been suspended due to Force Majeure. Such request will be made within seven (7) calendar days after the end of the suspension and will include the proposed revised Date for Completion which the Client may accept or reject acting reasonably. Notwithstanding any such request, the Consultant will continue to perform the Services in accordance with the original Date for Completion pending the Client's **decision on whether** to accept or reject such request.
  - 17.4.3 To the extent that the Consultant is not performing the Services, the Client's payment obligations under this Contract will be suspended.
  - 17.4.4 During the suspension of any obligation under Clause 17.4.1, the Client may make alternative arrangements for the performance of any suspended non-financial obligation, whether by another person or otherwise, without incurring any liability to the Consultant.
- 17.5 **Notification**
- A Party which is, or expects to be, unable to perform any obligation under this Contract by reason of Force Majeure will:
- 17.5.1 notify the other Party of the occurrence of the Force Majeure as soon as possible but not more than two (2) calendar days after its occurrence;
  - 17.5.2 notify the other Party as soon as possible but not more than seven (7) calendar days after the occurrence of the Force Majeure giving:
    - (A) reasonably full particulars of the Force Majeure and details of the obligations that it is unable to perform by reason of the Force Majeure;

- (B) the date of commencement of the Force Majeure and an estimate of the period of time required to enable it to resume full or partial performance of its obligations under this Contract; and
- (C) where possible, the means proposed to be adopted to avoid or remove the circumstances constituting the Force Majeure and to mitigate the effect of the Force Majeure;

17.5.3 resume full performance as quickly as possible after termination of the Force Majeure or after the Force Majeure has abated to an extent which permits resumption of performance;

17.5.4 notify the other Party when the Force Majeure has ceased or abated to an extent which permits resumption of performance to occur; and

17.5.5 notify the other Party when resumption of performance has occurred.

#### 17.6 Mitigation

17.6.1 A Party affected by Force Majeure will use its best endeavours to avoid or remove the circumstances constituting the Force Majeure and to mitigate its effect. The other Party will co-operate and provide such assistance as the Party affected by the Force Majeure may reasonably request.

17.6.2 If a Party gives a notice where it reasonably expects to be unable to perform any obligation under this Contract by reason of Force Majeure, **that Party's obligation to mitigate will commence upon the giving of the notice but that Party's relief from performance will only apply once the impact of the Force Majeure has occurred.**

#### 17.7 Liability not Relieved

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

17.7.1 its negligence; or

17.7.2 its failure to promptly use its best endeavours to mitigate or remedy the Force Majeure and its effects.

#### 17.8 Force Majeure affecting Sub-Contractor

If any Sub-Contractor is entitled to relief from Force Majeure on terms additional to or broader than those specified in this Clause 17, such additional or broader Force Majeure will not excuse the **Consultant's non-performance** or entitle the Consultant to relief under this Contract.

#### 17.9 Prolonged Force Majeure

17.9.1 A prolonged Force Majeure period (the "**Prolonged FM Period**") will be:

- (A) fifteen (15) calendar days if the original Date for Completion is less than six (6) months from the Effective Date; or
- (B) thirty (30) calendar days if the original Date for Completion is six (6) months or more from the Effective Date,

from the later of the date on which the affected Party gives notice of the Force Majeure in accordance with Clause 17.5 and the date on which the Force Majeure actually prevents the **affected Party's ability to perform its obligations.**

17.9.2 If a Party has given the other Party a notice in accordance with Clause 17.5 and the same Force Majeure prevents or inhibits its performance of its obligations under this Contract for a period of more than the Prolonged FM Period, then either Party may give the other Party a notice requiring the Parties to consult in good faith to decide what action should be taken to carry out the intentions of this Contract. If the Parties are unable to agree on what action should be taken within ten (10) Business Days after the date of such notice, then the Client may immediately terminate this Contract by notice to the Consultant.

#### 17.10 Special Covid-19 Provisions

17.10.1 In this Clause 17.10:

- (A) "**COVID-19 Pandemic**" means the outbreak of the coronavirus disease 2019 ("**COVID-19**"), as recognised as a pandemic by the World Health Organization on 11 March 2020; and

- (B) **“Government Authority”** means the government of the Kingdom of Saudi Arabia or of any political subdivision thereof, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies).

17.10.2 Notwithstanding anything to the contrary in the Contract:

- (A) The Parties agree that all the laws, official decisions and directives of the **Government Authority (the “Laws”) related to the COVID-19 Pandemic** published or in force, as the case may be, as of the **Effective Date (the “Reference Date”) (the “Existing COVID-19 Laws”) were fully considered by them, are fully reflected in the Contract Price** and their respective obligations under the Contract will be performed notwithstanding the adverse effect of the Existing COVID-19 Laws and without any recourse to Clause 17 (*Force Majeure*) or any other remedy available to it under the Laws.
- (B) If any additional Laws, or any other laws applicable to this Contract, related to the **COVID-19 Pandemic become effective after the Reference Date (the “New COVID-19 Laws”), any adverse impact of the New COVID-19 Laws** on a Party will constitute Force Majeure under Clause 17 (provided all the other requirements for Force Majeure under this Contract and Sub-Clause (C) below are satisfied). The Parties agree that relief under Clause 17 will constitute the sole and exclusive remedy related to the New COVID-19 Laws. Any adverse impact from the New COVID-19 Laws will not entitle a Party to relief under any provisions hereunder or any other remedy available to it under the Laws.
- (C) Before a Party may give notice of Force Majeure under Clause 17.5 related to the **New COVID-19 Laws (a “COVID-19 FM Notice”), the Parties acting reasonably and in good faith** will have determined that technological substitution or other alternative measures to minimize the adverse impact of the New COVID-19 Laws on the performance by a Party are not commercially reasonable.
- (D) Following receipt of a COVID-19 FM Notice by the Client, the Client may within twenty-eight (28) days and upon reasonable written notice to the Consultant and in its sole discretion:
- (1) descope at no cost to it all or part of the obligations the performance of which is or will be prevented by the New COVID-19 Laws. If the Client proceeds to perform (or cause to be performed) any such descoped obligations, the Client will do so at its own cost and the Consultant will co-operate in good faith with, and provide reasonable assistance and information to, the Client and Persons nominated by it to perform such descoped obligations; and
  - (2) either:
    - (a) suspend at no cost to it all or part of the Contract; or
    - (b) terminate all or part of the Contract at no cost to it upon five (5) **days’** written notice.
- (E) The Consultant undertakes:
- (1) to use all reasonable endeavours to prevent the spread of COVID-19 among its personnel, and where Services are conducted at a work site of the Client, **the Client’s work site and any person at the Client’s work site, and to pre-empt, avoid, and mitigate its impacts during performance of the Services for the Client, including in particular where such Services are provided at a work site of the Client;**
  - (2) that, where Services are conducted at a work site of the Client, any person coming on the work site or otherwise performing the Services (other than employees or representatives of the Client) will have COVID-19 medical insurance in place;
  - (3) to, where Services are conducted at a work site of the Client, comply and cause all persons performing such services to comply at all times with the laws of the Kingdom of Saudi Arabia related to COVID-19 and good industry practice, including operational protocols, related to COVID-19;

- (4) to comply in good faith with all COVID-19-related reporting requirements, data gathering and information sharing requirements reasonably requested by the Client;
- (5) to use such videoconferencing and similar remote working technology (such as Microsoft Teams) as the Client may specify; and
- (6) to cause its subcontractors at all levels to agree on a back-to-back basis with a clause in form and substance similar to that of this Clause 17.10.

## 18. **ETHICAL BUSINESS CONDUCT OF THE PARTIES**

- 18.1 Each Party warrants that neither it nor any person acting on its behalf has made or offered, or proposes to make or offer, or has caused or proposes to cause any third party to make or offer, with respect to the matters that are the subject of this Contract, any payment, gift, promise or other advantage, whether directly or indirectly, including (without limitation) through Affiliates or representatives (including representatives of the intended recipient), to or for the use of any public official, where such payment, gift, promise or advantage would violate:
- 18.1.1 the applicable laws of the country in which the activities under this Contract are taking place;
  - 18.1.2 the Anti-Bribery Law (promulgated pursuant to Royal Decree M/36 dated 29/12/1412H) and Royal Decree 4 of 1440 Approving the Anti-Bribery Law;
  - 18.1.3 the laws of the country of incorporation of such party;
  - 18.1.4 the principles described in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or the related documents and recommendations identified in that Convention; or
  - 18.1.5 **the principles described in the World Economic Forum's Partnering Against Corruption Principles for Countering Bribery set out in the World Economic Forum's 2005 publication Partnering Against Corruption Principles for Countering Bribery.**
- 18.2 The Consultant will use its best endeavours to avoid any act or omission which may conflict in any way with the interests, standing or reputation of the Client or its Affiliates and the Consultant will procure that its Affiliates and Sub-Contractors do likewise. For the purpose of this Clause 18.2, an act will include the giving or receiving of any gift (including entertainment), payment, loan, goods, service or favour of any kind.
- 18.3 The Consultant will promptly inform the Client of any breach or potential breach of this Clause 18 and any violation or potential violation by of any applicable professional code of conduct or ethical requirement of any kind by the Consultant, its Affiliates or its Sub-Contractors.

## 19. **ASSIGNMENT AND SUB-CONTRACTING**

- 19.1 The Client may assign, novate or permit to be taken as security the whole or any part of this Contract, or any benefit, or interest in, or under this Contract, without the consent of the Consultant and will inform the Consultant of such event in due time.
- 19.2 The Consultant will not sub-contract, assign, novate or permit to be taken as security the whole or any part of this Contract or any benefit or interest in or under this Contract without the prior written consent of the Client.

## 20. **CHANGE IN LAW**

- 20.1 **If a Change in Law does or will materially adversely affect the Consultant's performance of its obligations** under this Contract, the Consultant may give a notice to the Client with respect to such Change in Law. The Client will determine the impact, if any, of such Change in Law and agree a procedure with the Consultant to manage the impact of such Change in Law. Where there is a decrease in costs arising from a Change in Law, the Contract Price will be reduced accordingly.
- 20.2 This Clause 20 will only apply to the extent that any additional costs or delay that the Consultant incurs (or will incur) as a result of a Change in Law are **directly and solely related to the Consultant's performance of the Services.**
- 20.3 A Party affected by a Change in Law will use its best endeavours to avoid or remove the circumstances constituting the Change in Law and to mitigate its effect. The other Party will co-operate and provide

such assistance as the Party affected by the Change in Law may reasonably request.

21. **NOTICES**

21.1 All communications (including certificates, notices, consents, approvals, requests and demands) under or in connection with this Contract:

21.1.1 will be in writing and addressed to the recipient Party at the address set out below (or as otherwise notified by a Party to the other from time to time);

21.1.2 will be signed by or on behalf of the Party making the communication;

21.1.3 will be delivered by courier or email; and

21.1.4 subject to Clause 21.2, will be taken to have been received by the addressee:

(A) in the case of delivery by courier, on the date shown on the receipt issued by the courier; or

(B) in the case of email, on the date and at the time the email is sent, unless that time is outside normal business hours in Saudi Arabia, in which case that communication is taken to be received on the next Business Day in Saudi Arabia.

21.2 All invoices issued in connection with this Contract, all notices issued in connection with Clause 23 and any other form of claim issued by one Party against the other in connection with this Contract, will be delivered by courier and not by email.

If to **NEOM**:

Address: Information Technology and Communications Complex (ITCC), 2<sup>nd</sup> Floor, Building IN-01, Al Nakheel District 12382, Riyadh, P.O. Box 10, Riyadh 11411, Kingdom of Saudi Arabia.

Attention: Ron Bowker

Email: Ron.Bowker@neom.com

Telephone No.: +966 53 551 5606

If to the **Consultant**:

Address: Level 1, Building 7, Zone A, Business Gate, Airport Road, PO. Box 340014, Riyadh, Kingdom of Saudi Arabia

Attention: Omar Qirem – Chief Executive Officer

Email: Omar.Qirem@edelman.com

Telephone No.: +97150 6116855

22. **MISCELLANEOUS**

22.1 **Entire agreement**

This Contract contains the entire agreement between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them, whether oral or in writing. The Parties will not be bound by or be liable for any statement, representation, promise, inducement, solicitation or understanding of any kind or nature not set out in this Contract.

22.2 **Amendments**

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

22.3 **Relationship of the Parties**

The relationship of the Parties is that of independent contractors dealing at arm's length, and except as otherwise stated in this Contract, nothing in this Contract will constitute the Parties as partners, joint venturers, co-owners or as the agent, employee or representative of the other or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither Party will hold itself out as having authority to do the same.

22.4 **Third Party Rights**

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

22.5 **Indemnities**

22.5.1 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties, and survives the expiry or termination of this Contract for any reason.

22.5.2 It is not necessary for a Party to incur any cost or to make any payment before enforcing a right of indemnity conferred by this Contract.

22.5.3 A Party will pay on demand any amount it is required to pay under an indemnity in this Contract.

22.6 **Severance**

Any provision of this Contract which is prohibited or unenforceable is ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provisions.

22.7 **No Representation or Reliance**

Each Party acknowledges:

22.7.1 **that neither Party (nor any person on a Party's behalf) has made any representation or other inducement to the other Party to enter into this Contract; and**

22.7.2 that it does not enter into this Contract in reliance on any representation or other inducement by or on behalf of any other Party,

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

22.8 **Waiver**

A Party's failure to exercise, or delay in exercising, a right or remedy under this Contract does not operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy under this Contract will prevent or restrict the further exercise of that right or remedy. A waiver given by a Party under this Contract will only be effective and binding on that Party if it is given or confirmed in writing by that Party.

22.9 **Cumulative Rights**

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

22.10 **Survival**

Provisions of this Contract which are expressed to survive its expiry or termination, or from their nature or context, it is contemplated that they are to survive expiry or termination, will remain in full force and effect notwithstanding expiry or termination of this Contract for any reason.

22.11 **Further acts and documents**

The Consultant will promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to the other Party) required by law or reasonably requested by the Client in order to give effect to this Contract.

22.12 **Consents**

A consent required under this Contract from a Party will be in writing and may be given or withheld, or may be given subject to any conditions, as that Party (in its sole discretion) thinks fit, unless this Contract expressly provides otherwise.

22.13 **Counterparts**

This Contract may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Contract and all together constitutes one agreement. This Contract may be executed and delivered by facsimile or portable document format copy.

22.14 **Costs**

Except as otherwise provided in this Contract, each Party will pay its own costs in connection with negotiating, preparing, executing and performing its obligations under this Contract.

23. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 23.1 This Contract is governed by the laws of the Kingdom of Saudi Arabia.
- 23.2 Any dispute, controversy or claim arising out of or in connection with this Contract, including the **breach, termination or invalidity thereof (a "Dispute")**, will first be referred to a member of each Party's senior management, who will use their reasonable endeavours to try and resolve the Dispute in an amicable manner. In the event the Parties are unable to resolve the Dispute amicably within a period of thirty (30) days from the date of referring the Dispute to senior management, then the Parties agree that the Dispute will be finally resolved by the competent courts of the Kingdom of Saudi Arabia.
- 23.3 Notwithstanding any litigation initiated, the Consultant will continue to perform its obligations under this Contract pending resolution of the dispute.
- 23.4 The Consultant will not raise any claim, proceeding or action in connection with the formation, performance, interpretation, nullification, termination or invalidation of this Contract against any:
- 23.4.1 part of the Government of the Kingdom of Saudi Arabia other than the Client;
  - 23.4.2 Affiliate of the Client; or
  - 23.4.3 officer, director or employee of the Client.
- 23.5 The Consultant will not raise any claim, proceeding or action against the Client for any:
- 23.5.1 loss, damage or cost; or
  - 23.5.2 additional payment or extension of time under this Contract or at law,
- to the extent that such claim, proceeding or action is based on any act or omission by any third party.
- 23.6 The obligations in this Clause 23 will survive the expiry or termination of this Contract for any reason.

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**SCHEDULE 1**

**SCOPE OF SERVICES**

**Scope of Services:**

The Consultant shall work alongside the NEOM IPR Framework lead to develop and implement the IPR Framework in the U.S. Key processes to be involved in the foregoing shall include, among others:

- a. Strategic counsel
- b. Media relations
- c. Stakeholder identification and engagement
- d. Content development



**SCHEDULE 2**

**SCHEDULE OF RATES**

In consideration of the due performance of the Services, the Client agrees to pay the Consultant a fixed fee of USD 236,250 (inclusive of Withholding Tax) in three equal instalments of USD 78,750. Subject to Clause 7.2 of this Agreement, the Consultant shall invoice each instalment at the end of each month commencing from the Effective Date.

Said invoice shall include a description of the services performed. In accordance with Clause 7.3, within forty-five (45) Business Days of receipt by the Client of an invoice that complies with Clause 7, Client shall make payment to Consultant.