



# GENERAL TERMS AND CONDITIONS

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## 1. Definitions

1.1 Unless the context otherwise requires, the terms capitalized and used herein or in any other document which is part of the SO Documents and the defined terms set forth in this Clause 1, together with their respective grammatical variations and cognate expressions, shall have the meanings specified herein:

Acceptable Bank	shall mean a 'scheduled bank' in India (as set forth in the Second Schedule to the Reserve Bank of India Act, 1934), excluding any co-operative or gramin (rural) bank.
Advance Payment Bank Guarantee	shall mean unconditional and irrevocable first demand bank guarantee(s) provided by the Contractor to the Employer in terms of Clause 7, to secure the advance payment(s) made by the Employer to the Contractor.
Affiliate	shall mean, with respect to any Party, any Person which directly or indirectly, Controls, is Controlled by or is under common Control with it.
Basic Price	shall mean the amount payable by the Employer to the Contractor for performance of the Scope of Work determined in accordance with Clause 4, which shall be inclusive of applicable Taxes (except GST), labour and other statutory charges, gratuity amounts, cost of materials, consumables, tools and tackles, cost for Contractor's Equipment, insurance charges, margin, overheads, charges for bank guarantees and all other costs associated with performance of the Scope of Work and other obligations under the SO Documents, unless otherwise specified in the Service Order.
BOQ	shall mean the items forming part of the Services and the corresponding rates applicable to such items, as set out in the Price Schedule.
Change	shall have the meaning ascribed to the term in Clause 9.1.
Change in Law	shall mean the occurrence of any of the following after the Effective Date: <ul style="list-style-type: none"> <li>(a) enactment, modification or repeal of any new applicable law in India;</li> <li>(b) any change in the interpretation or enforcement of any applicable law by a decision rendered by the Supreme Court of India; or</li> <li>(c) increase or decrease in the relevant rates of applicable GST in India,</li> </ul> provided that "Change in Law" shall not include any: <ul style="list-style-type: none"> <li>(i) change in the interpretation or application of any applicable law except as provided in (b) above;</li> <li>(ii) enactment, modification, repeal, interpretation or application of any applicable law of India which increases market prices of equipment, commodities, raw materials and labour in general, used in the performance of Services;</li> <li>(iii) such event of Change in Law listed in points (a), (b) and (c) above, which occurs during the time period of delay in the performance of the Contractor's obligations, for reasons not attributable to the Employer; and</li> <li>(iv) implication on the SO Price arising out of currency fluctuations.</li> </ul>
Change Proposal	shall have the meaning ascribed to the term in Clause 9.3.
Codes and Standards	shall mean the latest applicable international and Indian codes and standards that would be applicable for services and works of a similar type and specification as the Services.
Completion	shall mean the conclusion of such portions of the Scope of Work pertaining to the Services, as per the Specifications and in accordance with the terms of the SO Documents.

Completion Schedule	shall mean the time specified in the Service Order (as extended in accordance with the terms herein), within which the Completion as a whole (or completion of a Milestone, where a separate time for completion of performance of such Milestone has been prescribed) is to be achieved in accordance with the terms of the SO Documents.
Confidential Information	shall have the meaning ascribed to the term in Clause 42.1.
Contract Performance Bank Guarantee	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 7, to secure the performance by the Contractor of the Scope of Work for a time period as specified in the Service Order.
Contract Performance cum Performance Bank Guarantee	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 7, to secure the performance by the Contractor for the entire Scope of Work, including the Contractor's obligations during the Defect Liability Period, as specified in the Service Order.
Contractor	shall mean the successful bidder who is awarded the SO Documents and which is a company duly incorporated and validity existing as per the provisions of Companies Act, 2013; or a proprietor in case the bidder is a sole proprietorship; or a partnership firm registered under the applicable law.
Contractor's Equipment	shall mean any and all equipment, materials, tools, supplies and other items brought in by the Contractor for or in connection with the performance of the Services.
Control	shall mean, with reference to a Person, the possession, directly or indirectly, of the power or authority to direct or cause the direction of the day to day affairs, management or policies of such Person, whether through the ownership of voting securities, by any agreement with respect to voting of securities, by any other agreement conferring control over management or policy decisions, by virtue of the power to control the composition of the board of directors or managers of such Person, or otherwise.
Defect Liability Period	shall mean the period more specifically set out in the Service Order, during which the Contractor shall remain liable, at its own cost and expense, for all repairs or replacement of any Defects.
Defect(s)	shall mean any defect or deficiency in the Services (including any portion performed or executed by any Sub-Contractor) on account of non-conformance of the Services with the Specifications, Performance Guarantee and the terms of the SO Documents.
Delay Liquidated Damages	shall have the meaning ascribed to the term in Clause 24.1.
Deployment Shortfall Liquidated Damages	shall have the meaning ascribed to the term in Clause 24.3.
Disclosing Party	shall have the meaning ascribed to the term in Clause 42.1.
Drawings and Documents	shall mean all drawings referred to in the SO Documents, along with any modification of such drawings (as approved in writing by the Employer) and shall include: (i) drawings furnished by the Employer or the Employer's consultant to the Contractor; and (ii) engineering data and drawings submitted by the Contractor during the progress of the Scope of Work.
Effective Date	shall mean the date of issuance of the Service Order by the Employer to the Contractor, unless otherwise specified in the Service Order.

Employer		shall mean the company issuing the Service Order, including its legal successors and assigns.
ESG		shall have the meaning ascribed to the term in Clause 26.1.
Extra Item		shall mean any item forming part of the Services which is not provided for in the BOQ and required for Completion, as more particularly specified in Clause 4.1(c).
Final Invoice		shall mean the invoice in respect of all outstanding amounts raised by the Contractor on Completion, as may be specified in the Service Order.
Force Majeure		shall have the meaning ascribed to the term in Clause 36.1.
Free Material	Issue	shall mean the material supplied free of charge by the Employer to the Contractor in accordance with Clause 19 and as per the list specified in the Service Order.
Good Practice	Industry	shall mean standards, methods, techniques and procedures that are employed by leading, reasonable and prudent service providers engaged in the performance of services which are similar to the Services.
GST		shall mean the applicable goods and services tax and/or any compensation or cess payable in terms of the Central Goods and Service Tax Act, 2017, the State Goods and Services Tax Acts passed by the States in the Republic of India, Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017, the Goods and Service Tax (Compensation to States) Act, 2017, or any other statute or ordinance issued as a part of the regime applicable to goods and services and the rules, notifications and circulars under each of the foregoing for the time being in effect, as applicable to the Scope of Work performed under the SO Documents.
GTC		shall mean these general terms and conditions.
Human Resources and Relations Requirements	Industrial	shall mean the norms, rules, regulations and policies pertaining to compliances, as provided by the Employer to the Contractor, in respect of human resources and industrial relations that are to be adhered to by the Contractor as may be applicable to the Scope of Work and set out in the annexure which may be identified as 'Human Resources and Industrial Relations Requirements' and attached to the Service Order, as may be amended or modified, from time to time.
Intellectual Property Rights		shall mean all patent, trademark, copyright, design rights, trade secret, mark or any other intellectual property rights (whether registered or not) applicable to or utilised in the Services licensed, granted or assigned by the Contractor or any Contractor's Affiliate to, or otherwise vested in the Employer pursuant to the terms of the SO Documents.
Interim Order	Change	shall have the meaning ascribed to the term in Clause 9.5.
Invoice		shall have the meaning ascribed to the term in Clause 5.3(b)(i).
Man-day		shall mean a unit of measurement corresponding to the presence and availability for performing Services of one (1) man for a work period of eight (8) consecutive hours within a period of twenty four (24) consecutive hours.
Manning Schedule		shall mean the schedule set out in the Specifications or attached to the Service Order, providing details of the: (i) various Services to be performed; (ii) number of persons of each category of personnel (including any Sub-Contractors) and an estimate of the number of Man-days to be spent by each category in performing the Services; and (iii) name, category, particular Service to be performed, location of performance and an estimate of the number of Man-days to be spent by each personnel in performing such Services for the Term.

Milestone	shall mean the milestones indicating completion of specified portions of the Services, as may be specified in the Service Order.
Party	shall mean the Employer or the Contractor, as applicable.
Performance Bank Guarantee	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 7, to secure performance of the Contractor's obligations during the Defect Liability Period.
Performance Guarantee	shall mean the guaranteed standards and parameters, including the key performance indicators (KPIs) or service level agreements (SLAs) for performance of the Services, as set out in the Specifications, which are required to be maintained by the Contractor.
Person	shall mean individuals, firms, companies, corporations, trusts, government entities, joint ventures and other bodies, whether incorporated or not.
Price Schedule	shall mean the schedule annexed to the Service Order, setting out the prices payable in respect of the Services.
Receiving Party	shall have the meaning ascribed to the term in Clause 42.1.
Running Account Bills	shall mean the periodic bills raised by the Contractor based on the progress of the Services performed, but shall not include the Final Invoice.
Safety Requirements	shall mean the safety norms, rules, regulations and policies provided by the Employer to the Contractor, as may be applicable to the Services and annexed to the Service Order, as may be amended or modified from time to time.
Scope of Work	shall mean the Services and such other activities required to be performed by the Contractor under the SO Documents, as specifically set out in Clause 3.
Service Order	shall mean the service order issued by the Employer.
Services	shall mean the services to be performed by the Contractor pursuant to the Service Order in accordance with the Specifications and all other terms and conditions stipulated in the SO Documents.
Shortfall Liquidated Damages	shall have the meaning ascribed to the term in Clause 24.2.
Site	shall mean any location or premises of the Employer, which is designated as the place for the performance of the Services (or any part thereof), as specified in the Service Order.
SO Documents	shall mean and include the Service Order and the GTC along with any annexures, schedules and documents that are referred in or attached to the Service Order.
SO Price	shall mean the Basic Price plus applicable GST, payable to the Contractor for performance of its obligations under the SO Documents, as specified in the Service Order.
Specifications	shall mean all Drawings and Documents, referred standards, various technical guidelines, quality standards, technical documents, specifications, provisions and requirements which pertain to the method and manner of performing the Scope of Work and to the quantities and qualities pertaining to the performance of the Services, as set out in the annexure which may be identified as 'Price Schedule' or 'Specifications' and attached to the Service Order, as may be amended or modified from time to time.
Sub-Contractor	shall mean (i) any Person to whom any part of the Scope of Work has been subcontracted by the Contractor, or (ii) any supplier from whom the Contractor

	purchases any item(s) required for the performance of the Scope of Work, and shall include the successors and permitted assigns of such entities.
Taxes	shall mean and include taxes, duties, levies, cess, GST, royalty and other similar imposts by whatever name called, whether in the nature of indirect tax or direct tax and whether or not imposed at the federal, state, municipal or any other level.
Term	shall have the meaning ascribed to the term in Clause 8.1.
TPIA	shall mean the third party inspection agency appointed and/or authorized by the Employer for carrying out inspection and review of the Services.

## 2. Interpretation of SO Documents

- 2.1 Subject to the order of precedence as set out below, all documents forming part of the SO Documents are intended to be correlative, complementary and mutually explanatory. The SO Documents shall be read and construed together as a single document and where these documents are at variance with each other, for the purpose of interpretation, the priority of the documents shall be in the following sequence:
- (a) The Service Order.
  - (b) The Specifications, including all Schedules, Drawings and Documents and any other documents.
  - (c) The GTC.
  - (d) Any other Schedules and Annexures forming part of the SO Documents.
- 2.2 In the event of any inconsistency:
- (a) between the text of the Clauses, the Annexures and the Specifications hereto, the text of the Clauses shall prevail;
  - (b) between the text of the Specifications and the Annexures hereto, the text of the Specifications shall prevail; and
  - (c) between the provisions and particulars of one Annexure and those of any other Annexure, the provisions and particulars of the Annexure more specific to the provision which is inconsistent shall prevail.
- 2.3 Notwithstanding the sub-division of the SO Documents into sections, every part of each document shall be deemed to be supplementary to and complementary of each other.
- 2.4 All headings and marginal notes to the items of the GTC, the Service Order, the Specifications or to any other document forming part of the SO Documents are solely for the purpose of giving a concise indication of the general subject matter thereof and not a summary of the contents. Such headings and marginal notes shall not be deemed to be part of or be used in the interpretation or construction of the said document.
- 2.5 Words incorporating the singular only shall also include the plural and vice-versa where the context requires. Words of any gender are deemed to include the other gender(s).
- 2.6 The term 'Clause', 'Schedule' or 'Annexure' refers to a specified clause, schedule or annexure of the GTC, unless otherwise expressly specified.
- 2.7 Reference to the words 'include', 'including' and 'included' shall be construed without limitation.
- 2.8 For the purposes of the SO Documents, the words and abbreviations that have well-known technical or trade meanings used but not defined in the SO Documents, shall be construed in accordance with such recognized technical or trade meanings.
- 2.9 Reference to any legislation, law, regulation or to any provision thereof shall include references to any such law as it may be amended, supplemented or re-enacted from time to time (whether before or after the date of the SO Documents) and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.



- 2.10 The SO Documents are a joint draft product of the Parties, and any rule of statutory interpretation interpreting agreements against a party primarily responsible for drafting the agreement shall not be applicable to the SO Documents.
- 2.11 All approvals provided by a Party under the SO Documents shall be in writing and, for the purposes of the SO Documents, 'in writing' shall mean and include printing, electronic mail and letters.
- 2.12 Any reference to the SO Documents shall include all amendments, changes and modifications made to the SO Documents in accordance with the provisions hereof.

### **3. Scope of Work**

- 3.1 The detailed Scope of Work shall be as specified in the Service Order and Specifications. The Contractor shall be bound to ensure that the Services and the performance thereof is compliant with the Specifications and Codes and Standards, as set out in the SO Documents.
- 3.2 The Contractor shall, unless specifically excluded in the SO Documents, perform all such incidental work and activities with respect to such items not specifically mentioned in the SO Documents but can be reasonably inferred as required or necessary to complete the Scope of Work, as if such work, activities and/or items were expressly mentioned in the SO Documents. However, the Contractor shall not perform any extra or additional work and activities which do not form part of or can be inferred from the Scope of Work, unless such additional work is included in the SO Documents by way of an amendment. Except as otherwise expressly provided in the SO Documents, the Contractor agrees and acknowledges that the Contractor shall perform all of its obligations and responsibilities under the SO Documents at its own risk, cost and expense.
- 3.3 In addition to provision of tools and tackles as may be specified in the SO Documents, the Contractor agrees to provide at the Site, all materials, equipment, consumables and accessories as may be required up to completion of the Scope of Work (as applicable), at its own cost and expense, unless otherwise agreed in the Service Order.
- 3.4 In performing the Scope of Work, the Contractor shall comply with the directions of the Employer and/or the Employer's representative. If the Contractor renders any advice to the Employer during the performance of the Scope of Work, the Contractor shall be bound by such advice and shall be liable for the same, notwithstanding that the Employer may, at its discretion, decide whether to accept, reject or implement the Contractor's advice.
- 3.5 The Contractor agrees and acknowledges that it has entered into the SO Documents after due and careful inquiry of all matters relating hereto and has satisfied itself in respect of all pertinent matters which may have a bearing upon the performance of the Scope of Work, including the nature, quality and magnitude of the Scope of Work to be performed, availability of personnel and resources, applicable laws and conditions at the Site. The Contractor's failure to acquaint itself and/or consider any applicable condition, situation, requirement or other matter referred to under this Clause or those pertaining to the Scope of Work or the SO Documents shall not relieve the Contractor from performing its obligations under the SO Documents, nor entitle the Contractor to any variation in accordance with Clause 9 herein.

### **4. Basic Price**

#### **4.1 *For Basic Price on lump-sum basis***

The Basic Price shall be as specified in the Service Order. Unless otherwise provided for in the Service Order or agreed otherwise by the Employer, the Basic Price shall remain firm and no escalation to the Basic Price shall be allowed during the tenure of the SO Documents, including any extensions thereto.

OR

#### ***For Basic Price on BOQ basis***

- (a) The Basic Price payable to the Contractor shall be calculated on the basis of the estimated portions of the Services proposed to be carried out at the rates quoted by the Contractor in the BOQ, and shall be as set out in the Price Schedule. The Contractor acknowledges that the actual amount payable by the Employer to the Contractor may differ from the Basic Price, based on the Services performed and as certified by the Employer. If the variation results in an increase in the estimated value of the Basic Price, as set out in the Price Schedule, the Parties shall mutually agree upon the

revised estimates of the Services to be availed under the BOQ and effect necessary amendments to the SO Documents in accordance with Clause 9.

- (b) The unit rates quoted and accepted as per the BOQ shall remain firm till Completion, irrespective of any variation in the Services availed, and shall not be revised under any circumstances and for whatsoever reason till the Completion, except in accordance with Clause 9 or as may be agreed otherwise by the Employer.
- (c) Payment for Extra Items not included in BOQ
  - (i) If any item forming part of the Services is not provided for in the BOQ and is required to be executed to achieve Completion, it shall be acknowledged as an Extra Item, and the Contractor on receipt of instructions from the Employer, shall be bound to perform Services with respect to such Extra Items.
  - (ii) The rate for such Extra Items shall be submitted by the Contractor to the Employer, which shall be calculated in accordance with the procedure set out in the Service Order. The Contractor shall submit the details of the Extra Items executed in the subsequent Running Account Bills.
  - (iii) In the event mutually agreeable rates for the Extra Items are not finalised between the Parties, the Contractor shall proceed to carry out the Services at the provisional rates to be decided by the Employer. The Employer shall certify payments to the Contractor, based on such provisional rates fixed by the Employer, for the Services performed on the basis of such Extra Item, subject to upward or downward adjustment after such provisional rates are finalized.

4.2 The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Basic Price, which shall, except as otherwise provided for in the SO Documents, cover all its obligations under the SO Documents. Unless otherwise provided for in the Service Order, the Basic Price shall be inclusive of all applicable Taxes (except GST), labour and other statutory charges, gratuity amounts, cost of materials, consumables, tools and tackles, cost for Contractor's Equipment, insurance charges, margin, *overheads*, charges for bank guarantees and all other costs associated with the performance of the Scope of Work and other obligations under the SO Documents.

## 5. Payment Terms

5.1 The SO Price *shall* be payable as per the terms specified in the Service Order. The Contractor agrees that it shall not be entitled to payment of idling, down-time or any other analogous charges in respect thereof, for any reason whatsoever.

5.2 Unless otherwise specified in the Service Order, the mode of payment through which the Employer shall make payments under the SO Documents shall be wire transfer. Any bank charges incurred with respect to such payments shall be to the respective accounts of the Parties. No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Services or any part(s) thereof. All payments payable by the Employer to the Contractor under the SO Documents shall be made subject to any deductions or withholdings required under applicable laws and the Employer shall provide the Contractor with the relevant documents and/or certificates required under applicable laws in connection with such deductions or withholdings.

### 5.3 Invoicing

The Contractor may raise invoices for claiming payment of the SO Price, in accordance with the stipulations set out in the Service Order and the manner as set out below. The Contractor shall ensure that all invoices raised under the SO Documents are correct and complete. Unless otherwise specified in the Service Order, the Contractor shall raise all invoices in an electronic format and comply with the applicable laws in this respect, including the relevant procedure pertaining to e-invoicing. Any invoice issued by the Contractor, in any manner other than the manner prescribed under the SO Documents shall be deemed to be an incorrect invoice and shall not be eligible for any payments under the Service Order.

(a) *Invoicing mechanism for payment on periodic basis*

- (i) The SO Price shall be paid to the Contractor on a pro-rata basis against Running Account Bills within such number of days of submission of such Running Account Bills and along with the documents as specified in the Service Order.
- (ii) The Contractor shall submit Running Account Bills on the basis of the total value attributable to completed portion of the Services for claiming payment, in a manner and form as specified in the Service Order.
- (iii) All Running Account Bills shall be verified and approved by the Employer prior to payment. The Employer shall not be obligated to pay Running Account Bills unless they are fully supported by documents as prescribed herein and have been verified and confirmed by the Employer.
- (iv) Payments made against Running Account Bills shall be treated as advance payments against amounts that would be payable against the Final Invoice.

OR

(b) *Invoicing mechanism for payment on milestone basis*

- (i) Upon completion of each Milestone, the Contractor shall raise and submit a written invoice ("**Invoice**") to the Employer for the pro-rata payment of the SO Price corresponding to the Milestone completed by the Contractor.
- (ii) The Invoice shall be in a manner and form as acceptable to the Employer and shall provide the detailed breakup of the total value attributable to the completed Milestone (including any expenses incurred and the location where such expenses were incurred and the personnel incurring such expenses, which are to be reimbursed by the Employer in accordance with the Service Order).
- (iii) All Invoices shall be verified and approved by the Employer prior to payment. The Employer shall not be obligated to make payments against Invoices unless they are fully supported by documents as may be prescribed in the Service Order and have been verified and confirmed by the Employer.

(c) *Final Payment*

- (i) The Final Invoice shall be drawn up by the Contractor in the form approved by the Employer and shall include all outstanding claims. The Contractor hereby waives, any and all outstanding amounts with reference to any part of the Services and/or any outstanding claims that are not claimed by the Contractor in the Final Invoice. The Contractor shall submit to the Employer, such certificates as may be specified in the Service Order, along with the Final Invoice, in a form and manner as may be specified in the Service Order.
- (ii) In the event the SO Price is payable on a BOQ basis, the Contractor shall draw up the Final Invoice by applying the applicable rates specified in the BOQ to the actual portions of the Services performed. If the Employer determines that any part of the Services is not covered by any item in the BOQ, then the Employer shall determine the applicable rates in respect thereof. If the Parties do not agree on the BOQ applied in the Final Invoice, the Parties shall mutually discuss and agree on the revisions that may be required to the Final Invoice within thirty (30) days of raising of the Final Invoice by the Contractor and the Contractor shall revise and re-issue the Final Invoice accordingly.

#### 5.4 *Discrepant Amounts*

- (a) In the event the Employer finds any discrepancy, within a reasonable time period, in any invoice raised by the Contractor, the Employer shall give a notice regarding discrepant amount to the Contractor and withhold such part of the invoice value which is discrepant till such time the discrepancy is resolved between the Parties. If the Contractor intends to dispute the discrepant amount, the Contractor shall provide documentary evidence to the Employer within fifteen (15) days of receipt of notice regarding discrepant amount. If the Contractor's documentary evidence is accepted by the Employer, the Employer shall pay the amount as mentioned in the invoice

originally raised by the Contractor as per the payment terms specified in the Service Order, from the date of submission of Contractor's documentary evidence. In the event that the Parties are unable to resolve any issue in relation to discrepant amount within thirty (30) days of issue of the notice by the Employer in relation to the discrepant amount, such dispute shall be resolved in accordance with Clause 40.

- (b) Notwithstanding anything to the contrary in the SO Documents, the payment of any invoice by the Employer shall not prejudice, at any point of time, any rights of the Employer under the SO Documents, including the right of the Employer to notify any discrepancy in respect of any amounts therein, as may be identified by way of any audit or inspection, that may have been conducted subsequent to the payment of such invoice. In the event any such discrepancy is identified in relation to any invoice that has already been paid by the Employer, the Employer shall have the right to adjust any amount that may be due and payable by the Contractor, in accordance with Clause 45.

## **6. Taxes**

- 6.1 Except GST, all applicable Taxes shall be solely payable by the Contractor, unless otherwise specified in the Service Order. The Employer shall pay the applicable GST to the Contractor at actuals, as per the rates specified in the Price Schedule. The Contractor shall deposit the applicable GST with the relevant government authority and file returns and such other analogous statutory filings with respect to GST, in accordance with the manner and timelines stipulated under applicable laws (including all rules and regulations in respect thereof). The Contractor shall, within three (3) days from such deposit and/or filings (as the case may be), submit to the Employer all relevant documentation evidencing such compliance and deposit of GST. If the Contractor fails to comply with its obligations under this Clause 6, the Employer shall be entitled to: (i) withhold payments due to the Contractor under the SO Documents; and/or (ii) invoke the bank guarantee(s) (as applicable) provided by the Contractor in accordance with Clause 8, to the extent of the amount of GST that has not been deposited by the Contractor with the government authorities, along with any interest, fine and/or penalty, as may be levied under applicable laws. In the event the Contractor is in breach of its obligations under this Clause 6.1, the Employer shall also be entitled to blacklist the Contractor and thereby restrict the Contractor from participating in future projects of the Employer.
- 6.2 The Contractor shall, in respect of the deposit of Taxes (as may be applicable), comply with all applicable laws (including all rules and regulations in respect thereof) and shall ensure that all requirements, as stipulated under applicable laws in relation to the deposit of Taxes, are complied with. The Contractor shall ensure timely deposit of all Taxes, including applicable fees, assessments and other analogous charges, as may be required in connection therewith with the government authorities. The Contractor shall be solely liable for any consequences arising out of non-compliance with such applicable laws and any expenses suffered by the Employer on account of such non-compliance by the Contractor shall be to the Contractor's account.
- 6.3 The Contractor hereby agrees and acknowledges that in case any tax benefits/rebates, duty drawbacks, GST refunds or such other applicable tax concessions and/or exemptions are available with respect to the Services, the Contractor shall avail of such concessions and/or exemptions or benefits and pass on such exemptions or benefits to the Employer or shall assist the Employer in availing such exemptions or benefits. In order to enable the Employer to satisfy its obligations under this Clause 6.1, the Contractor shall duly execute all such further instruments and documents and do or procure to be done all such acts or things, as may be required to ensure that the terms of the SO Documents are complied with.
- 6.4 If there is a delay in Completion and a statutory increase occurs in the applicable GST or implication of any new Taxes during the period of such delay, for reasons not attributable to the Employer, then the same shall be to the account of the Contractor.

## **7. Bank Guarantees**

- 7.1 The Contractor shall provide the Employer with an Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and/or Contract Performance cum Performance Bank Guarantee, as the case may be, issued by an Acceptable Bank, at the times and in the amount, manner and form as more particularly specified in the Service Order. The Contractor shall also procure a confirmation from the bank issuing such Advance Payment Bank Guarantee, Contract

Performance Bank Guarantee, Performance Bank Guarantee and/or Contract Performance cum Performance Bank Guarantee, as the case may be, of the valid issue of such guarantees and provide such confirmation to the Employer, within ten (10) days of the submission of such bank guarantees to the Employer. The Contractor shall ensure that the Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and/or Contract Performance cum Performance Bank Guarantee, as the case may be, that is submitted by the Contractor and the rights and interests therein are assignable by the Employer in favour of its lenders or security trustees. In the event that the bank issuing such Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and/or Contract Performance cum Performance Bank Guarantee, as the case may be, no longer meets the requirement of an Acceptable Bank at any time during the subsistence of such bank guarantee, the Contractor shall replace such bank guarantee with another bank guarantee from an Acceptable Bank within fifteen (15) days of the Employer's demand.

- 7.2 The Employer shall have an unqualified option under the Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and/or Contract Performance cum Performance Bank Guarantee, as the case may be, to invoke such guarantee(s) and claim the amounts thereunder in the event of the Contractor's failure to honour its obligations, responsibilities or commitments under the SO Documents for which such relevant security has been provided and/or in respect of any amounts due from the Contractor to the Employer.
- 7.3 In the event the Employer draws on the Contract Performance Bank Guarantee, the Performance Bank Guarantee or Contract Performance cum Performance Bank Guarantee, as the case may be, in part or in full, the Contractor shall immediately restore the value of such bank guarantee to such value which existed prior to drawal of such bank guarantee. If the Contractor fails to restore such bank guarantee, the Contractor shall not be entitled for any further payments under the SO Documents.
- 7.4 In the event that:
- (a) the Completion of the Services is delayed beyond the Completion Schedule on account of which the advance amount remains unadjusted, the validity of the Advance Payment Bank Guarantee shall be extended till the revised Completion Schedule or until recovery or refund of the full amount of the advance payment;
  - (b) the Completion of the Services has been delayed beyond the Completion Schedule, thirty (30) days prior to the scheduled expiry of the Contract Performance Bank Guarantee, the validity of the Contract Performance Bank Guarantee shall be extended till the revised Completion Schedule; and
  - (c) the Defect Liability Period is extended, the validity of the Performance Bank Guarantee or the Contract Performance cum Performance Bank Guarantee, as the case may be, shall be extended till the expiry of such extended Defect Liability Period.
- 7.5 The Parties agree that all costs relating to the bank guarantees provided by the Contractor in accordance with the terms of this Clause, including any costs in respect of the opening, renewal, maintenance and invocation of such bank guarantees (as applicable), shall be borne by the Contractor.

## **8. Term of the Service Order and Completion Schedule**

- 8.1 The SO Documents shall be in full force and effect from the Effective Date and shall continue to be in subsistence until all obligations under the SO Documents have been fulfilled by the Parties, unless otherwise terminated in accordance with the provisions of the SO Documents ("**Term**").
- 8.2 The Completion Schedule shall be as specified in the Service Order. The Completion Schedule shall be deemed to be of essence with respect to the SO Documents and any extension of time in this respect shall also be considered to be of essence of the SO Documents. If the Contractor fails to Complete the Services or any part thereof, including failure to achieve any Milestone within the specified Completion Schedule, the Employer shall be entitled, at its option, to:
- (a) recover Delay Liquidated Damages from the Contractor; and/or
  - (b) terminate the SO Documents or part thereof and engage a third party to complete the Services, at the risk and cost of the Contractor.



8.3 Any cost or expense resulting from any such delay in achievement of any Milestone and/or Completion of the entire Scope of Work, shall be solely to the Contractor's account. The adjustments with respect to the amount recoverable, if any, in terms of Clause 8.2 above, shall be made from the bank guarantee(s) provided by the Contractor in terms of Clause 7, as may be available, or in any other manner as may be deemed appropriate by the Employer.

## 9. Variation

9.1 Subject to Clauses 9.4 and 9.5, the Employer shall have the right to propose, and subsequently require the Contractor to make, any change, modification, addition or deletion to, in or from the Scope of Work ("**Change**"). The Contractor may, during the performance of the Services, propose to the Employer any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Services. The Employer may at its discretion approve or reject any Change proposed by the Contractor.

9.2 Notwithstanding Clause 9.1, any necessary change made due to any default of the Contractor in the performance of its obligations under the SO Documents, shall not be deemed as a Change and shall not result in any adjustment of the SO Price or the Completion Schedule.

9.3 If the Employer proposes a Change or acknowledges the Contractor's proposal for a Change in accordance with Clause 9.1, it shall send to the Contractor a request to that effect, requiring the Contractor to prepare and furnish to the Employer as soon as practicable a proposal detailing the proposed Change ("**Change Proposal**"), which shall include, *inter alia*, brief description of the Change, estimated impact on the Completion Schedule, SO Price, Specifications or any other provisions of the SO Documents.

9.4 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fifteen (15) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a written change order, incorporating the proposed Change. If the Employer is unable to reach a decision within fifteen (15) days or decides not to proceed with the Change for any reason, it shall notify the Contractor accordingly.

9.5 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Completion Schedule, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of an order signed by the Employer ("**Interim Change Order**").

9.6 Upon receipt of an Interim Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal. If the Parties cannot reach an agreement within sixty (60) days from the date of issue of the Interim Change Order, then the matter may be referred for dispute resolution, in accordance with Clause 40.

9.7 Notwithstanding anything contained in this Clause, the Employer shall have the right to amend the Scope of Work and the revised SO Price shall be mutually agreed between the Parties. The Employer shall have the right to get any part of the Services to be performed by other consultants, advisors, contractors or service providers, which may be appointed from time to time by the Employer and thereby removing such Services from the Scope of Work.

## 10. Location for performing Services, Site Access and Mobilisation

10.1 Depending upon the nature of the Services and the requirements of the Employer, the Contractor shall be required to perform the Services from its own premises or at the Site or any other location as may be specified in the Service Order. In the event the Contractor is required to perform Services at the Site, the Employer shall provide the Contractor, on a non-exclusive basis, with the non-exclusive right to use of, enter upon, access and work upon such portions of the Site, as may be specified in the Service Order.

10.2 The Contractor agrees to provide and complete mobilisation at the Site (or any other premises as may be directed by the Employer) within such time period as specified in the Service Order, with all necessary consumable materials, equipment, rigs, machinery, personnel, etc. as may be required for the performance of the Services and specified in the SO Documents. The Contractor shall be responsible for mobilizing all necessary trained personnel and equipment as may be required for the performance of the Services in

accordance with Clause 14. Unless otherwise specified in the Service Order, the Contractor shall not be entitled to payment of any charges incurred in respect of mobilisation or demobilisation.

## **11. Utilities and Facilities at the Site**

- 11.1 The Parties agree that, unless specified otherwise in the Service Order, the Contractor shall, at its cost, be responsible for construction and maintenance of office and storage facilities at the Site. The Employer shall be responsible for arrangement of utilities required for the performance of the Services at a single point within the Site, as specified in the Service Order. The Contractor shall be responsible for any further distribution of such utilities and setting up a metering system for measuring the consumption of utilities. Unless otherwise specified in the Service Order, the cost of such utilities shall be borne by the Contractor.
- 11.2 The Contractor shall ensure that all the Contractor's Equipment is in sound operating condition, compliant with the site regulations and be safe and fit for the purpose and use intended under the SO Documents. The Contractor's Equipment shall be energy efficient and the Contractor shall perform Services in a manner which optimises the energy consumption by the Contractor. The Contractor shall be solely responsible for the Contractor's Equipment.
- 11.3 The Employer shall have the right to inspect and approve of all the Contractor's Equipment. Any Contractor's Equipment which is not in conformity with the terms of the SO Documents as per the Employers' determination, shall be promptly repaired or suitably replaced by the Contractor, at its own cost and expense.

## **12. Programme of Performance, Reports and Meetings**

- 12.1 Unless otherwise required by the Employer, the Contractor shall, within fifteen (15) days from the Effective Date, submit to the Employer a detailed programme of performance of the Scope of Work by the Contractor, presenting the sequence in which the Contractor proposes to schedule, program and achieve completion of the Milestones (if any) and all other obligations of the Contractor under the SO Documents. The programme so submitted by the Contractor shall be in accordance with the Completion Schedule and other dates and periods specified in the Service Order. The Contractor shall update and revise the programme as and when appropriate or when required by the Employer and shall submit all such revisions to the Employer.
- 12.2 The Contractor shall monitor progress of all the activities specified in the programme referred to in this Clause and submit a progress report to the Employer on a periodic basis, as may be required by the Employer's representative or as may be specified in the Service Order. The Employer and the Contractor shall, within ten (10) days of the Effective Date, mutually agree to the form of the progress report which shall cover, *inter alia*, aspects of progress of work as per the Services, performance issues, key operational hurdles and deliverables addressed during the report period or anticipated to be completed during the succeeding report period. The Contractor shall also furnish to the Employer information or status reports which the Employer may require from time to time. The Contractor shall inform the Employer immediately upon receipt of knowledge of occurrence of any event which may impact or hamper the performance of the Services. The Parties may also arrange for meetings to be held during the performance of the Services on a periodic basis. The Contractor shall make itself and its personnel available to attend such meetings.

## **13. Drawings and Documents**

- 13.1 Unless otherwise required by the Employer, the Contractor shall submit copies of the Drawings and Documents to the Employer for approval within fourteen (14) days of the Effective Date (or within such other time period as may be specified by the Employer). The Employer shall, within fourteen (14) days of receipt of such Drawings and Documents, either return one (1) copy thereof to the Contractor along with its approval or notify the Contractor in writing of its disapproval and provide comments. If the Employer disapproves the Drawings and Documents, the Contractor shall modify the Drawings and Documents as per the Employer's comments and resubmit them for approval.
- 13.2 The Contractor shall not deviate from any Drawings and Documents submitted in accordance with Clause 13.1, without the Employer's approval in writing. In the event of any inconsistency, inaccuracy or ambiguity in the Drawings and Documents, or if, in the opinion of the Contractor, any detail thereof requires modification, the Contractor shall immediately obtain the Employer's approval and further instructions in writing before proceeding with the modification in the Drawings and Documents, which the Contractor shall perform in compliance with such instructions issued by the Employer.

Notwithstanding any consent or approval of the Employer, the Contractor shall be responsible for, and promptly correct, any discrepancies, errors or omissions in the Drawings and Documents and other particulars supplied by the Contractor. If the Contractor neglects or refuses to make the required corrections, the Employer may, without prejudice to any of its other rights under the SO Documents, and after giving notice to the Contractor, proceed to make the correction by itself or through a third party, and shall be entitled to recover the cost thereof from the Contractor.

## **14. Personnel**

### **14.1 *Project Manager***

The Contractor shall, for the purpose of the SO Documents, designate a competent and experienced person to serve as the Contractor's project manager, who shall be responsible for the administration, supervision, co-ordination and execution of the Contractor's obligations hereunder. Such project manager shall be authorised to bind the Contractor for all purposes under the SO Documents and notices, approvals and consents given to or received from the project manager shall have the same effect as if given to or received from the Contractor.

### **14.2 *Manning Schedule***

- (a) Unless otherwise provided for in the Service Order or agreed by the Employer, the Contractor shall deploy personnel in accordance with the Manning Schedule. Notwithstanding the preparation of the Manning Schedule by the Parties, the Employer shall be entitled to amend the Manning Schedule (with reasonable notice) to modify the number of persons, category and the names of personnel who would perform the Services and the estimated Man-days to be spent in performing such Services and the Contractor shall deploy personnel in accordance with such revised Manning Schedule, as may be notified by the Employer. Any such change shall not entitle Contractor to any de-mobilisation and/or re-mobilisation charges or any other expenses or fees whatsoever. The Contractor shall maintain proper records, in the manner prescribed by the Employer, of the time spent by the Contractor's personnel in performance of the Services.
- (b) In the event the Contractor does not deploy the prescribed personnel or delays such deployment, then without prejudice to any other rights available to the Employer under the SO Documents or applicable laws, the Employer shall, until the date of deployment of necessary personnel in accordance with the Manning Schedule, be entitled to: (i) deploy such personnel as it deems appropriate and competent to perform the Services(s) (or portion thereof) at the cost and expense of the Contractor; or (ii) deduct Deployment Shortfall Liquidated Damages in accordance with Clause 24.3, whichever is higher, which shall be reimbursed by or recovered from the Contractor from the relevant Invoice or Running Account Bill, as the case may be.

### **14.3 *Other Obligations of the Contractor***

- (a) The Contractor shall be solely responsible for all personnel engaged for the performance of the Scope of Work, without any recourse to the Employer. The Contractor shall take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its personnel deployed at the Site and to preserve peace and protection of persons and property on and near the Site. The personnel shall possess suitable competence, ability, skill, expertise, training and qualifications as is required for the performance of the Contractor's obligations under the SO Documents. The Parties agree that the Employer shall have no responsibility whatsoever for the Contractor's personnel, Sub-Contractors, vehicles and equipment, which are engaged for the performance of the Scope of Work under the SO Documents. The Employer reserves the right to require the Contractor to cause removal or replacement of any personnel indulging in misconduct or acting in a manner which is non-compliant with the SO Documents or prejudicial to the health, safety, protection of the project or the environment.
- (b) The Contractor shall, and require its Sub-Contractors and personnel engaged in performance of the Scope of Work to, comply with the SO Documents and relevant labour laws, including laws relating to employment, provident fund, minimum wages, prohibition of child labour, health, safety, welfare and immigration. The Contractor shall, and ensure that its personnel, Sub-Contractors and their respective personnel shall, strictly comply with the Human Resources and Industrial Relations Requirements and other standard norms, rules, regulations and policies prevalent in the industry,



while performing their respective obligations under the SO Documents. In the event the Contractor is in breach of the Human Resources and Industrial Relations Requirements and/or any of its obligations under this Clause 14.3(b), the Employer shall be entitled to levy liquidated damages upon the Contractor, in accordance with Clause 24.5.

- (c) The Contractor shall undertake background verification and screening in respect of all personnel engaged for performance of the Scope of Work, including for criminal records and shall be responsible for the visas, work permits and other immigration requirements for its personnel.
- (d) The Contractor shall be liable and responsible for all payments to its personnel, including salaries, wages, Taxes, allowances and other benefits in accordance with applicable laws. Unless otherwise specified in the Service Order, the Contractor shall, at its own cost, make arrangements for the engagement of all personnel, local or otherwise, including their boarding and lodging and transport.

## **15. Permits and Licenses**

The Contractor shall obtain and maintain all necessary authorisations and clearances for the performance of the Services, which may be required to be obtained and maintained under applicable laws, including any import licenses, immigration, temporary residence and exit permits, as may be required for the Contractor to perform and complete the Services in accordance with the SO Documents. The Contractor shall maintain all records and registers as per the provisions of applicable laws and shall be solely liable for any consequences arising out of non-compliance with applicable laws by itself or by its Sub-Contractors, agents or personnel. Any incidental expenses for complying with applicable laws shall be borne by the Contractor.

## **16. Quality Assurance**

The Contractor shall perform the Services strictly in accordance with the Drawings and Documents, Specifications, Good Industry Practice and all terms and conditions specified in the SO Documents such that the Services meet the requirements of the SO Documents including, *inter alia*, the Performance Guarantee. The Contractor shall institute a system for quality assurance for complying with the requirements set forth in the SO Documents and the quality control plans and procedures specified or approved by the Employer. The Contractor shall strictly adhere to such quality assurance system. However, such compliance shall not relieve the Contractor of its duties, obligations or responsibilities under this Contract. The Employer reserves the right to reject the Services on account of non-compliance with the quality assurance requirements under the SO Documents and the Contractor shall be liable for any costs, losses or damages in respect of the same.

## **17. Maintenance of Site**

The Contractor shall keep the Site clean and otherwise free from accumulation of waste materials, rubbish and other debris resulting from performance of the Services. On or before Completion, the Contractor shall remove from the Site all waste materials, rubbish and other debris resulting from the performance of the Services, as well as all the Contractor's Equipment and surplus material to which the Employer does not hold title, and shall leave the Site in a neat, clean and usable condition.

## **18. Cooperation**

The Contractor shall fully co-operate with the Employer's other contractors or third parties deputed by the Employer at the Site. The Contractor shall coordinate and plan its work and activities in mutually agreed schedule with the Employer's representative, other contractor(s) and third parties at the Site, and shall undertake all actions as may be necessary for such cooperation. If any part of the Contractor's work is dependent upon the work of any other contractor or third party, it shall be the responsibility of the Contractor to inspect and promptly report in writing to the Employer of any defect in such works which may affect the performance of the Services. The failure of the Contractor to do so shall constitute an acceptance by the Contractor of the other contractor's or third parties' work and no claim or extension of time by the Contractor in this regard shall be entertained by the Employer.

## **19. Free Issue Material**

- 19.1 The Employer may supply Free Issue Materials to the Contractor from its stores, in accordance with the requirement of the Contractor and/or stipulations set out in the Service Order. If such Free Issue Materials are being supplied, the Contractor shall take possession of such Free Issue Materials and transport the

same from the Employer's stores to the Site, or any other place where it is performing Services at, at its cost and risk.

- 19.2 The Contractor shall prepare and submit to the Employer, within such timeline as may be prescribed by the Employer: (i) an overall schedule for the estimated Free Issue Materials as may be required by the Contractor for the performance of the Services; and (ii) a look ahead schedule for the estimated quantities of the required Free Issue Materials.
- 19.3 Any subsequent requisition for issue of Free Issue Materials submitted by the Contractor to the Employer shall contain the following details:
- (a) cumulative quantity issued prior to the current requisition;
  - (b) available stock with the Contractor; and
  - (c) quantity of Free Issue Materials required under the current requisition, together with the details of the proposed and theoretical consumption of the same and the program for the Services for which such Free Issue Materials are required.
- 19.4 For each consignment of Free Issue Materials, the Contractor shall provide a written acknowledgement of the receipt thereof. The acknowledgement shall indicate full particulars of the quantities, sections, sizes, grade and such other information as may be required by the Employer. The Contractor shall use the Free Issue Materials provided by the Employer solely for the performance of the Services.
- 19.5 Any Free Issue Material issued by the Employer to the Contractor from its stores shall be on the basis of the Drawings and Documents which are pre-approved by the Employer. The Contractor shall utilise the Free Issue Materials in accordance with the wastage parameters prescribed by the Employer.
- 19.6 The Contractor shall make adequate arrangements for stacking of Free Issue Materials. The Contractor shall be responsible for safe custody of such Free Issue Materials and shall be liable for any loss or damage caused to the Free Issue Material.
- 19.7 The Contractor shall submit a consumption statement for Free Issue Material along with each Running Account Bill/Invoice and/or Final Invoice raised, as the case may be, in a format as may be specified by the Employer, which shall tally with the balance Free Issue Material and scrap available with the Contractor. The Employer reserves the right to withhold payment in the event the reconciliation statement is not submitted to the satisfaction of the Employer.
- 19.8 On the expiry of the Term, surplus Free Issue Material shall be returned by the Contractor to the Employer's stores, at the risk and cost of the Contractor. The Contractor shall not be permitted to utilise any Free Issue Materials provided to it in excess of the theoretical consumption specified for such Free Issue Materials (including permissible wastage limits as may be specified for such Free Issue Materials). If the Contractor: (i) fails to return the surplus Free Issue Materials; or (ii) utilises any Free Issue Material in excess of the theoretical consumption specified for such Free Issue Materials (including permissible wastage limits as may be specified for such Free Issue Materials), the Employer shall have the right to recover from the Contractor the landed cost (*i.e.* cost plus freight, Taxes and twenty five percent (25%) of overheads), incurred by the Employer in respect of such Free Issue Materials which the Contractor has failed to return or consumed in excess of the prescribed theoretical quantity.

## **20. Insurance**

- 20.1 Unless otherwise specified in the Service Order, the Contractor shall, at its own cost, arrange, secure and maintain, all insurance policies required under applicable laws in connection with the performance of the Services (except the insurance policy(ies) required to be obtained by the Employer as per the SO Documents), including professional liability and indemnity, workmen's compensation, employees' state insurance, public liability insurance and insurance for all its employees, equipment, vehicles and other assets engaged in the performance of the Services.
- 20.2 The Basic Price is inclusive of charges pertaining to such insurance, unless otherwise specified in the Service Order. If any damage is caused to the property of the Employer or of a third party during the performance of the Services, the cost of such damages as estimated by the Employer or ascertained or demanded by the affected third party shall be borne by the Contractor. The Contractor shall [\(where](#)

required by the Employer) designate the Employer's lenders as the 'loss payees', in all the insurance policies procured by the Contractor under the SO Documents.

## **21. Inspection, Testing and Review**

- 21.1 The Employer, its representatives or any TPIA shall have the right to inspect, examine and review the performance of the Services during any stage of the Services and at any and all places where the Services are being performed, in accordance with the inspection and testing requirements as may be stipulated in the Specifications. The procedures for such inspection, examination or review shall be as set out in the Specifications or in accordance with Codes and Standards and/or Good Industry Practice. The Contractor shall cooperate with the Employer for such inspection, examination, reviewing and shall if necessary, obtain the authorisation for the Employer to conduct the same.
- 21.2 For determining that the Services conform to the requirements of the SO Documents including, *inter alia*, the Performance Guarantee, the Employer may require the Contractor to carry out, or cause to be carried out, tests specified by it in accordance with the Codes and Standards, Good Industry Practice and applicable laws. The Contractor shall carry out or cause to be carried out all such tests in accordance with the instructions of the Employer and/or the Employer's representative and provide copies of the test results to the Employer's representative.
- 21.3 The Contractor shall furnish all requisite facilities, assistance, labour, equipment, materials, utilities, apparatus and instruments necessary for the safe and convenient inspection and testing in accordance with this Clause 21. The right of inspection, examination, review and testing by the Employer, its representatives or TPIA provided herein is intended solely for the Employer's benefit. No exercise of or failure to exercise such right shall relieve the Contractor of any of its obligations hereunder or prejudice any of the Employer's rights under the SO Documents.

## **22. Acceptance and Rejection**

- 22.1 If as a result of any inspection, examination or testing carried out in accordance with Clause 21, the Employer determines that any part of the Services performed is Defective or otherwise not in accordance with the SO Documents, the Employer shall have the right to reject such part of the Services performed and shall notify the Contractor promptly of such rejection. The Contractor shall promptly undertake the necessary remedial work at its own cost and ensure that the rejected Services are re-performed to comply with the SO Documents.
- 22.2 After completion of the necessary remedial work, the Employer has the right to subject such re-performed and rectified work to further inspection, examination and testing by the Employer, its representatives or TPIA. All costs and expenses of such further inspection, examination and testing shall be to the Contractor's account. The Contractor shall not be entitled to raise any Running Account Bills or Invoices for any sums payable in respect of the portion of the Services which has been rejected by the Employer in accordance with the provisions of this Clause.

## **23. Performance Guarantee**

- 23.1 The Contractor shall ensure that all the Services performed shall comply with and meet the Performance Guarantee. The Contractor shall maintain such Performance Guarantee at all times during the Term. The Employer shall monitor and evaluate the compliance of Services with the Performance Guarantee on a periodic basis, in accordance with Clause 21. If the Performance Guarantee are not achieved (either in whole or in part), the Employer shall have the right to:
- (a) levy Shortfall Liquidated Damages in accordance with Clause 24.2;
  - (b) engage any third party contractors or service provider(s) for achievement of Performance Guarantee in accordance with Clause 31; or
  - (c) reject such Services without any liability whatsoever, in accordance with Clause 22.
- 23.2 The Employer has the right to review the Performance Guarantee and revise the Performance Guarantee accordingly, as may be agreed between the Parties. The Contractor shall facilitate and support the Employer to enable review, revision and improvement of the Performance Guarantee.

## **24. Liquidated Damages**

- 24.1 If the Contractor fails to complete any Milestone or achieve Completion as per the Completion Schedule, the Employer shall have the right to levy liquidated damages for such delay, in accordance with the terms specified in the SO Documents ("**Delay Liquidated Damages**").
- 24.2 If the Services fail to achieve the Performance Guarantee as stipulated in Clause 23, the Employer shall have the right to levy liquidated damages for such shortfall in performance, in accordance with the terms specified in the SO Documents ("**Shortfall Liquidated Damages**").
- 24.3 In the event the Contractor has deployed lesser personnel than as prescribed under the Manning Schedule, the Employer shall have the right to levy liquidated damages for such shortfall in deployment, in accordance with the terms specified in the SO Documents ("**Deployment Shortfall Liquidated Damages**").
- 24.4 The combined maximum ceiling for the Delay Liquidated Damages, Shortfall Liquidated Damages and Deployment Shortfall Liquidated Damages shall be as specified in the Service Order.
- 24.5 In the event the Contractor breaches any of its obligations set out under Clause 14.3(b) or Clause 27.3, the Employer shall have the right to levy liquidated damages for such breach, as specified in the Service Order.
- 24.6 The Parties agree that the liquidated damages set out in the SO Documents are a genuine pre-estimate of the losses/damages that shall be suffered by the Employer on account of any delay in completion of the Scope of Work and/or failure to achieve Performance Guarantee or deploy personnel and/or breach of obligations set out under Clause 26 (as may be applicable). The Parties further irrevocably agree that the liquidated damages prescribed herein: (i) shall be payable on demand without requiring any proof of actual loss/damages caused by the Contractor's breaches; and (ii) have been mutually determined after joint discussions and calculations.
- 24.7 The Parties agree that the GST applicable on liquidated damages payable by the Contractor under this Clause 24 shall be to the Contractor's account. The total amount of liquidated damages payable by the Contractor in terms of the SO Documents shall be grossed up to take into account such liability of GST and the Employer shall be entitled to raise invoice(s) upon the Contractor in respect of the same. The Employer may recover such liquidated damages by: (i) deducting such liquidated damages from any amounts due or which may become due to the Contractor; (ii) directing the Contractor to pay such liquidated damages to the Employer as a debt due and payable; or (iii) claiming such liquidated damages from available bank guarantees.
- 24.8 The payment of liquidated damages shall not relieve the Contractor from its obligation to achieve the Milestones (if any) and Completion, nor from any other obligations and liabilities under the SO Documents, and shall not prejudice any other remedy that the Employer may have in relation to the Contractor's non-compliance with the SO Documents. Any correspondence or minutes of meetings and/or acceptance of delayed performance of the Scope of Work shall not be construed as a waiver of liquidated damages payable under the SO Documents.

## **25. Compliance with Applicable Laws and Site Regulations**

- 25.1 The Contractor shall, and ensure that its Sub-Contractors and their respective personnel shall, abide by all applicable laws relating to the performance of the Scope of Work. The Contractor shall comply with the specific rules and regulations, as provided by the Employer and to be observed during performance of the SO Documents at the Site. The Contractor shall ensure that its Sub-Contractors, labourers and personnel also comply with the said rules and regulations. Such rules and regulations shall include rules in respect of security, safety of the Services and people at the Site, gate control, sanitation, medical care and fire prevention. The Contractor shall also comply with the 'code of conduct', published on the Employer's website, during the performance of its obligations under the SO Documents.
- 25.2 The Contractor shall provide and maintain, at its own cost, all lighting, fencing and watch and ward for the Site, as may be necessary for the proper execution and the protection of the Services and the safety of the Employer's personnel and property, occupiers of adjacent property and the general public. The Contractor shall develop and submit for the Employer's Representative's approval, a comprehensive security plan with respect to the Services and the Site, which shall be consistent with the security requirements specified by the Employer, and the Contractor shall strictly adhere to such plan approved

by the Employer. The Contractor shall be further responsible for keeping unauthorised persons away from the Site or the portions for which the Contractor is responsible for security.

25.3 The Contractor shall be liable for any damage or injury to persons or property of the Employer or third parties caused as a result of acts or omissions of the Contractor in the course of performing the Scope of Work under the SO Documents.

## **26. Compliance with Environmental, Social and Governance Requirements**

26.1 The Contractor shall, as a part of performing its obligations under the SO Documents, ensure responsible business management pertaining to environmental, social and governance (“**ESG**”) related matters. In this regard, the Contractor shall, and ensure that its Sub-Contractors and their respective personnel shall: (i) comply with policies, codes and guidelines, as may be notified by the Employer to the Contractor, pertaining to the ESG requirements and as may be required in terms of applicable laws; (ii) employ management systems for ESG risks and opportunities, and commit to continuous improvements thereof; (iii) ensure fair terms and conditions of employment for its Sub-Contractors, employees and personnel; (iv) take all necessary care of the personnel engaged in the performance of the Services and undertake activities for their skill enhancement and welfare; (v) assess and mitigate the health, safety and environmental risks which may arise due to the performance of the Scope of Work; and (vi) focus on corporate responsibility and long term sustainability.

26.2 The Contractor shall, and ensure that its Sub-Contractors and their respective personnel shall, abide by all environmental laws. The Contractor shall take all necessary care that the Scope of Work is performed with the minimum possible impact on the environment and local community in respect of land and occupants affected by or adjacent to the Site, and shall further take all precautions to avoid pollution or contamination of air, land or water arising out of the performance of the Scope of Work. The Contractor shall ensure efficient management and disposal of hazardous materials and toxic emissions, in compliance with the applicable laws. The Contractor shall preserve and protect all existing vegetation such as trees (but not shrubs or grass) on or adjacent to the Site. Further, the Contractor shall not remove or destroy such vegetation, unless such vegetation creates any hindrance with respect to the performance of the Services.

26.3 Further, the Contractor shall, and ensure that its Sub-Contractors shall, as part of its corporate responsibility, undertake to focus on: (i) the promotion of diversity, prosperity and sustainable development; (ii) enhancement of skills, empowerment of women, protection of human rights and development of local community; (iii) reduction of pollution, preservation of biodiversity and water resources, conservation of natural resources and energy and supporting efforts to combat climate change; (iv) develop and use environmental friendly technology and reduce negative impact on the environment; (v) creation and implementation of sustainable water use strategies; (vi) avoiding the usage of plastic (including any single use plastic items or non-biodegradable materials) and innovating new products to reduce carbon footprint; and (vii) establishing strong risk management and corporate governance mechanisms and build healthy stakeholder relationships.

26.4 In furtherance to the objectives and requirements stipulated in this Clause 26, the Contractor represents, warrants and covenants that:

- (a) equal employment opportunities and a work environment conducive to the growth and development are provided to the Contractor’s personnel;
- (b) all personnel are employed on their own free will;
- (c) the Contractor’s workforce does not comprise of any form of prohibited labour, including forced or bonded labour and child labour;
- (d) the Contractor’s personnel are not subjected to any form of discrimination or harassment;
- (e) there is no incidence of slavery and human trafficking of any form in any transactions entered into by the Contractor;
- (f) the Contractor’s personnel do not and shall not indulge in any activity which is prohibited under the applicable laws;



- (g) regular meetings are conducted with the Contractor's personnel by the supervisor of such personnel such that the personnel are provided with a fair and transparent forum to freely raise their problems and grievances;
- (h) a formal grievance redressal mechanism is established by the Contractor such that its personnel have free and fair access to the Contractor's representative, for the personnel to raise their grievances, without any kind of prejudice or retaliation on account of raising such grievances; and
- (i) the Employer's whistle blower policy is complied with and if any of the Contractor's personnel becomes aware of any wrongdoing or unethical activity being performed by the Employer's personnel or other contractors, then such activity is promptly reported to the Employer in accordance with such policy.

## **27. Compliance with Safety Requirements**

- 27.1 The Contractor shall, and ensure that its personnel, Sub-Contractors and their respective personnel shall, strictly comply with the Safety Requirements and other standard safety norms, rules, regulations and policies prevalent in the industry, while performing the obligations under the SO Documents. The Contractor shall conduct, prior to commencement of the Services, a: (i) job safety analysis for the Services and obtain a permit to work for the same, which shall be duly approved by the Employer, and (ii) training session for the personnel deployed for the performance of the Services on the Safety Requirements and compliance measures with respect to the same. The Contractor shall further ensure that the personnel deployed for the performance of the Scope of Work are adequately trained and medically fit for the purpose of performing any activities which may be hazardous or involve high risks.
- 27.2 All safety plans, checklists and method statements prepared by the Contractor in respect of the Services shall, if required by the Employer, be submitted to the Employer for approval. The Contractor shall, with the Employer's approval and in accordance with the Safety Requirements, appoint and deploy competent safety resources at the Site, including supervisors and safety stewards, for the performance of the SO Documents. The Contractor shall, as part of the Safety Requirements and for the benefit of its personnel: (i) establish and construct necessary safety-related infrastructure and welfare facilities at the Site; (ii) conduct safety awareness and training programs for its personnel in order to ensure that the necessary risk control measures are adopted for the performance of the Services; (iii) conduct periodical medical check-ups and provide adequate medical facilities; (iv) provide personal protective equipment that complies with IS/EN standards (as updated); (v) conduct routine inspections in respect of compliance with safety measures at the Site; (vi) prepare and enforce emergency plans, policies for prevention of substance abuse, fire incidents and safety hazard mitigation policies etc.; (vii) adhere to housekeeping requirements for the Site and other facilities established by the Contractor; and (viii) constitute a Site-level safety committee for the purpose of reviewing and reporting compliance with the Safety Requirements. Further, the Contractor shall, and ensure that its Subcontractors and their personnel shall, ensure prompt identification and mitigation of all safety-related incidents and conditions, that may arise during the performance of the Scope of Work and keep the Employer apprised of the same.
- 27.3 The Employer and/or its representatives shall have the right to conduct audits and inspections on a periodic basis and evaluation on a continuation basis, in order to assess the Contractor's compliance with the Safety Requirements and its obligations under this Clause 26. Based on the evaluation of such audits and inspections, the Employer may, at its discretion, provide incentives to the Contractor for satisfactory compliance with the Safety Requirements, in accordance with the terms specified in the Safety Requirements. In the event the Contractor is in breach of the Safety Requirements and/or any of its obligations under this Clause 26, the Employer shall also be entitled to levy liquidated damages upon the Contractor, in accordance with Clause 24.5.
- 27.4 If the Employer has a first-aid centre and other facilities at the Site, the Employer may, at its option, make available such facilities for the treatment of the Contractor's personnel, who may be injured or become ill while engaged in the performance of the Services. If such facilities are made available to the Contractor's personnel then in consideration for the use of such facilities, the Contractor hereby agrees to defend, indemnify and hold harmless the Employer and all providers of medical services or facilities from any claims arising out of or relating to the use of such medical services or facilities by the Contractor's personnel. Nothing herein contained shall be construed as imposing any duty upon the Employer to provide facilities necessary to furnish emergency medical treatment or related services to

the Contractor's personnel or to make such facilities and/or services available to the Contractor's personnel.

## **28. Title and Risk of Loss**

- 28.1 Except as otherwise provided herein, title and proprietary interest in the Services (or any part thereof) and any other items created pursuant to performance of the Services, including any Drawings and Documents, shall become and remain the property of the Employer.
- 28.2 Notwithstanding the foregoing, the Contractor shall be liable for and shall bear any and all risk of loss or damage caused due to performance of the Services until Completion thereof in accordance with the provisions of the SO Documents. Upon Completion, risk of loss or damage shall pass to the Employer, provided that any loss or damage resulting from the performance of the Services which are caused due to reasons attributable to the Contractor shall be borne by the Contractor.

## **29. Deficiency in Services and Defect Liability**

- 29.1 The Contractor shall be liable and keep the Employer indemnified for any discrepancies, error or omissions in the Services performed by it, whether or not the same has been approved by the Employer. The Contractor also warrants that any works or items produced or created during the course of performing the Services (or any part thereof) shall be free from any Defects. If: (i) errors, omissions, ambiguities, inadequacies are found in such Services; (ii) there is any fault, imperfection, shortcoming or inadequacy in the quality, nature and performance or any other deficiency whatsoever in the performance of Services by the Contractor; and/or (ii) any Defects are found in such works during the Defect Liability Period, the Contractor shall, at its cost and expense and in consultation and agreement with the Employer regarding appropriate remedying of such Defects, promptly repair, replace or otherwise make good such Defects within the Defect Liability Period or within such time period as may be notified by the Employer. For the avoidance of the doubt, it is clarified that the determination of a Defect shall be at the sole discretion of the Employer and the decision of the Employer in this regard should be final and binding on the Contractor. The Employer's acceptance of the Services, any works created pursuant thereto and tools and tackles, shall in no way relieve the Contractor of its obligations under this Clause.
- 29.2 If applicable, the Employer shall provide the Contractor with necessary access to the Site as may be required for performance of the Contractor's obligations under this Clause 29.2. The Contractor may, with the consent of the Employer, remove from the Site the works or items created pursuant to the performance of Services or any part thereof that is Defective, deficient and/or damaged, if repairs to the Services cannot be expeditiously carried out at the Site.
- 29.3 If the Contractor fails to promptly commence remediation of such Defect(s), the Employer may, following notice to the Contractor, proceed to remedy the Defect(s), and any costs incurred by the Employer in connection therewith shall be: (i) reimbursed by the Contractor; (ii) deducted by the Employer from any amounts due to the Contractor; or (iii) claimed by the Employer under the applicable bank guarantee(s).
- 29.4 If the repair, replacement or making good of any Defects is of such a character that it may affect the efficiency of the Services being performed, the works or any part thereof, the Employer may require the Contractor to immediately perform tests on the repaired or replaced part of such works upon completion of such remedial work. If such repaired or replaced part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until such part passes such tests. The tests shall be mutually agreed upon by the Parties.

## **30. Representations and Warranties**

- 30.1 The Contractor hereby represents and warrants to the Employer that:
- (a) it is duly organized, validly existing, and in good standing under the laws of the country or state in which it is organized or incorporated;
  - (b) it is duly qualified to do business in all jurisdictions and owns or possesses all applicable permits that are necessary to operate its business as is currently being conducted, perform its obligations under the SO Documents and that the copies of such applicable permits have been delivered to the Employer;

- (c) the execution, delivery and performance of the SO Documents by the Contractor and the consummation of the transactions contemplated thereby do not and shall not contravene the certificate of incorporation or by-laws of the Contractor and do not and shall not conflict with or result in: (i) a breach of or default under any indenture, agreement, judgment, decree, order or ruling of any court, government authority or regulatory body to which the Contractor is a party or by which any of its assets are bound that would have a material adverse effect on the Contractor's ability to perform its obligations under the SO Documents; or (ii) a breach of any applicable laws;
- (d) the SO Documents constitute legal, valid and binding obligations of the Contractor, which are enforceable against it in accordance with the terms of the SO Documents;
- (e) it is the owner, valid licensee or authorized user of all Intellectual Property Rights and any other tools or equipment which shall be used for or is incident to the design, engineering and the performance of the Scope of Work and that the Employer's proposed use (as contemplated by the SO Documents) of the Services and all other property provided by the Contractor under the SO Documents, do not and shall not infringe or misappropriate the Intellectual Property Rights of any Person;
- (f) the Scope of Work shall be performed with professionalism, promptness, diligence, in a skilled and workmanlike manner, in accordance with Good Industry Practice and the terms of the SO Documents;
- (g) there are no legal, arbitration proceedings or any other proceedings by or before any government authority, now pending or threatened against it, its Affiliate or any Sub-Contractor which, if adversely determined, could be expected to have adverse effects on the financial condition, options, prospects or business of the Contractor or the Contractor's ability to perform its obligations under the SO Documents;
- (h) it has the requisite expertise, skill, knowledge, experience, manpower and adequate infrastructure (with capacity and ability to augment all of these as may be necessary) to successfully perform the Scope of Work in accordance with the terms of the SO Documents;
- (i) it has examined all aspects of the SO Documents (including other terms and conditions of the SO Documents) and the Scope of Work and has satisfied itself fully as to the sufficiency of consideration for performance and completion of all of its obligations under the SO Documents;
- (j) the Services shall be free of Defects and deficiencies;
- (k) it is fully aware of and shall comply with all applicable laws during the performance of the Scope of Work;
- (l) the Services performed hereunder shall be executed in a timely manner with due care and diligence and shall be fit for the purposes and uses intended and capable of operation in the manner contemplated hereby and in accordance with the SO Documents;
- (m) any work product that may be created pursuant to the performance of the Services shall be free and clear of any and all claims and encumbrances;
- (n) neither the Contractor nor any of its Affiliates or Sub-Contractors, and to the best of its knowledge, none of its or its Affiliates' or Sub-Contractors' respective employees, officers, directors, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for: (i) any government official, employee, representative or agent; (ii) any employee, officer, director, representative or agent of the Employer or its Affiliates; or (iii) any other Person with respect to the negotiation, execution or performance of the SO Documents; and
- (o) no representation or warranty made by it, as contained herein or in any other document furnished by it to the Employer or to any government authority in relation to applicable permits in relation to the SO Documents, contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading.

### 30.2 The Employer represents and warrants to the Contractor that:

- (a) it is a corporation duly organized, validly existing, and in good standing under the laws of India;



- (b) it has full corporate power and authority to execute, deliver and to perform its obligations under the SO Documents, and that the execution, delivery and performance of the SO Documents by the Employer have been duly authorized by all necessary corporate action on the part of the Employer; and
- (c) the execution, delivery and performance of the SO Documents by it and the consummation of the transactions contemplated thereby do not and shall not: (i) contravene the Employer's certificate of incorporation, its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the Employer is a party that would materially and adversely affect the Employer's ability to perform its obligations under the SO Documents; or (iii) breach any applicable laws, judgment, decree, order or ruling of any court, government authority or regulatory body to which the Employer is a party or by which any of its assets are bound.

### **31. Contractor's Liability for Failure to Perform**

In the event that the Contractor is in breach of its obligations under the SO Documents, which results in delay in achievement of any Milestone or Completion within the Completion Schedule or hindrance in performance of the Scope of Work, the Employer shall, without prejudice to any of its other rights under applicable law or the SO Documents, be entitled to complete the Services by itself or appoint another contractor to perform or complete the Services, and the Contractor shall, in addition to the payment of liquidated damages, be liable to reimburse to the Employer any additional costs, including any overheads, incurred for the engagement of such third party contractor.

### **32. Intellectual Property Rights**

- 32.1 In performing the Scope of Work, the Contractor shall not incorporate into the Services or any part of the Scope of Work or use in connection with the provision of the Services, any materials, components, designs, Drawings and Documents, methods, processes or systems that involve the use of any Confidential Information, or Intellectual Property Rights that the Contractor does not have the right to use or incorporate or which may result in claims or suits against the Employer, the Contractor or any Sub-Contractor, arising out of claims of infringement of any proprietary rights, Intellectual Property Rights of a third party or any licensing agreements thereof.
- 32.2 The title to all the designs, Drawings and Documents, documentation, inventions and discoveries made by the Contractor in the course of performing its obligations under the SO Documents shall, at all times, reside with the Employer. Notwithstanding any proprietary legends or copyright notices to the contrary, the Employer shall be entitled to copy or reproduce documents and information furnished by the Contractor with respect to the SO Documents and distribute such copies or reproductions to others for the purposes of the Services and/or the SO Documents. The Contractor is responsible for obtaining necessary permissions and releases from any third parties placing proprietary rights or copyrights on such documents or information. The Contractor agrees to do everything necessary to assign to the Employer all Intellectual Property Rights which arise as a result of the performance of the Services and at the time that such Intellectual Property rights are first created.
- 32.3 The Contractor shall defend, indemnify and hold harmless the Employer, the Employer's representatives, employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, which the Employer or its representatives, employees and officers may suffer as a result of any infringement or alleged infringement of Intellectual Property Rights, which the Contractor is not licensed to use, or any claims, suits or proceedings by a third party, whether rightful or otherwise, alleging that a proprietary right or copyright has been infringed by any use, copying, reproduction or distribution by the Employer.

### **33. Indemnity**

- 33.1 The Contractor shall defend, indemnify and hold the Employer harmless from and against any and all losses arising directly or indirectly from or incurred by reason of:
  - (a) the acts or omissions of the Contractor, its Affiliates, Sub-Contractors or any of their respective personnel during the performance of the Contractor's obligations under the SO Documents, including any such losses arising from injury to or death of any person or damage to or loss of property;

- (b) hazardous materials introduced to the Site or any other location by the Contractor, its Affiliates, Sub-Contractors or their respective personnel in the performance of the Scope of Work;
- (c) non-compliance with applicable laws by the Contractor, its Affiliates, Sub-Contractors or their respective personnel; and
- (d) any breach of representations or warranties given by the Contractor, its Affiliates, Sub-Contractors or their respective personnel under or in relation to the SO Documents.

33.2 The obligation to indemnify stipulated in this Clause is a continuing, separate and independent obligation of the Contractor and shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied towards reduction of the claims made against the Employer.

#### **34. Limitation of Liability**

34.1 The aggregate liability of either Party, arising out of or in connection with the Scope of Work or the SO Documents, shall not exceed one hundred percent (100%) of the SO Price, provided that no such limit shall apply in respect of the Contractor's liability for:

- (a) losses resulting from any fraud, wilful misconduct or illegal or unlawful acts or omissions of the Contractor or any Sub-Contractor or any of their respective personnel;
- (b) liquidated damages payable by the Contractor under the SO Documents;
- (c) costs and expenses incurred with respect to rectification of any Defect; and
- (d) liability pursuant to the breach of the Contractor's indemnity obligations under the SO Documents.

34.2 Neither Party shall be liable to the other Party for any loss of use, loss of production or loss of profits or any other indirect or consequential damage, whether foreseeable or not, that may be suffered by the other Party.

#### **35. Change in Law**

35.1 The Contractor shall, on or following the occurrence of a Change in Law, give notice of such Change in Law to the Employer in accordance with the provisions of this Clause as soon as may be reasonably practicable. The notice served pursuant to this Clause shall provide, *inter alia*, details of the Change in Law and the effect thereof on the SO Documents. If the Employer accepts the Change in Law proposed by the Contractor, the SO Price shall be correspondingly increased or decreased, and/or the Completion Schedule shall be adjusted to the extent that the Contractor has been affected in the performance of any of its obligations under the SO Documents.

35.2 If due to such Change in Law, the Contractor is entitled for any additional amounts, the same shall be paid to the Contractor only against a claim supported by documentary evidence, to the satisfaction of the Employer. If due to such Change in Law, the Employer is entitled to recover any amount, the same shall be recovered from the Contractor as a debt due and payable by the Contractor to the Employer.

#### **36. Force Majeure**

36.1 "**Force Majeure**" shall mean any event or circumstance or combination of events or circumstances in India which: (i) is beyond the reasonable control of the affected Party; (ii) the affected Party could not reasonably have anticipated or provided for before entering into the SO Documents; (iii) could not have been prevented by Good Industry Practice; (iv) is not suffered by a Sub-Contractor; (v) is unavoidable notwithstanding the reasonable care of the Party affected; and (vi) has not resulted from the negligence of the affected Party or the failure of such Party to perform its obligations under the SO Documents and which, or any consequences of which, has a direct, material and adverse effect upon the performance by the affected Party of its relevant obligations under the SO Documents and shall be restricted to the following events:

- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, terrorism and civil war; or

- (b) earthquake, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or nuclear or other natural disaster, epidemic, pandemic, lock downs imposed by government authorities.

36.2 Notwithstanding the foregoing, an event of Force Majeure shall not include:

- (a) any Site condition or event arising therefrom;
- (b) the occurrence of any manpower, material or equipment shortage;
- (c) inability to procure funding by the Contractor;
- (d) any increase in cost, prices, rates, wages, commissions, fees, duties or other levies;
- (e) any hindrance created by any third party in respect of any access right or right of use in respect of the Site;
- (f) inability of a Party to pay any amounts due pursuant to the SO Documents;
- (g) conditions caused by the negligence or wrongful acts of the affected Party;
- (h) a breach of any provision of the SO Documents or any default or failure by a third party in any agreement entered into by the affected Party with such third party;
- (i) any delay, default or failure (direct or indirect) in obtaining materials, equipment or performing services by any Sub-Contractor, any workers or agents thereof, performing the Scope of Work or any part thereof; or
- (j) disruption of access to the Site due to road conditions.

36.3 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the SO Documents by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof immediately following the date of commencement of any event of Force Majeure and in any event within seven (7) days of the occurrence of such event. Such notice shall be a pre-condition to an affected Party claiming relief for an event of Force Majeure and, if such notice has not been provided, the affected Party shall be precluded from claiming any loss pursuant to an event of Force Majeure.

36.4 The Party giving such notice shall be excused from the performance of its obligations under the SO Documents for so long as the relevant event of Force Majeure continues, and to the extent that such Party's performance is prevented, hindered or delayed. The Completion Schedule shall be extended for the time period during which such event of Force Majeure exists and, in such case, both Parties shall mutually discuss and arrive at the further course of action for the performance of their respective obligations. The Party invoking such event of Force Majeure as a cause for such delay shall promptly submit to the other Party proof of the nature of such delay and its effect upon the time for performance of its obligations.

36.5 Delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not constitute a default or breach of the SO Documents or give rise to any claim for damages or additional cost or expense. However, the affected Party shall mitigate the effect thereof upon its performance of the SO Documents and to fulfil its obligations under the SO Documents, including recourse to alternate acceptable sources of the Services and other resources, but without prejudice to either Party's right to terminate the SO Documents under Clause 38.

36.6 If the performance of the SO Documents is substantially prevented, hindered or delayed for either a period of more than one hundred and twenty (120) consecutive days or an aggregate period of more than fifty percent (50%) of the total Completion Schedule, on account of one or more events of Force Majeure during the currency of the SO Documents, the Parties shall attempt to develop a mutually satisfactory solution, failing which the Employer may terminate the SO Documents by giving a notice to the Contractor. In the event of termination pursuant to this Clause, the rights and obligations of the Employer and the Contractor shall be as set out in Clause 38.2.

## **37. Suspension**

- 37.1 The Employer may, by issuing a notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the SO Documents. Such notice shall specify the obligation of which performance is to be suspended, the date of suspension and the reasons thereof. The Contractor shall forthwith:
- (a) suspend performance of such obligation (except those obligations necessary for the care or preservation of the Services), until ordered in writing to resume such performance by the Employer;
  - (b) place no further subcontracts or orders for goods, supplies, services, work or facilities in respect of the Scope of Work, except to the extent expressly requested by the Employer; and
  - (c) unless otherwise directed by the Employer, use all endeavours to suspend on the most favourable terms available to the Contractor all orders, contracts, subcontracts and agreements to the extent affected by such suspension and otherwise minimise any additional costs associated with such suspension.
- 37.2 The Employer shall issue orders for suspension or reinstatement of the SO Documents to the Contractor in writing, as may be required. In the event of any suspension, the Completion Schedule shall be extended suitably by the Employer, which in any case shall not be more than for a period equal to the duration of suspension.
- 37.3 During a suspension, the Contractor shall not be entitled to payment of the SO Price which would have otherwise been ordinarily payable during the relevant period of such suspension, except for such part of the Scope of Work which has been completed prior to the date of suspension specified in the notice of suspension. Upon resumption by the Contractor of all activities affected by a suspension, the Employer shall resume payments of the SO Price with the payment dates adjusted to reflect the period during which scheduled payments were not made.
- 37.4 The Employer shall reimburse the Contractor any necessary, reasonable, proper, verified and demonstrable costs incurred as a direct result of such suspension of the Scope of Work, provided such costs are substantiated to the Employer's satisfaction. The Employer shall not be responsible for any costs and liabilities, if suspension or delay is due to default by the Contractor or its Sub-Contractors.

## **38. Termination**

### **38.1 *Termination for the Contractor's Default***

- (a) The Employer may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents forthwith and with no compensation, by giving a notice of termination, if the Contractor:
  - (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
  - (ii) assigns or transfers the SO Documents or any right or interest therein, except as provided under the SO Documents;
  - (iii) in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in execution of the SO Documents; or
  - (iv) delays performance of any obligation under the SO Documents, resulting in the maximum ceiling of the liquidated damages as stipulated in the SO Documents being reached.
- (b) The Employer may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents by giving the Contractor a termination notice of fifteen (15) days, with no compensation to the Contractor, if the Contractor:
  - (i) abandons or repudiates the SO Documents;
  - (ii) fails to commence work on the Scope of Work promptly or has suspended the progress of performance of its obligations under the SO Documents for more than thirty (30) days after receiving a written instruction from the Employer to proceed;

- (iii) fails to execute the SO Documents in accordance with the terms and conditions therein, or neglects to carry out its obligations under the SO Documents; or
- (iv) refuses or is unable to provide sufficient materials, services or labour to execute and complete the performance of the Services in a manner specified in the programme furnished under Clause 12 at such rates of progress that give assurance to the Employer that the Contractor can complete the Services in accordance with the Milestones or the Completion Schedule,

and the Contractor fails to remedy, or to take steps to remedy, such default within fourteen (14) days of its receipt of a notice from the Employer requiring the Contractor to cure such default.

(c) *Termination for Cross Default*

The Contractor agrees and acknowledges that the Contractor and/or its Affiliates have been awarded separate service orders and/or purchase orders in addition to this Service Order. The division of the scope of work under the respective orders that are awarded to the Contractor and/or its Affiliates, shall not be construed to limit their respective liabilities or responsibilities thereunder. The Contractor further agrees that, in the event of any breach or default by the Contractor and/or its Affiliates under any such order awarded to it, which would either result in a termination of or give rise to a termination right under such order, such breach or default shall be construed to be a breach or default under the SO Documents and the Employer shall, without prejudice to any other rights or remedies as it may possess, have the right to terminate all the orders in accordance with the provisions of termination contained under such other orders, at the risk and cost of the Contractor, by giving a notice of termination to the Contractor.

(d) Upon receipt of the notice of termination under Clause 38.1(a), Clause 38.1(b) or Clause 38.1(c), as the case may be, the Contractor shall, either immediately or upon such date as is specified in the notice of termination:

- (i) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Services already executed;
- (ii) deliver to the Employer parts of the works (or parts thereof) executed by the Contractor in the course of performing Services up to the date of termination;
- (iii) terminate all sub-contracts, except those to be assigned to the Employer;
- (iv) to the extent legally possible, assign to the Employer all rights, titles and benefits of the Contractor to the Services as on the date of termination and, as may be required by the Employer, in any sub-contracts concluded between the Contractor and its Sub-Contractors;
- (v) deliver to the Employer all Drawings and Documents, Specifications and all other documents prepared in connection with the Scope of Work by the Contractor or its Sub-Contractor, as on the date of termination;
- (vi) if applicable, co-operate with the Employer and take all necessary measures to achieve a smooth transition for the Site, the facilities being managed in the course of performing Services or any part thereof, from the Contractor to the Employer and comply with certain divestment and handover requirements, including:
  - a. demobilising personnel in a phased manner and handover the Site and the facilities to the Employer's personnel or such other persons as the Employer may direct;
  - b. delivering and transferring relevant records, reports, logs, manuals, documents containing Intellectual Property Rights, applicable permits and other licences pertaining to the Site or such facilities;
  - c. providing comprehensive training to the Employer's personnel or such other persons as the Employer may direct for the performance of the Services; and
  - d. survey the Site and the facilities for any damage or deficiencies and make good the same at its own cost and expense.

- (e) Upon such termination in terms of Clause 38.1, the Employer may take possession of the Site, expel the Contractor and complete the Scope of Work by itself or by employing any third parties in accordance with Clause 31.
- (f) Subject to Clause 38.1(g) below, the Contractor shall be paid the SO Price attributable to the Services (or part thereof) as executed by the Contractor and accepted by the Employer, as on the date of termination. If the Employer instructs the Contractor to provide for safekeeping of the Services, any reasonable costs incurred by the Contractor with respect to protection of the Services shall be paid by the Employer to the Contractor. Any sums due to the Employer from the Contractor and accruing prior to the date of termination shall be deducted from any amounts to be paid to the Contractor under the SO Documents.
- (g) Pursuant to termination of the SO Documents in accordance with Clause 38.1, if the Employer completes the Scope of Work (or any part thereof) under the SO Documents, the cost of completing such Scope of Work by the Employer shall be determined, as under:
  - (i) if the sum that the Contractor is to be paid, pursuant to Clause 38.1(f), plus the reasonable costs incurred by the Employer in completing the Services, exceeds the SO Price, the Contractor shall be liable to pay to the Employer such excess amounts incurred by the Employer;
  - (ii) if such excess is greater than the sums due to the Contractor under Clause 38.1(f), the Contractor shall pay the balance to the Employer; and
  - (iii) for termination due to the defaults by the Contractor, the Employer reserves the right to get the balance work done by other agencies at the risk and cost of the Contractor.

#### **38.2 Termination for the Employer's Convenience**

- (a) The Employer may, at any time, terminate the SO Documents for any reason whatsoever, by giving the Contractor a ten (10) days' notice of termination.
- (b) Upon receipt of the notice of termination under Clause 38.2(a), the Contractor shall take all measures as specified in Clause 38.1(d).
- (c) In the event of termination of the SO Documents under Clause 38.2(a), the Employer shall pay the following amounts to the Contractor:
  - (i) the SO Price, properly attributable to the Services executed by the Contractor and accepted by the Employer, as on the date of termination; and
  - (ii) the reasonable cost of termination of sub-contracts between the Contractor and its Sub-Contractors, subject to the Contractor submitting documentary evidence of such termination to the Employer's satisfaction.

38.3 In this Clause 38, in calculating any amounts due from the Employer to the Contractor, any sum previously paid by the Employer to the Contractor under the SO Documents, including any advance payment paid pursuant to the terms of payment under the SO Documents, shall be taken into account.

#### **39. Governing Laws**

The SO Documents shall be governed by and interpreted in accordance with the laws of the Republic of India.

#### **40. Settlement of Disputes**

40.1 If any dispute whatsoever arises between the Employer and the Contractor in connection with or arising out of the SO Documents, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination or the execution of the Scope of Work, whether during the progress of the Scope of Work or after Completion of the Services and whether before or after the termination, abandonment or breach of the SO Documents, the Parties shall seek to resolve any such dispute by referring the matter to an authorized representative of the Employer. Such representative shall provide his decisions within thirty (30) days of the referral of such dispute. Either Party, if not in agreement with such representative's decision, may proceed to resolve such dispute in accordance with Clause 40.2, within thirty (30) days of such decision.



- 40.2 All disputes arising hereunder and remaining unresolved in terms of Clause 40.1, shall be referred to the courts at Ahmedabad, Gujarat, India and such courts shall have exclusive jurisdiction on all matters arising out of or relating to the SO Documents.
- 40.3 Notwithstanding reference of any dispute to the Employer's representative or to the courts, the Parties shall continue to perform their respective obligations under the SO Documents, unless otherwise agreed by the Parties in writing. Further, each Party agrees to pay to the other Party, all such undisputed amounts due under the SO Documents, provided that such amounts due are not a subject matter of such dispute.
- 40.4 Notwithstanding anything to the contrary contained herein but subject to Clause 40.2, the Contractor acknowledges that damages may not be an adequate remedy for a breach of the SO Documents and that the Employer shall have a right to seek injunctive relief or specific performance, as a remedy for any actual or threatened breach. The Contractor agrees to the Employer seeking grant of injunctive relief to restrain any conduct or threatened conduct which is or shall be in breach of the SO Documents or specific performance to compel the Contractor to perform its obligations under the SO Documents, as a remedy for any actual or threatened breach which shall be in addition to any other remedies available to the Employer.

#### **41. Assignment and Subcontracting**

- 41.1 The Employer shall be entitled to assign the whole or any part of the SO Documents or any benefit or interest herein without the Contractor's consent. The Contractor particularly consents to the grant and creation by the Employer of a security interest in and assignment of the SO Documents and any and all of the Employer's rights, titles and interests in and under the SO Documents in favour of any lender, security agent or trustee. In furtherance of and to give effect to such security interest and assignment, the Contractor agrees to enter into such contracts, direct agreements, consents and deliver such legal opinions as are reasonably customary and as may be required by any of the lenders or their representatives.
- 41.2 The Contractor shall not be entitled to assign or subcontract any part of the SO Documents or any benefit or interest in or under the SO Documents, without the prior written approval of the Employer.
- 41.3 The Contractor shall be responsible for all acts, omissions and defaults of any Sub-Contractor, as if such acts, omissions and defaults were committed by the Contractor and any assignment or subcontracting shall not relieve the Contractor of any of its responsibilities under the SO Documents or at law.

#### **42. Confidentiality**

- 42.1 All information including, without limitation, oral and written information, disclosed by the Employer, the Employer's representative (including any experts appointed by the Employer) or Employer's personnel ("**Disclosing Party**") to the Contractor or any Person acting for and on behalf of the Contractor ("**Receiving Party**") is deemed to be confidential, restricted and proprietary to the Disclosing Party ("**Confidential Information**").
- 42.2 Except as specified in the SO Documents, the Confidential Information supplied is not to be reproduced in any form except as required to accomplish the intent of, and in accordance with the terms and conditions of the SO Documents. The Receiving Party shall provide the same care as it provides to protect its own similar proprietary confidential information to avoid disclosure or unauthorized use of the Confidential Information. All Confidential Information shall be retained by the Receiving Party in a secure place with access limited to only such of the Receiving Party's personnel, employees or agents who need to know such Confidential Information for the purposes of completing the Scope of Work, performance of obligations under the SO Documents and to such third parties as the Disclosing Party has consented to by prior written approval. Unless otherwise specified in writing, all Confidential Information, including all copies thereof: (a) remains the property of the Disclosing Party; (b) shall be used by the Receiving Party only for the purpose for which it was intended; and (c) shall be returned to the Disclosing Party or destroyed after the Receiving Party's need for it has expired or upon request of the Disclosing Party, and, in any event, upon expiration or termination of the SO Documents. At the request of the Disclosing Party, the Receiving Party shall furnish a certificate certifying that any Confidential Information not returned to Disclosing Party has been destroyed. For the purposes hereof, Confidential Information does not include information that:

- (a) is already published or otherwise in public domain before it was communicated to the Receiving Party without any fault or negligence of the Receiving Party;
- (b) prior to disclosure, was already in the Receiving Party's legitimate possession without having been obtained directly or indirectly from the Disclosing Party;
- (c) is lawfully obtained from an independent source that had neither direct nor indirect obligation of confidentiality towards the Disclosing Party;
- (d) is independently developed by the Receiving Party, by itself or through parties who have not had, either directly or indirectly, access to or knowledge of such information; or
- (e) is obligated to be produced under order of a court of competent jurisdiction or other similar requirement of a government authority, provided that the Receiving Party provides the Disclosing Party with prior notice of such order or requirement for disclosure of such information.

42.3 The Contractor shall, and ensure that its personnel shall, comply with the applicable laws prohibiting insider trading and shall not, at any point in time, use the Confidential Information for the purposes of trading in the securities market, either by itself or through others.

42.4 Any document other than the SO Documents itself that contains Confidential Information, shall remain the Employer's property and all copies thereof shall be returned to the Employer upon completion of the Scope of Work.

#### **43. Adjustments**

43.1 The Contractor agrees that the Employer shall have a right to set-off payments due and payable to the Contractor against payments due and receivable from the Contractor in terms of the SO Documents. If the Employer is unable to adjust or set-off any payments due and receivable from the Contractor, the Employer shall have the right to raise a credit note on the Contractor to claim any reimbursements that may be due from the Contractor.

43.2 It is agreed between the Parties that all payments by the Contractor in respect of any payment obligations of the Contractor in terms of the SO Documents shall be made without any deductions or set-off. If the Contractor is prevented by applicable law or otherwise from making, or causing to be made, such payments without deduction, the Contractor shall gross-up such payments by such amounts as may be necessary for the Employer to receive the full payments it would be entitled to receive, had such payments been made without such deduction.

#### **44. Anti-Bribery and Anti-Corruption**

The Contractor covenants that neither the Contractor nor any of its Affiliates, Sub-Contractors, employees, agents or representatives shall make, offer or agree to give any bribe, commission, gift or inducement to: (i) any government official; (ii) any officer, employee, agent or representative of the Employer or its Affiliates; or (iii) any other Person, in relation to the obtaining or execution of the SO Documents or performance of obligations hereunder. Such an act by the Contractor or any of its Affiliates, Sub-Contractors, employees or representatives shall, in addition to any criminal liability which the Contractor may be subject to under applicable law, provide a right to the Employer to terminate: (i) the SO Documents in accordance with Clause 38.1(a); and/or (ii) any other contract that may have been entered into between the Parties. The Contractor shall also be liable for payment of any loss or damages suffered by the Employer due to any such termination, which the Employer may, at its option, deduct and/or set off from the amounts otherwise due to the Contractor under the SO Documents or any other contract or recover from the Contractor as a debt due and payable. Any dispute as to the breach by the Contractor of its obligations under this Clause shall be determined by the Employer in such manner and on such evidence or information as available to the Employer, and the Employer's decision in this regard shall be final and conclusive.

#### **45. Amendment**

No modification of the terms of the SO Documents shall be effective unless it is in writing, is dated, expressly refers to the SO Documents and is agreed to and signed by duly authorised representatives of the Parties.

#### **46. Constitution**



The Contractor shall not alter, modify or change its constitution, without the Employer's prior written approval.

**47. Language of Communication**

All documents, writing and notices pertaining to and submitted in terms of the SO Documents and provided by one Party to the other shall be in the English language. If any writing or document, including any document issued or certified by any Person, is not in English, then it shall be translated into English and notarised, by the Party in possession of such writing and the English version of such writing shall govern and prevail.

**48. Severability**

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

**49. Independent Contractor**

The Parties acknowledge and accept that the Contractor shall act and perform its obligations under the SO Documents as an independent contractor and that the Contractor shall not be regarded as an employee, agent or partner of the Employer. The Contractor shall not have any power or authority to enter into any contract, agreement or arrangement for or on behalf of the Employer.

**50. Non-Solicitation**

The Contractor shall not, during the Term and for a period of one (1) year thereafter, directly or indirectly offer employment to or employ/hire the employees of the Employer.

**51. Waiver**

Any waiver of a Party's rights, powers or remedies under the SO Documents shall be in writing, dated and signed by such Party or its authorized representative granting such waiver. A Party granting such waiver shall specify the right and the extent to which it is being waived.

**52. Survival**

Notwithstanding anything to the contrary in the SO Documents, the termination, cancellation or expiration of the SO Documents for any reason shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such termination, cancellation or expiration, as the case may be. The provisions of Clause 20 (*Insurance*), Clause 24 (*Liquidated Damages*), Clause 29 (*Deficiency in Services and Defect Liability*), Clause 29.4 (*Representations and Warranties*), Clause 32 (*Intellectual Property Rights*), Clause 33 (*Indemnity*), Clause 34 (*Limitation of Liability*), Clause 38 (*Termination*), Clause 39 (*Governing Laws*), Clause 40 (*Settlement of Disputes*), Clause 42 (*Confidentiality*) and Clause 52 (*Survival*) shall survive termination, cancellation or expiration of the SO Documents, in addition to any other provisions that by their content are intended to survive the performance, termination, expiration or cancellation of the SO Documents.

**53. Entire Agreement**

The SO Documents constitute the entire agreement between the Parties with respect to the Scope of Work set out thereunder and supersedes all prior agreements, understandings, negotiations, letters of intent/award and correspondence, whether oral or written, between the Parties, with respect to the Scope of Work.