



GENERAL TERMS AND CONDITIONS (HIGH VALUE DOMESTIC ON-SITE WORKS)

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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.
Additional Tests	shall have the meaning ascribed to the term in Clause 28.6.
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 8, 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.
Applicable Laws	shall mean: <ul style="list-style-type: none"> (a) any law, legislation, statute, act, by-law, rule, regulation, memorandum, circular, resolution, ordinance, order, decree, protocol, notification, policy, administrative guideline, ruling, instruction, directive, code, consent, license, approval, permit, bilateral or international treaty or any interpretation thereof by any Government Authority or by any Person acting under the authority of any Government Authority, as may be applicable from time to time to the SO Documents, and to the exercise, performance and discharge of the respective rights and obligations of the Parties, or to the Parties, as the context may require; and (b) judgments, decrees, injunctions, writs, orders or like actions of any court, tribunal, government department or other administrative, judicial or quasi-judicial body or agency or instrumentality of competent jurisdiction, having the force of law in India, as may be applicable from time to time.
Applicable Permits	shall mean any waiver, exemption, building, variance, franchise, permit, authorization, approval, license or similar order which may be required to be obtained or maintained under Applicable Laws in relation to all or any part of the Scope of Work or any part incidental thereto, from any Government Authority, agency, authority, court or other body having jurisdiction over all or any part of the Works to be performed pursuant to the terms of the SO Documents.
Bank Guarantees	shall mean, collectively, the Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and Contract Performance cum Performance Bank Guarantee, as may be applicable, provided by the Contractor in accordance with Clause 8.
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 and BOCW Cess), 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.
BOCW Cess	shall mean the cess payable under the Building and Other Construction Workers Welfare Cess Act, 1996.
BOQ	shall mean the bills of quantity and items forming part of the Works, and item rates as set out in the Price Schedule.
Change	shall have the meaning ascribed to the term in Clause 10.1.
Change in Law	shall mean the occurrence of any of the following after the Effective Date: <ul style="list-style-type: none"> (a) enactment, modification or repeal of any Applicable Laws in India; (b) any change in the interpretation or enforcement of any Applicable Laws by a decision rendered by the Supreme Court of India; or (c) increase or decrease in the relevant rates of applicable GST in India, provided that "Change in Law" shall not include any: <ul style="list-style-type: none"> (i) change in the interpretation or application of any Applicable Laws except as provided in (b) above; (ii) enactment, modification, repeal, interpretation or application of any Applicable Laws of India which increases market prices of Equipment and Materials, commodities, raw materials and labour in general, used in the performance of the Works; (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 (iv) implication on the SO Price arising out of currency fluctuations.
Change Proposal	shall have the meaning ascribed to the term in Clause 10.3.
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 Works.
Commissioning	shall mean the successful operation of the Works at full load or, as may be applicable, in accordance with the terms of the SO Documents and the achievement of the parameters corresponding to the commissioning of the Works, as set out in the Specifications.
Completion Schedule	shall mean the time specified in the Service Order (as extended in accordance with the terms herein), within which the Works (or of a part of the Works for which a separate time for completion of performance of such part has been prescribed) are to be completed and Commissioned and the milestones specified in the SO Documents are to be achieved in accordance with the terms of the SO Documents.
Confidential Information	shall have the meaning ascribed to the term in Clause 55.1.

Construction Manager		shall have the meaning ascribed to the term in Clause 19.3(a).
Contract Performance Guarantee	Bank	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 8, to secure the performance by the Contractor of the Scope of Work for a time period as specified in the Service Order.
Contract Performance Guarantee	cum Bank	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 8, 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.
Contractor IP		shall have the meaning ascribed to the term in Clause 43.2.
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 Works (not constituting Equipment and Materials).
Contractor's Representative		shall have the meaning ascribed to the term in Clause 19.2(a).
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 Period	Liability	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 arising from or deficiency in the Works and/or the Equipment and Materials (including any portion performed, provided or executed by any Sub-Contractor) on account of: (i) non-conformance of the Works and/or the Equipment and Materials with the Specifications; or (ii) any faulty design, material, engineering or workmanship, which affects the ability of the Works to comply with the Specifications on a consistent and reliable basis.
Delay Damages	Liquidated	shall have the meaning ascribed to the term in Clause 34.1.
Disclosing Party		shall have the meaning ascribed to the term in Clause 55.1.
Discrepant Amount		shall have the meaning ascribed to the term in Clause 5.4(b).
Discrepant Notice	Amount	shall have the meaning ascribed to the term in Clause 5.4(a).

Drawings Documents	and shall mean all designs, drawings, calculations, technical information and documents of a like nature referred to in the SO Documents, along with any modification thereof (as approved in writing by the Employer) and shall include drawings, designs, calculations, technical information, engineering data and documents: (i) furnished by the Employer or the Employer's consultant to the Contractor; and (ii) 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.
Employer IP	shall have the meaning ascribed to the term in Clause 43.3.
Employer's Representative	shall have the meaning ascribed to the term in Clause 19.1(a).
Equipment Materials	and shall mean any and all plant, machinery, equipment, materials and other items, including spare parts, which are either to be provided by the Contractor and/or to be supplied by the Other Contractor, as may be specified in the SO Documents, for the purpose of incorporation in the Works.
ESG	shall have the meaning ascribed to the term in Clause 39.1.
Extra Item	shall mean any item not provided for in the BOQ and required for Handing Over, as more particularly specified in Clause 4.1(c).
Factory Tests	shall have the meaning ascribed to the term in Clause 28.2(a).
Final Acceptance	shall mean the completion of all activities by the Contractor, as specified under Clause 37.
Final Acceptance Certificate	shall mean the certificate issued by the Employer to the Contractor on achievement of Final Acceptance.
Final Invoice	shall mean the invoice in respect of all outstanding amounts raised by the Contractor upon completion of the final payment milestone, as may be specified in the Service Order.
Force Majeure	shall have the meaning ascribed to the term in Clause 47.1.
Free Issue Material	shall mean the material supplied free of charge by the Employer to the Contractor in accordance with Clause 26 and as per the list specified in the Service Order.
Good Industry Practice	shall mean standards, methods, techniques and procedures that are employed by leading, reasonable and prudent service providers engaged in the performance of works and services which are similar to the Works.
Government Authority	shall mean the Government of India, any state government, any local, regional, territorial or municipal government or quasi government, ministry, government department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial, regulatory or administrative body or any other state utility having or purporting to have jurisdiction over the SO Documents, or any portion thereof and performance of the obligations and exercise of rights of the Parties in

		accordance with SO Documents, or any matter arising from or in connection with the SO Documents.
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.
Handing Over		shall mean the completion of all activities by the Contractor, as specified under Clause 35.
Handing Over Certificate		shall mean the certificate issued by the Employer to the Contractor on completion of Handing Over.
Human Resources and Industrial Relations Requirements		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, existing now or in the future) including copyright, patents, designs, trade marks (including service marks), business names, domain names, know-how, Confidential Information, inventions, concepts, software licenses, object code, technology development work, software objects, moral rights, trade secrets, processes, methods and other analogous rights applicable to or utilised in the Works 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 10.5.
Latent Defect(s)		shall mean inherent Defects in design, engineering, workmanship or material which have surfaced after the Defect Liability Period and which could not be determined during routine inspection and which may hinder or endanger the normal operation of the Works.
Latent Liability Period	Defect	shall mean the period of five (5) years commencing from the date of expiry of the Defect Liability Period, during which the Contractor shall remain liable at its own cost and expense for all repairs or replacement of any Latent Defect.
Losses		shall mean all costs, damages, liabilities, verdicts, judgements, settlements, fines, penalties and expenses (including court costs and expenses and reasonable costs and expenses of legal counsel) with

		respect to actions, suits, demands, causes of action, claims or investigations incurred by an indemnified party in connection with an event to which it is entitled to indemnity under the SO Documents (including any court costs and expenses and reasonable costs and expenses of legal counsel incurred by such indemnified party for legal action to enforce such indemnity obligations).
Master Document List		shall have the meaning ascribed to the term in Clause 12.2.
Mechanical Completion		shall have the meaning ascribed to the term in Clause 30.1.
Mechanical Completion Certificate		shall mean the certificate issued by the Employer to the Contractor on achievement of Mechanical Completion.
Other Contractor		shall mean the suppliers, contractors, consultants and/or advisers other than the Contractor to whom orders have been placed by the Employer for the Project and shall include their respective successors and permitted assigns.
Party		shall mean the Employer or the Contractor, as applicable.
Performance Guarantee	Bank	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Contractor to the Employer in terms of Clause 8, to secure performance of the Contractor's obligations during the Defect Liability Period.
Performance Guarantee		shall mean the guaranteed standards and parameters of operation and/or performance of the Works as set out in the Specifications.
Performance Guarantee Tests		shall mean the test(s) that may be conducted by the Contractor with regard to the Works to ascertain whether the Works, or the specified parts thereof, are able to achieve the Performance Guarantee.
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 Works.
Project		shall mean such project or facility for which the Works are being performed, as further described in the Service Order.
Project IP		shall have the meaning ascribed to the term in Clause 43.1.
Provisional Acceptance Certificate		shall mean the certificate issued by the Employer to the Contractor on successful Commissioning of Works.
Punch-List Items		shall mean such items of work which, in the Employer's determination, individually or in any combination, do not have an adverse effect on the safety, functioning, operability or integrity of the use of the whole or part of the Works for its intended use.

Quality Assurance Plan	shall mean the detailed quality assurance plans set out in the annexure which may be identified as 'Quality Assurance Plan' or 'QAP' and attached to the Service Order or as may be prepared by the Contractor in accordance with Clause 24.1, which shall set out the procedures and compliances required for the design and execution stage for the Works, to ensure that the Works comply with the requirements set forth in the Specifications and the SO Documents.
Receiving Party	shall have the meaning ascribed to the term in Clause 55.1.
Running Account Bills	shall mean the periodic bills raised by the Contractor based on the progress of the Works 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 Scope of Work and set out in the annexure which may be identified as 'Safety Requirements' and attached to the Service Order, as may be amended or modified, from time to time.
Scope of Work	shall mean the Works 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.
Shortfall Liquidated Damages	shall have the meaning ascribed to the term in Clause 34.2.
Site	shall mean the location designated by the Employer for the performance of the Works (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 of the Works and the Equipment and Materials to be furnished under the SO Documents, 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 (including any Equipment and Materials), 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.

TCS	shall have the meaning ascribed to the term in Clause 6.2.
Term	shall have the meaning ascribed to the term in Clause 9.1.
TPIA	shall mean the third party inspection agency appointed and/or authorized by the Employer for carrying out inspection and review of the Works.
Works	shall mean all the works performed by the Contractor as per the Specifications and the terms of the SO Documents, which may pertain to or include engineering, design, procurement, installation, erection, construction, supervision, testing, Commissioning and handing over services, as may be applicable and as specified in the Service Order.

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 attached thereto.
 - (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 Applicable Laws or to any provision thereof shall include references to any such Applicable Laws 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 Works, the performance of the Works and the Equipment and Materials used therein, if any, are 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 The Works shall be complete in every respect with all mountings, fittings, fixtures and standard accessories normally supplied with such Works even though not specifically detailed in the Specifications, unless specifically included in the list of excluded items. The Contractor shall ensure that the Works shall be fit and suitable for the intended purposes (including completion of Handing Over) as evidenced by the SO Documents, and shall comply with the terms of the SO Documents. The Contractor shall not be eligible for any extra payment in respect of such mountings, fittings, fixtures and standard accessories etc., which may be required for the safe operation of the Works in accordance with the Specifications, applicable Codes and Standards and the SO Documents, even though such items may not have been included specifically in the SO Documents.
- 3.4 In addition to provision of Equipment and Materials and all other spare parts, tools and tackles as may be specified in the SO Documents, the Contractor agrees to provide at the Site, all materials, equipment, consumables, accessories and construction supplies as may be required up to completion of the Scope of Work and for the satisfactory performance of the Works (as applicable), at its own cost and expense.
- 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:

- (a) the nature, quality and magnitude of the Scope of Work to be performed;
- (b) availability of personnel and resources;
- (c) Applicable Laws and all environmental risks, conditions and applicable restrictions;
- (d) general and local conditions, including conditions at the Site; and
- (e) access to the Site in the manner set out in the SO Documents.

3.6 The Contractor acknowledges that the conditions referred to in Clause 3.5 and those pertaining to the Works and/or the SO Documents generally have been taken into consideration for determining the SO Price and other terms and conditions set out in the SO Documents. The Contractor shall further be deemed to have obtained all necessary information as to the risks and contingencies which may influence or affect the performance of the Works. The Contractor's failure to acquaint itself and/or consider any applicable condition, situation, requirement or other matter referred to in Clause 3.5 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 10 herein.

3.7 The Employer shall, if necessary, make available to the Contractor all such information that is relevant for the performance of the Works and other obligations set out in the SO Documents, other than the SO Documents itself. The Contractor hereby acknowledges and agrees that the Employer does not assume any responsibility in respect of, or warrant, guarantee or make any representation as to any information supplied pursuant to this Clause 3.7, including the accuracy, completeness, interpretation or adequacy of such information. The Employer shall also not be liable to the Contractor in relation to any claim pertaining to or in connection with the information supplied by the Employer, any action or inaction taken by the Contractor in respect of such information or the non-provision of any other information by the Employer. The Contractor further agrees that it shall protect, indemnify and hold the Employer harmless from and against any and all Losses arising directly or indirectly from or incurred by reason of the use of the information supplied by the Employer by any Person to whom the Contractor has supplied such data and information or any portion thereof, including the Contractor itself, its Sub-Contractors, and their respective personnel.

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 estimated quantities and 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 quantities executed and as certified by the Employer. If the quantity 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 quantities to be availed under the BOQ and effect necessary amendments to the SO Documents in accordance with Clause 10.

- (b) The unit rates quoted and accepted as per the BOQ shall remain firm till Handing Over, irrespective of any quantity variation, and shall not be revised under any circumstances and for whatsoever reason till the completion of Handing Over, except in accordance with Clause 10 or as may be agreed otherwise by the Employer.
 - (c) Payment for Extra Items not included in BOQ
 - (i) If any item is not provided for in the BOQ and is required to be executed to complete Handing Over, it shall be acknowledged as an Extra Item, and the Contractor on receipt of instructions from the Employer, shall be bound to carry out 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 Works 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 Works 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 and BOCW Cess), 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 Works or any part(s) thereof or otherwise relieve the Contractor of its obligations under the SO Documents. 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*
- (a) The Contractor shall raise Running Account Bills and the Final Invoice 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.

(b) Running Account Bills

- (i) The SO Price shall be paid to 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 Works 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 Employer. The Employer reserves the right to make partial or provisional payment against Running Account Bills which have been disputed in accordance with Clause 5.4, pending audit and reconciliation of the total amount invoiced.
- (iv) Payments made against Running Account Bills shall be treated as advance payments against amounts that would be payable against the Final Invoice. The Employer reserves the right to withhold payments due to the Contractor against any Running Account Bill(s), if the Contractor fails to comply with its obligations under SO Documents.

(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 Works 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 installed quantities. If the Employer determines that any part of the Works 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 in any invoice raised by the Contractor, the Employer shall issue a written notice of such discrepancy to the Contractor ("**Discrepant Amount Notice**") and the reasons thereof, within a reasonable time period from the date of time period of receipt of the invoice by the Employer.
- (b) The Employer shall, in such an event, pay such part of the invoice value which is not discrepant, in accordance with the payment terms specified in the Service Order, and

withhold that part of the invoice value which is discrepant ("**Discrepant Amount**") till such time that the discrepancy is resolved between the Parties.

- (c) 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 57.
- (d) Upon receipt of a Discrepant Amount Notice in relation to any Discrepant Amount from the Employer, if the Employer's view on the Discrepant Amount is accepted by the Contractor, the Contractor shall provide a revised invoice to the Employer after excluding the Discrepant Amounts. If the Contractor intends to dispute the Employer's view on the Discrepant Amount, the Contractor shall provide documentary evidence to the Employer within fifteen (15) days of receipt of the Discrepant Amount Notice in respect of such Discrepant Amount, to enable the Employer to confirm the acceptance or rejection of the Discrepant Amount within fifteen (15) days. If the Contractor's documentary evidence is accepted by the Employer, the Employer shall accept the invoice originally raised by the Contractor and make the payment of the Discrepant Amount in accordance with the payment terms specified in the Service Order, from the date of submission of the documentary evidence by the Contractor.
- (e) In the event that the Parties are unable to resolve any issue in relation to such discrepancies in the invoices within thirty (30) days of issue of the Discrepant Amount Notice by the Employer in relation to such Discrepant Amount, such dispute shall be resolved in accordance with the provisions of Clause 51.

6. Taxes

- 6.1 Except GST and BOCW Cess, all applicable Taxes shall be solely payable by the Contractor, unless otherwise specified in the Service Order. The Parties agree that the BOCW Cess shall be directly paid to the relevant Government Authorities by the Employer. The Contractor shall register itself under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 within fifteen (15) days of the Effective Date and furnish its registration details to the Employer for the purpose of payment of the BOCW Cess by the Employer within three (3) days of such registration. 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. 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), 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 In the event the Contractor is required to collect from the Employer, tax collected at source ("**TCS**") as per the applicable law, then the Contractor shall forthwith inform the Employer and shall ensure that all invoices raised under the SO Documents (including pro-forma invoices for

release of advance payments), clearly specify the correct amount of applicable TCS on the total invoice amount (including GST). The Contractor shall, if required by the Employer, furnish all other details and documentary evidence pertaining to such applicable TCS. The Contractor shall comply with the requirements of the applicable law with respect to TCS and shall be solely responsible for any incorrect declaration in this regard.

- 6.3 The Contractor shall pay and observe all formalities pertaining to, *inter alia*, filing of requisite declarations or returns and providing necessary deposits, in respect of any and all Taxes and levies in relation to the:
- (a) Contractor's Equipment;
 - (b) income, profit, real property and personal property of the Contractor and/or Sub-Contractor; and
 - (c) applicable payroll, withholding, social security, workers' compensation, employment cesses, levies and contributions imposed under any Applicable Laws in connection with or measured by compensation (including, without limitation, wages and salaries) paid to or for the benefit of the personnel of the Contractor and/or Sub-Contractor, including, Taxes on health and welfare fund, minimum wage, provident fund, employee state insurance, gratuity, pension, annuity, disability insurance and all other similar social payments under the Applicable Laws.
- 6.4 Unless otherwise specified in the Service Order, the import or customs duty, if applicable, on the import of Equipment and Materials under the Applicable Laws, is included in the SO Price and shall be borne by the Contractor.
- 6.5 The Contractor shall, in respect of the deposit of Taxes (as may be applicable), comply with all Applicable Laws 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.
- 6.6 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 Works, 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, 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.
- 6.7 If there is a delay in completion of Handing Over 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, the same shall be to the account of the Contractor.
- 6.8 *Employer's Right to Withhold*
- (a) The Employer may withhold or deduct from the payment of any amount payable to the Contractor under the SO Documents, including any advance payment, and pay on the Contractor's behalf such taxes and other sums, if any, as the Employer may be required to withhold or deduct as provided under Applicable Laws.
 - (b) If the Contractor desires income tax deduction or withholding at a lower rate or value, under any legislation or under any advance ruling or advance assessment of a Government

Authority, then the Contractor shall be responsible for: (i) obtaining the necessary authorisation from such Government Authority, certifying or authorising the deduction or withholding of tax at a lower rate or value, and (ii) provision of the original copy of such authorisation to the Employer. For the avoidance of doubt, it is hereby clarified that the time taken by the Contractor for obtaining the above certificate shall be excluded when calculating any time period set out under the provisions of the SO Documents for such payment by the Employer.

- (c) The Employer shall issue the relevant certificates for deduction of Taxes at source made by the Employer, in accordance with Applicable Laws, from the payments made by the Employer to the Contractor.

7. Royalties

- 7.1 The Contractor shall be liable to pay all royalties, rents and other payments, including Taxes on royalties such as district mineral fund for natural materials (including crushed stone aggregate, natural sand and earth) and other surplus material (whether natural or man-made), obtained from the Site or otherwise. Unless otherwise specified in the Service Order, the Basic Price includes all applicable royalties, rents and other payments as per the prevailing rates and Applicable Laws.
- 7.2 The Contractor shall be responsible for all procedural compliances related to the payment of royalties as set out in Clause 7.1 and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment, short-payment, non-compliance, penalty, interest or other such issue, and for all liabilities and expenses related to such proceedings. In the event any proceedings are initiated against the Employer by any Government Authority for failure of the Contractor to pay the royalties in accordance with Clause 7.1, the Contractor shall fully indemnify and compensate the Employer for all losses arising as a result of such proceedings.

8. Bank Guarantees

- 8.1 The Contractor shall provide the Employer with the Bank Guarantees as shall be stipulated in the Service Order, 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 Bank Guarantees 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 Bank Guarantees that are 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 Bank Guarantees 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.
- 8.2 The Employer shall have an unqualified option under Bank Guarantees 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.
- 8.3 In the event the Employer draws on any of the Bank Guarantees 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.
- 8.4 In the event that:

- (a) the Commissioning of the Works is delayed beyond the time specified for completion of Commissioning in terms of 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 Commissioning of the Works has been delayed beyond the time specified for completion of Commissioning in terms of 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.

8.5 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, confirmation, renewal, maintenance and invocation of such Bank Guarantees (as applicable), shall be borne by the Contractor.

9. Term of the Service Order and Completion Schedule

9.1 Unless otherwise terminated in accordance with the provisions of the SO Documents, the SO Documents shall be in full force and effect from the Effective Date and shall be deemed to have been completed on expiry of the Latent Defect Liability Period ("**Term**").

9.2 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 Works or any part thereof within the specified period, 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 Works, at the risk and cost of the Contractor.

9.3 Any cost or expense resulting from noncompliance with the Completion Schedule shall be solely to the Contractor's account. The adjustments with respect to the amount recoverable, if any, in terms of Clause 9.2 above, shall be made from the Bank Guarantee(s) provided by the Contractor in terms of Clause 8, as may be available, or in any other manner as may be deemed appropriate by the Employer.

10. Variation

10.1 Subject to Clauses 10.4 and 10.5, 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 its performance of the Works propose to the Employer any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Equipment and Materials, the Works. The Employer may at its discretion approve or reject any Change proposed by the Contractor.

10.2 Notwithstanding Clause 10.1, 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.

10.3 If the Employer proposes a Change or acknowledges the Contractor's proposal for a Change in accordance with Clause 10.1, 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.

- 10.4 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.
- 10.5 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**").
- 10.6 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 51.
- 10.7 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.

11. Work Program

11.1 Programme of Performance

Unless otherwise specified in the Service Order, 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 all 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, including such schedules of the Other Contractors, as may be provided by the Employer to the Contractor. 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.

11.2 Progress Report

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 daily, weekly and/or monthly basis, as may be required by the Employer.

11.3 Progress of Performance

If at any time the Contractor's actual progress falls or threatens to fall behind the program referred to in Clause 11.1, the Contractor shall prepare and submit to the Employer a revised program, taking into account the prevailing circumstances, and shall notify the Employer of the steps being taken to expedite progress so as to attain Commissioning within the Completion Schedule as specified under Clause 9, subject to the provisions of Clause 10 or any extended period as may otherwise be agreed upon between the Parties. The Parties agree that the Employer shall have the right to depute its personnel at the Contractor's or any of the Sub-Contractor's works, in order to expedite the performance of the Scope of Work.

12. Design and Engineering

- 12.1 The Contractor shall, as part of the Scope of Work, perform all design and engineering works, in accordance with the SO Documents and Good Industry Practice and shall cause the Works to meet and achieve the requirements of the SO Documents, Drawings and Documents, Specifications and the Performance Guarantees. In the event no applicable standard is mentioned in the Specifications, the standard shall be equivalent or superior to the industry standards whose application is appropriate to the Works.
- 12.2 The Contractor shall, within fifteen (15) days of the Effective Date or within such time period as may be agreed upon by the Parties in the kick-off meeting, prepare and provide to the Employer for the Employer's approval, a submission schedule, in accordance with which the Contractor shall prepare and submit all Drawings and Documents and other design and engineering information pertaining to the Works ("**Master Document List**"). The Employer shall, within fifteen (15) days of the receipt of the Master Document List from the Contractor, communicate its approval or suggest revisions. The Contractor shall incorporate such revisions and resubmit the Master Document List for the Employer's approval.
- 12.3 If applicable, the Contractor shall be responsible for carrying out technical studies as may be required in connection with the performance of the Works, and the Employer shall provide information and assistance to the Contractor as may be reasonably required in this regard. The Contractor shall provide copies of reports for such technical studies to the Employer, along with the records and data used for such studies.
- 12.4 The Contractor shall be deemed to have scrutinized the Specifications which specifies the operation and functional requirements of the Employer with respect to the Works (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works and for the accuracy of such Specifications of the Employer (including design criteria and calculations).
- 12.5 The Contractor undertakes that the design, engineering, Drawings and Documents, performance of the Scope of Work and the Works as completed shall be fit for the intended purpose, and shall be in accordance with Applicable Laws, Good Industry Practice and the terms of the SO Documents.

13. Drawings and Documents

- 13.1 The Contractor shall submit copies of the Drawings and Documents to the Employer for approval within such time period as shall be specified in the Master Document List. The Employer shall, within fourteen (14) days of receipt of such Drawings and Documents, either return one 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 shall promptly correct, any discrepancies, errors or omissions in the Drawings and Documents and other particulars supplied by the Contractor, and shall not be further relieved of its obligations under the SO Documents. 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. Site

14.1 Site Access

The Contractor shall have access to the Site from such date as may be specified in the Service Order, and the Employer shall provide the Contractor with the right to use of, enter upon, access and work upon such portions of the Site, as may be specified in the Service Order. The Contractor agrees and acknowledges that the access to the Site provided to the Contractor by the Employer shall be on a non-exclusive basis and shall be in accordance with any specific approvals granted by the Employer and any Applicable Permits issued by the relevant Government Authority in this regard. The Contractor shall not restrict the Employer from employing the services of the Other Contractors on the Site for performing other works.

14.2 Maintenance of Site

The Contractor shall keep the Site and all construction thereupon clean and otherwise free from accumulation of waste materials, rubbish and other debris resulting from performance of the Works. On or before the date of Handing Over, the Contractor shall remove from the Site all waste materials, rubbish and other debris resulting from the performance of the Works, 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. Unsuitable or excess excavation material and debris shall be transported by the Contractor to such areas as may be designated by the Employer as spoil areas. The Contractor shall transport such materials to the designated spoil areas and grade the same at these areas.

14.3 Other requirements

The Contractor shall be responsible for obtaining any and all necessary Applicable Permits required for use of public roads and infrastructure, right of way, easements and such other access rights as may be necessary and required for the Contractor or the Sub-Contractor(s) to access the Site in connection with the performance of the Scope of Work. The Contractor shall ensure that such access roads to the Site shall not be exclusive to the Contractor's use and access, but shall be available for use by the Employer and such other persons who may need to access the Site in connection with the Scope of Work, the SO Documents and/or the Project.

15. Mobilisation

The Contractor shall complete mobilisation at the Site 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 Works and specified in the SO Documents. Unless otherwise specified in the Service Order, the Basic Price shall be inclusive of charges in respect of mobilisation or demobilisation and the Contractor shall not be entitled to any additional payment on account thereof.

16. Utilities and Facilities at the Site

16.1 The Parties agree that, unless specified otherwise in the Service Order: (i) the Contractor shall, at its cost, be responsible for construction and maintenance of office and storage facilities at the Site; and (ii) the Employer shall be responsible for arrangement of utilities required for the performance of the Works 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.

16.2 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 Works in a manner which optimises the energy consumption by the Contractor. The Contractor shall be solely responsible for the Contractor's Equipment.

16.3 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.

17. Construction and Erection Methods and Conduct at the Site

17.1 *Preservation of and Non-Interference with Existing Facilities*

The Contractor shall protect from damage all existing structures, improvements or utilities at or near the Site, and shall promptly repair and restore any damage thereto resulting from the Contractor's failure to protect the same in carrying out its obligations hereunder. The Contractor agrees and acknowledges that the cost for such repair or restoration shall be to the Contractor's account. The Contractor shall further ensure that the performance of the Works does not disrupt or interfere with the productive capacities of any other Person at the Site.

17.2 *Hazardous Materials*

(a) In the event there are any hazardous materials discovered at the Site, or introduced to or existing at the Site prior to the commencement of the Works, the Contractor shall ensure that all precautions are undertaken to prevent its Sub-Contractors, their respective personnel and other persons from unauthorised use, access or tampering of such hazardous materials. If the Contractor becomes aware of presence of any hazardous materials in or on the Site, the Contractor shall:

- (i) suspend performance of the Works to the extent required to avoid any imminent or substantial safety or health hazard until action sufficient to protect the interests of the Employer, the Contractor, any Sub-Contractor and their respective personnel is taken;
- (ii) notify the Employer immediately; and
- (iii) carry out the instructions of the Employer.

(b) The Contractor shall be responsible for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to hazardous materials present at, or in, or under, or migrating and/or emanating to or from the Site, including for the payment of any fines and penalties or other liabilities resulting from acts or omissions with respect to handling of such hazardous materials. For avoidance of doubt, in case of such hazardous materials which were: (i) brought or caused to be brought on the Site by, or were the result of, any act or omission of the Contractor or any Sub-Contractor; or (ii) handled, treated or stored at the Site by the Contractor or any Sub-Contractor in violation of any Applicable Laws, then the Contractor shall perform its obligations with respect to such hazardous materials under this Clause 17.2, at its own cost and expense.

(c) The Employer shall have the sole discretion to approve the action, if any, to be taken by the Contractor with respect to the handling, treatment, storage, removal, remediation, avoidance or other appropriate action (if any) with respect to any such hazardous materials.

(d) Notwithstanding anything contained to the contrary herein, the Contractor shall be solely responsible for ensuring complete compliance with all requirements imposed by Applicable Laws and terms and conditions of any Applicable Permits in relation to the hazardous materials. The Contractor shall prepare and provide all documentation, as may

be required, to the relevant Government Authorities, and shall provide a copy of same to the Employer.

17.3 *Navigation, Fishing and Removal of Impediments to Navigation*

The Contractor shall not, and shall ensure that its Sub-Contractors or their respective personnel do not, violate any Applicable Laws or Applicable Permits in respect of activities relating to navigation and/or fishing at or near the Site or along any approach to the Site. The Contractor shall further ensure that navigation channels situated in the vicinity of the Site, if any, are not obstructed in any manner whatsoever.

17.4 *Archaeological and Antiquities Remains*

- (a) The Contractor agrees and acknowledges that all archaeological remains or antiquities, including fossils, coins, articles of value or antiquity and structures and other remains or items of geological or archaeological interest discovered at the Site, shall be placed under the care and authority of the Employer and, to the extent permitted by Applicable Laws, shall be the property of the Employer.
- (b) The Contractor shall undertake all precautions to prevent its Sub-Contractors, their respective personnel and other persons from removing or damaging any such archaeological remains or antiquities. The Contractor shall promptly notify the Employer upon discovering any archaeological remains or antiquities at the Site. The Employer may, upon receipt of such notice from the Contractor, require the Contractor to:
 - (i) remove or procure removal of such article or item; or
 - (ii) otherwise deal with such archaeological remains or antiquities as required by Applicable Laws, or as determined by the Employer.

18. Equipment and Materials

18.1 *Procurement*

- (a) The Contractor shall be responsible for engineering, manufacture, assembly and/or procurement of the Equipment and Materials along with spares, tools and tackles and consumables, as may be required up to Handing Over, at its own cost.
- (b) The Contractor shall ensure that the Equipment and Materials shall comply with the Specifications, Codes and Standards, Applicable Laws, Good Industry Practice and requirements of all appropriate Government Authorities and the terms and conditions of any Applicable Permits.
- (c) The Contractor shall obtain the best possible warranties and guarantees with respect to materials and workmanship of all Equipment and Materials from all relevant Sub-Contractors for the benefit of the Employer. All such warranties and guarantees shall be so written as to survive all inspections, tests and approvals of the Employer and, if agreed between the Contractor and the Sub-Contractor, the Defect Liability Period and/or the Latent Defect Liability Period. In no event shall the Contractor's obligations under the SO Documents be diminished by the warranties and guarantees provided by Sub-Contractors. For avoidance of doubt, this clause shall not be applicable to such Equipment and Materials expressly stated as being required to be provided by the Employer or Other Contractors.

18.2 *Packaging*

- (a) The Contractor shall be solely responsible for proper packing and crating of the Equipment and Materials and shall ensure that:

- (i) the Equipment and Materials are properly painted, packed and crated in a manner suitable for transportation and storage and in such a manner so as to protect them from breakage, pilferage, damage and deterioration in transit and during storage at the Site till the time of utilisation; and
 - (ii) all packages of the Equipment and Materials shall be clearly marked and individually tagged with the Contractor's part numbers and the respective Equipment and Materials' code numbers.
- (b) Pursuant to delivery of the Equipment and Materials, the Employer shall have the right to verify the contents of the Equipment and Materials delivered against the list, submitted by the Contractor to the Employer, in relation to the Equipment and Materials packaged. The Employer shall have the right to notify the Contractor in case of any discrepancy and the Contractor shall be responsible to make good such discrepancy, at its own cost.
- (c) Notwithstanding the foregoing, the Contractor shall be responsible for any loss or damage to the Equipment and Materials due to improper painting, packing and/or crating or arising out of any breach by the Contractor of its obligations under this Clause 18.2.

18.3 *Transportation and Storage*

- (a) The Contractor shall, at its own risk and cost, transport in an expeditious and orderly manner, all the Equipment and Materials and all the required materials from such location, as may be specified by the Employer, to the Site. Any damage caused to the Equipment and Materials due to improper transportation and/or storage thereof would be the sole responsibility of the Contractor. The Contractor shall handle the Equipment and Materials with due care in order to prevent any damage or loss thereto. The Contractor shall ensure proper storage, preservation and safe custody of the Equipment and Materials till such time the Equipment and Materials are taken over by the Employer in accordance with the terms of the SO Documents.
- (b) In respect of any Equipment and Materials that are supplied by Other Contractors to the Employer, the Employer shall provide to the Contractor during the kick-off meeting, a shipment schedule detailing the: (i) the details of the port on which the delivery of such Equipment and Materials shall take place; and (ii) schedule of delivery in accordance with which the Other Contractor shall deliver such Equipment and Materials. If required by the Employer, the Contractor shall be responsible for performing the obligation of unloading and transporting such Equipment and Materials in accordance with the shipment schedule provided by the Employer in accordance with this Clause 18.3(b), in a manner such that the Scope of Work is performed in accordance with the Completion Schedule.
- (c) The Contractor shall, at its own expense, handle all imported Equipment and Materials including the completion of any formalities with respect to customs clearance, stevedoring, handling, unloading, loading, storage and inland transportation of such Equipment and Materials. The Contractor shall perform all the obligations with respect to customs clearance of such Equipment and Materials. The Employer shall not be liable to the Contractor for any port dues, quay charges, berth charges, shipping or handling charges, wharf fees, demurrage, any incidental charges including penalties and fines on account of delays of clearance of Equipment and Materials or any other analogous charges for any reason whatsoever. In the event the Employer incurs any liability or obligation due to a failure on part of the Contractor to comply with its obligations herein, the Contractor shall be liable to indemnify the Employer for any such costs or expenses incurred by the Employer.
- (d) The Contractor shall adhere to the Applicable Laws and obtain all Applicable Permits from the relevant Government Authorities with respect to the transportation as specified in this Clause 18.3. The Contractor shall submit to the Employer copies of all such Applicable

Permits obtained by the Contractor from the relevant Government Authorities in this regard. The Employer shall use its best endeavours to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall defend, indemnify and hold harmless the Employer from and against any claim for damage to any facilities or to any public property that may be caused by the transport of the Equipment and Materials to the Site.

19. Parties' Representatives

19.1 Employer's Representative

- (a) The Employer shall have the right to appoint a representative for performing the duties delegated to it by the Employer under the SO Documents, as shall be specified in the Service Order or as may be appointed in the kick-off meeting ("**Employer's Representative**"). The Contractor acknowledges that the Employer has appointed or shall have the right to appoint the Employer's Representative for the purpose of the SO Documents. The Employer's Representative shall represent and act for the Employer at all times during the Term. All notices, instructions, orders, certificates, approvals and all other communications under the SO Documents shall be given by the Employer's Representative, except as herein otherwise provided. Such Employer's Representative 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 Employer's Representative shall have the same effect as if given to or received from the Employer.
- (b) All notices, instructions, information and other communications given by the Contractor to the Employer under the SO Documents shall be given to the Employer's Representative, except stated otherwise.

19.2 Contractor's Representative

- (a) The Contractor shall, for the purpose of the SO Documents, designate a competent and experienced person to serve as the representative for the Contractor, within fifteen (15) days from the Effective Date, for performing the duties delegated to it by the Contractor under the SO Documents, who shall be responsible for the administration, supervision, co-ordination and execution of the Contractor's obligations hereunder ("**Contractor's Representative**") and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fifteen (15) days thereafter, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fifteen (15) days of receiving the request for approval, the Contractor shall appoint a replacement within fifteen (15) days of such objection, and the foregoing provisions of this Clause 19.2(a) shall apply thereto.
- (b) The Contractor's Representative shall represent and act for the Contractor at all times during the Term and shall give the Employer's Representative all the Contractor's notices, instructions, information and all other communications to be provided under the SO Documents.
- (c) All notices, instructions, information and all other communications given by the Employer or the Employer's Representative to the Contractor under the SO Documents shall be given to the Contractor's Representative.
- (d) The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in Clause 19.2(a).
- (e) The Contractor's Representative may, subject to the approval of the Employer, at any time delegate to any person any of the powers, functions and authorities vested in the

Contractor's Representative. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Employer's Representative and approval of the same has been obtained.

19.3 *Construction Manager*

- (a) Commencing from the Effective Date and until Handing Over, the Contractor's Representative shall appoint a suitable person as the construction manager ("**Construction Manager**"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the SO Documents. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.
- (b) In case the Employer or the Employer's Representative is not satisfied with the performance of the Construction Manager or is of the opinion that the Construction Manager persists in misconduct, carries out its duties negligently or incompetently or fails to conform with any provisions of the SO Documents, the Employer's Representative shall inform the Contractor and the Contractor shall accordingly replace the Construction Manager with immediate effect. If any representative or Person employed by the Contractor is removed in accordance with this Clause 19.3(b), the Contractor shall, where required, promptly appoint a replacement.

20. **Personnel**

- 20.1 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 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.
- 20.2 The Contractor shall, and shall require its Sub-Contractors and personnel engaged in performance of the Scope of Work to, comply with the SO Documents and Applicable 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 20.2, the Employer shall be entitled to levy liquidated damages upon the Contractor, in accordance with Clause 34.4.
- 20.3 The Contractor shall undertake background verification and screening in respect of all personnel engaged for performance of the Scope of Work, including for any criminal records and shall be responsible for the visas, work permits and other immigration requirements for its personnel. The Contractor shall not appoint a foreign personnel or technician without the prior consent of the Employer. The Contractor shall be solely responsible for bringing in any foreign personnel and technicians and ensure compliance of all Applicable Laws with respect to the said foreign personnel or technicians including obtaining work permits, visas, arranging for accommodation, travel, and security clearances from any Government Authority as may be necessary.

- 20.4 The Contractor shall be further liable and responsible for all payments to its personnel, including salaries, wages, Taxes, allowances and other benefits in accordance with Applicable Laws. The Contractor shall contract for the provision of such social benefits for its employees and those of its Sub-Contractors as may from time to time be required by Applicable Laws in the jurisdictions where its obligations pursuant to the SO Documents are performed.
- 20.5 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. The Contractor shall ensure that all personnel of the Contractor and of its Sub-Contractors performing the Works are and at all times shall be, in possession of all such documents (including, without limitation, valid visas, work permits and security clearances) as may be required by any Applicable Laws.
- 20.6 The Contractor shall terminate the employment of any personnel whom the Employer deems unwilling to perform its services in a diligent and timely manner or who has engaged in any misconduct, illegal or immoral activities, and the Contractor shall nominate a suitable replacement who shall be subject to the approval of the Employer or Employer's Representative. The Employer reserves the right to require the Contractor to cause removal or replacement of any personnel 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.
- 20.7 The Contractor shall give to the Employer prompt written notice of any actual or anticipated labour dispute, which is likely to affect the performance of the Works. The Construction Manager shall immediately report to the Employer's Representative any conflicts or disorderly conduct concerning the labour force at the Site assigned to the Works by the Contractor or any Sub-Contractor in order to establish any measures that may be necessary to avoid any influence or affect that such conduct may have on the Employer's personnel.
- 20.8 The Contractor shall at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its personnel and to preserve peace and protection of persons and property on and near the Site. The Contractor shall give prompt notice to the Employer of any misappropriation or theft of the Employer's property or assets or any anticipated or actual unlawful, riotous or disorderly conduct.
- 20.9 During the Term, the Contractor shall submit to the Employer details showing the number of and details pertaining to each class of the Contractor's personnel on a monthly basis.

21. Subcontracting

21.1 Approval for Subcontracting

- (a) The Contractor shall not subcontract the whole or part of the Scope of Work without the prior written approval of the Employer, other than to those Sub-Contractors which may be preapproved by the Employer and are set out in the Service Order. The Parties agree that the list of preapproved Sub-Contractors set forth in the Service Order may be updated by the Employer from time to time during the Term. Notwithstanding the above, the Employer reserves the right to refuse the engagement of a Sub-Contractor by the Contractor or request a change of an existing Sub-Contractor, irrespective of such Sub-Contractor being preapproved by the Employer, including in cases where such Sub-Contractor has:
- (i) committed a breach of the Safety Requirements;
 - (ii) been blacklisted by any Government Authority; or
 - (iii) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Sub-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 Sub-Contractor takes or suffers any other analogous action in consequence of debt.

- (b) Prior to appointment of any Sub-Contractor not included in the list of preapproved Sub-Contractors, the Contractor shall provide a written notice to the Employer, providing details for each Person who the Contractor intends to select to perform any aspect of the Scope of Work as a Sub-Contractor, and shall furnish to the Employer for approval, such information concerning such proposed Sub-Contractor, as may be necessary to enable the Employer to determine compliance with the Specifications, Codes and Standards and other conditions of the SO Documents, including:
 - (i) a brief description of the work to be performed by such proposed Sub-Contractor;
 - (ii) prior experience of the proposed Sub-Contractor in performing work similar to the Scope of Work; and
 - (iii) such other information as may be requested by the Employer.
- (c) Nothing in the SO Documents generally or in this Clause 21 specifically shall be construed to relieve the Contractor of any of its obligations under the SO Documents, for which it shall continue to remain completely and fully liable as if no Sub-Contractor had been appointed, or to affect the Employer's rights *vis-a-vis* the Contractor.

21.2 Responsibility for Sub-Contractors

- (a) The Contractor shall ensure that all Sub-Contractors shall have and maintain all Applicable Permits to perform their respective work. The Contractor shall further ensure that all work performed by such Sub-Contractors are in compliance with the Specifications and all other requirements set forth in the SO Documents.
- (b) The Contractor shall be solely responsible for the acts, omissions or defaults of any Sub-Contractor, its agents or employees, as if they were the acts or defaults of the Contractor, its agents or employees.
- (c) No subcontract or service order issued by the Contractor in relation to the Scope of Work shall bind or purport to bind or create any obligations, directly or indirectly for the Employer. The Contractor shall ensure that all contracts entered into with the Sub-Contractors do not: (i) create any contractual obligation of the Employer towards such Sub-Contractors; (ii) provide a right to any Sub-Contractor to raise a claim against the Employer; (iii) give rise to a waiver by the Employer of its rights to reject any Defects or deficiencies in the Works or the Scope of Work; and (iv) release the Contractor from being solely responsible to the Employer for the Scope of Work. The Contractor shall also provide to the Employer un-priced copies of all subcontracts entered into with such Sub-Contractors, which shall be complete in all respects and shall contain all details and commercial conditions, including the scope of work, service and technical specifications, quality plans and delivery conditions. The Contractor agrees and acknowledges that the Employer shall have the right to require the Contractor to furnish any particular details in this regard, in the event the copies of such subcontracts do not contain the information that may be required by the Employer.
- (d) Additionally, every subcontract or service order or other contract entered into by the Contractor with third parties in relation to the Scope of Work shall contain a provision permitting unilateral assignment thereof (including assignment of warranties) to the Employer upon the Employer's written request. The Contractor shall include in all such subcontracts and service orders the right of unilateral written termination by the Contractor of all or a portion of such subcontract or service order, and if requested by the Employer, the Contractor shall exercise such right of termination.

22. Training of Employer's Personnel

- 22.1 The Contractor shall provide, or cause Other Contractor to provide to the Employer's personnel (including but not limited to the personnel from engineering, technical and operations team as appointed by the Employer) or any other person nominated by the Employer or the Employer's Representative, training programs in relation to the Scope of Work, including training at the Contractor's works, job training at Site and class-room training.
- 22.2 The Contractor shall prepare a detailed program for the training of the Employer's personnel and shall submit the same for the Employer's approval, within the time period as may be agreed upon by the Parties in the kick-off meeting. The Contractor shall, in accordance with the training program approved by the Employer, provide, or cause to be provided, to the Employer and its personnel, training in relation to the use, operation and maintenance of the Works at the Site and all such premises of the Employer where the Works have been performed, at no cost to the Employer.
- 22.3 The Contractor further undertakes to provide to the Employer and its personnel with, all necessary operation and maintenance procedures, training materials and aids, as may be required, including all training materials developed for the training program in order to facilitate the Employer in conducting future training for its personnel.
- 22.4 In the event the Employer requires any further training for its personnel in relation to the Works, the Employer shall depute such number of personnel at the Contractor's or its Sub-Contractors' premises for such training, as may be specified in the Service Order, at no additional cost to the Employer and on other terms as may be mutually agreed upon by the Parties. The Parties agree that the cost incurred in respect of travel, boarding, lodging and transportation of the Employer's personnel to the place where the Contractor's or its Sub-Contractors' premises are situated, shall be to the account of the Employer. For the avoidance of doubt, the Contractor acknowledges that the consideration for the training specified in this Clause 22 is included in the SO Price.

23. Permits and Licenses

- 23.1 The Contractor shall obtain and maintain all Applicable Permits for the performance of the Scope of Work, which may be required to be obtained and maintained under Applicable Laws. If requested by the Contractor, the Employer shall provide the Contractor with reasonable assistance in obtaining and maintaining any Applicable Permits. However, the foregoing shall in no circumstances be construed as relieving the Contractor from its obligation to obtain and maintain Applicable Permits, for which it shall remain primarily and fully responsible, or as imposing any responsibility on the Employer in respect of procurement of Applicable Permits.
- 23.2 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. The Contractor shall not be entitled to any adjustment to the Completion Schedule or the SO Price or any other terms of the SO Documents on account of any delay or failure to obtain or maintain any Applicable Permits.

24. Quality Assurance

- 24.1 In addition to the Quality Assurance Plan as may be annexed to the Service Order, if the Employer requires the Contractor to provide any further Quality Assurance Plan with respect to the Works (or any particular part thereof), the Contractor shall prepare and submit such Quality Assurance Plan to the Employer for approval within ten (10) days of the Employer's requirement or within such time period as may be agreed upon by the Parties in the kick-off meeting. The Employer shall provide its observations and comments on the Quality Assurance Plan submitted by the Contractor and shall indicate, as a part of its observations and comments, *inter alia*, all such

stages of manufacturing where the Employer would require testing and inspection in respect of each of the Works and Equipment and Materials. Thereafter, the Contractor shall incorporate the Employer's comments and prepare the final Quality Assurance Plan, as required to be complied with by the Contractor in accordance with Clause 24.2.

24.2 The Contractor shall, and shall cause its Sub-Contractors to, strictly adhere to the Quality Assurance Plans while performing the Scope of Work. Non-compliance with the Quality Assurance Plan shall entitle the Employer to reject the Works in accordance with Clause 29. The Contractor agrees and acknowledges that compliance with the Quality Assurance Plan shall not relieve the Contractor of its duties, obligations or responsibilities under the SO Documents.

25. Cooperation and Coordination with Employer and Other Contractors

25.1 The Contractor recognises and acknowledges that the Other Contractors have been or may be engaged by the Employer to advise the Employer and to perform other work and services in respect of the Project. The Contractor shall cooperate and coordinate with the Employer, the Other Contractors and their respective personnel, subcontractors, consultants and advisers, and shall provide all information and assistance and undertake all actions as may be required from the Contractor. If required by the Employer, the Contractor shall enter into such arrangements with the Other Contractors, as may be required by the Employer, to coordinate the performance of other work and services in respect of the Project.

25.2 If any part of the Contractor's work is dependent upon the work of any Other Contractor, it shall be the Contractor's responsibility to inspect and promptly report to the Employer of any defect in such works which may affect the performance of the Works and/or the Scope of Work. Any failure of the Contractor to notify the Employer shall constitute an acceptance by the Contractor of the Other Contractors' work, and the Contractor shall not be entitled to any adjustment to the Completion Schedule or the SO Price or any other terms of the SO Documents on account of such failure. Notwithstanding the above, the Contractor shall not be responsible for any inherent Defects in the works performed by Other Contractors.

25.3 The Contractor shall consult with the Employer's Representative with respect to issues pertaining to the Works and the Other Contractors' work, and shall participate in periodic meetings with the Employer and the Other Contractors at the Site or such other location as may be specified, in respect thereof.

25.4 The Contractor hereby acknowledges that failure to comply with its obligations under this Clause 25 may result in claims by the Other Contractor(s) against the Employer. The Contractor hereby undertakes to defend, indemnify and hold harmless the Employer in respect of and against any such claim, if the Employer makes a determination, from the information provided to it by the Other Contractor(s), that such claim arose due to reasons attributable to the Contractor and that the amounts claimed by the Other Contractor(s) are payable.

25.5 Save as provided in this Clause 25, the Contractor hereby releases and forever discharges the Employer from all actions, suits, claims, demands, costs and other liabilities of any nature which the Contractor now has or at any time may have, or, but for the execution of the SO Documents, might have had against the Employer arising out of or in connection with the performance, or any negligent performance, by any of the Persons referred to in this Clause 25, of any of their individual or collective obligations under any agreement in relation to the Project.

26. Free Issue Material

26.1 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 at its cost and risk. 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 Works; and (ii) a look ahead schedule for the estimated quantities of the required Free Issue Materials.

26.2 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 Works for which such Free Issue Materials are required.

26.3 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.

26.4 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. Wastage parameters in respect of such Free Issue Material shall be as per Clause 26.4(d) and the mode of issuing such Free Issue Materials shall be as below:

(a) *Cement*

Any cement to be issued to the Contractor shall be issued on weighment basis, the procedure for which may be prescribed by the Employer.

(b) *Reinforcement steel*

(i) Any reinforcement steel to be issued to the Contractor shall be issued in accordance with the requirements set out in the Drawings and Documents and any bar bending schedules provided by the Contractor. Such reinforcement steel shall be issued to the Contractor on the basis of weight, which shall be calculated as specified below:

- a. all reinforcement steel (in coils or straight length) shall be issued on the basis of actual weighment carried out by the Employer at the Site or in the vicinity of the Site; or
- b. reinforcement steel may also be issued on the basis of "sectional weight" as per IS:1752.

(ii) The actual weighment shall be done on weighing equipment available at the Site or in the vicinity of the Site and shall be jointly recorded in a register by the Parties, on a daily basis or on *each* indent basis. The reinforcement steel shall be issued to the Contractor in such diameters and lengths which are presently rolled in India or as may be available in the stores of the Employer.

(iii) Any reinforcement steel which is equal to or less than: (i) one hundred (100) times its diameter; or (ii) two (2) metres, whichever is higher, shall be considered as scrap. The Contractor shall return any such scrap generated from the use of reinforcement steel to the *Employer* at its store or at a location designated by the Employer, and such scrap shall be considered under accountable wastage for the purpose of reconciliation.

(iv) Any pieces of reinforcement steel measuring equal to or more than the length specified in Clause 26.4(b)(iii) above shall be classified as cut pieces and stacked

separately. Any cut pieces being returned by the Contractor shall be weighed in the same manner as was adopted at the time of issue of such reinforcement steel.

(c) *Structural steel*

(i) Any structural steel to be issued to the Contractor shall be issued on the basis of weight and the type of structural steel being issued.

(ii) Steel plates

a. All steel plates shall be issued on the basis of actual weighment carried out by the Employer at the Site or in the vicinity of the Site. Alternatively, the Employer may issue steel plates on the basis of "sectional weight" specified for plates in SP:6.

b. The actual weighment shall be done on weighing equipment available at the Site or in the vicinity of the Site or, in the event the weighing equipment is not available, on the basis of random lengths or bundle weights. The Parties shall jointly record the weighment in a register, on a daily basis or on each indent basis.

(iii) Structural steel (other than plates)

a. All structural steel (other than plates) shall be issued on the basis of "sectional weight" as per SP:6, irrespective of the section involved.

b. The structural steel shall be issued to the Contractor in such sections and length which are presently rolled in India or as may be available in the stores of the Employer.

c. In the event there is no unit weight prescribed in the relevant 'Indian Standards' for the issued sections of structural steel, the unit weights furnished by the supplier of such structural steel shall be considered. If there are no unit weights furnished by the supplier of such structural steel, the Employer may prescribe a representative unit weight on the basis of actual weighment carried out for samples of the issued structural steel.

(iv) Classification of scrap

a. Pieces of plates measuring less than one thousand and five hundred (1500) square centimetres in area or less than ten (10) centimetres in width shall be classified as scrap and stacked separately.

b. Cutting edges/pieces of plates measuring less than forty (40) millimetres in width or less than three (3) kilograms in weight shall be classified as rolling/melting scrap.

c. Pieces of structural steel (except for plates) measuring less than two (2) metres in length shall be classified as scrap and stacked separately.

(v) Cut pieces

a. Pieces of plates measuring more than or equal to one thousand and five hundred (1500) square centimetres in area or ten (10) centimetres in width shall be classified as cut pieces and stacked separately. The cut pieces of plates returned shall be rectangular in shape.

b. Pieces of structural steel (except for plates) measuring equal to or more than two (2) metres in length shall be classified as cut pieces and stacked separately.

- c. Any cut pieces being returned by the Contractor shall be weighed in the same manner as adopted at the time of issue of such material.

(d) *Wastage Parameters*

Sr. No.	Material Description	Permissible Wastage	Accountable Wastage	Unaccountable Wastage
1.	Cement	1.0%	-	-
2.	Reinforcement Steel	3.0%	2.5%	0.5%
3.	Structural Steel	3.0%	2.5%	0.5%

26.5 The Contractor shall construct fenced store yard(s) with 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. The Contractor shall, during stacking and storage of the following Free Issue Materials (if provided by the Employer), ensure the following:

(a) *Cement*

The Contractor shall construct a cement godown of suitable storage capacity, at its own cost. The cement bags shall be stacked in a manner that ensures adequate insulation from the walls and the floor, in order to ensure that such bags are not subjected to any contact with moisture. The cement bags shall be stacked in a manner that facilitates ease in counting and removal of such bags for use, on a 'first in first out' basis. The Parties agree that empty cement bags shall be the property of the Employer and the Contractor shall deposit such empty bags in the store.

(b) *Steel*

Reinforcement and structural steel shall be stored and stacked in such a manner so as to facilitate easy identification, and removal. The Contractor shall take proper care to prevent direct contact between the steel and the ground, at its own cost.

26.6 The Contractor shall submit a consumption statement for Free Issue Material along with each Running Account Bill 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.

26.7 The Contractor shall use the Free Issue Materials provided by the Employer solely for the performance of the Works. The Contractor shall procure materials (including cement and steel) required for its office, colony, stores and for works and temporary works, at its own cost and expense. Unless specified otherwise in the Service Order, the Free Issue Material provided by the Employer shall not be used for manufacturing of items such as reinforced cement concrete hume pipes, tiles and other such pre-cast elements, which may be manufactured outside the Site. The Employer shall have the right to recover the cost for any such Free Issue Materials consumed due to non-compliance with this Clause in accordance with Clause 26.8 below.

26.8 On Handing Over, 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 specified in Clause 26.4(d) above). 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 specified in Clause 26.4(d) above),

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.

26.9 Utilisation of Cut-pieces

- (a) The Contractor shall utilise the cut portions of reinforcement and structural steel as the Free Issue Materials, without any cost to the Employer, either by way of lapping in reinforcement steel or butt welding or splicing in structural steel.
- (b) The Employer's Representative shall have the right to direct the Contractor to utilise the cut portions generated by Other Contractors working at the Site, without any cost to the Employer. These cut pieces shall be received by the Contractor either from the Employer's stores or from the fabrication yards of Other Contractors, in accordance with the directions of the Employer's Representative. The cut pieces shall be issued on the same basis as the issue of fresh steel. All other stipulations mentioned in this Clause regarding wastage and excessive consumption of steel shall be applicable for such cut-pieces as well.

27. Insurance

- 27.1 Unless otherwise specified in the Service Order: (i) 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 Works (except the insurance policy(ies) required to be obtained by the Employer as per the SO Documents), including 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 Works; and (ii) the Employer shall procure the construction/erection all risks insurance policy for the Works.
- 27.2 The Basic Price is inclusive of all 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 Works, 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.
- 27.3 The Contractor shall ensure that its Sub-Contractors also maintain insurance similar to the insurance required to be maintained by the Contractor in accordance with the requirements set out in the Service Order with limits of liability and levels of deductibles as mandated by Applicable Laws and, if not mandated by Applicable Laws, then as acceptable to the Employer. The Parties shall further obtain and maintain adequate insurance for their respective employees and representatives during the Term.
- 27.4 The Contractor shall obtain additional insurance or revise the limits of existing insurance as per the Employer's request (if any) from time to time in which case, any additional cost shall be to the Employer's sole account.
- 27.5 In the event of occurrence of an insured event, the Contractor shall do all that is necessary to be done to prefer a claim under the insurance policy procured by it and shall carry out repairs or replacement of the damage caused by the insured event.
- 27.6 If the Contractor fails to effect and keep in force or materially modifies the insurances referred to in this Clause or the Service Order, as the case may be, the Employer may, in its sole and absolute discretion, effect and keep in force any such insurances, and pay such premium or premiums as may be necessary for that purpose, and from time to time deduct the amount so paid from or to any monies due, or which may become due, to the Contractor, or recover the same as a debt due from the Contractor. Further, the insurance obtained by the Contractor shall

contain a clause to the effect that the insurers have agreed to waive all rights of subrogation against the persons assured (including all beneficiaries thereof).

27.7 In the event that the Contractor purports to comply with the insurance requirements under the SO Documents by reference to any of its umbrella or corporate insurance policies, it shall provide to the Employer any information that the Employer may reasonably require in respect of such policy(ies).

27.8 The Contractor shall:

- a) provide to the Employer satisfactory evidence of the insurances required to be effected under the SO Documents before commencing the performance of the Works;
- b) be responsible for the deductibles, exceptions and exclusions relating to insurance proceeds under the insurance policies procured pursuant to this Clause 27; and
- c) 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.

27.9 The claim management with respect to the aforesaid insurance policies shall be the sole obligation of the Contractor. The Contractor shall provide not less than thirty (30) days advance notice to the Employer prior to the cancellation, termination or material alteration of said policies of insurance.

27.10 The Contractor agrees and acknowledges that except as specified in this Clause 27 above, all costs in respect of the insurances specified under the SO Documents shall be to the Contractor's account, and shall be included in the Basic Price.

28. Inspection and Testing

28.1 The Employer, its representatives or any TPIA shall have the right to inspect, examine and measure all design, engineering, Equipment and Materials and the Works performed or executed by the Contractor pursuant to the Scope of Work, during any stage of the Works and at any and all places where the Equipment and Materials are being manufactured or assembled, or the Works are being performed. The procedures for such inspection, examination or measurement shall be as set out in the Specifications or in accordance with Codes and Standards and/or Good Industry Practice, as may be applicable. The Contractor shall cooperate with the Employer for such inspection, examination and measurement and shall, if necessary, obtain the necessary authorisations for the Employer to conduct the same.

28.2 *Inspection and Testing for Equipment and Materials*

- (a) The Employer shall have the right to cause the Contractor to perform all such tests and inspections for the Equipment and Materials at the place of manufacture or assembly thereof, in accordance with the Quality Assurance Plan, in order to determine whether the Equipment and Materials conform to the Quality Assurance Plan, Specifications, Codes and Standards and other requirements of the SO Documents ("**Factory Tests**"). The Contractor shall give fifteen (15) days' advance notice of the conduct of the Factory Tests and of the place and time thereof to the Employer and, unless otherwise agreed by the Employer, all such Factory Tests shall be conducted in the presence of the Employer and/or the TPIA.
- (b) If the Equipment and Materials or any part thereof fail to pass the Factory Tests, the Employer and/or the TPIA shall have the right to reject such Equipment and Materials or parts thereof in accordance with Clause 29.

28.3 When the Factory Tests in respect of the Equipment and Materials performed in accordance with Clause 28.2 have been successfully carried out and the test reports thereof have been approved by the Employer, the Employer shall issue the MDCC to the Contractor. The Contractor shall dispatch the Equipment and Materials only after issuance of the MDCC by the Employer.

Any permission for dispatch of the Equipment or Materials approved by the Employer or the TPIA (as the case may be), including the issuance of MDCC, shall not relieve the Contractor from its obligations and responsibilities under the PO Documents.

28.4 The Contractor shall submit 'Manufacturer's Test Certificates' and the MDCC along with the dispatch of respective Equipment and Materials. The Contractor shall also provide a scanned copy of the same to the Employer by e-mail, for reference.

28.5 *Inspection and Testing for Parts of the Works*

- (a) No part of the Works shall be covered up on the Site without the Contractor carrying out any test or inspection as may be required in accordance with the Specifications or by the Employer. The Contractor shall, no later than seven (7) days prior to the likely completion of the construction of such parts of the Works, notify the Employer of the readiness thereof to be subjected to testing.
- (b) If the tests conducted upon completion of construction of such parts of the Works are not successful, then the Employer has the right to reject such parts of the Works without any liability whatsoever, in accordance with Clause 29.

28.6 *Additional Tests*

The Employer may, in addition to the tests conducted in accordance with this Clause 28 and otherwise prescribed under the SO Documents, require the Contractor to carry out any additional tests in connection with the Scope of Work ("**Additional Tests**"). In the event the results of such Additional Tests show that the design, engineering, workmanship and/or construction of the Equipment and Materials and/or the Works, as the case may be, are:

- (a) not in accordance with the terms of the SO Documents, the Contractor shall be responsible for rectification of the Defect and/or replacement of the Defective portion of the Equipment and Materials and/or the Works as discovered through the Additional Tests, and any implication on the Completion Schedule shall be borne by the Contractor; or
- (b) in accordance with the terms of the SO Documents, the Contractor shall be entitled to propose a Change for adjustment to the Completion Schedule in accordance with Clause 10, to the extent that such Additional Tests have had a material effect on the Contractor's ability to meet the Completion Schedule.

28.7 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 28, including the Factory Tests. The Contractor shall also ensure that the instruments and equipment utilised for the conduct of tests, inspections and measurement under this Clause 28 are calibrated by either the manufacturer of such instruments or equipment, or any accredited testing laboratory, from time to time, and the Contractor shall furnish the latest calibration certificate to the Employer in this regard. The right of inspection, examination, measurement 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.

29. Acceptance and Rejection

29.1 If as a result of: (i) any inspection, examination or testing of the Equipment and Materials and/or the Works carried out in accordance with Clause 28; or (ii) performance of activities specified under Clauses 30, 31 or 33, the Employer determines that any part of the Equipment and Materials and/or the Works is Defective, unable to achieve Commissioning or Performance Guarantees, or otherwise not in accordance with the SO Documents, the Employer shall have the right to reject such part of the Equipment and Materials and/or the Works 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 part of such Equipment and Materials and/or the Works complies with the SO Documents, which may include:

- (a) all specific corrective measures or rectification in respect of the Works, which when implemented and operated, shall enable the Equipment and Materials and/or the Works to comply with the requirements of the SO Documents; or
- (b) correct the Drawings and Documents and other technical documentation to reflect such corrective measures.

29.2 In case the Contractor fails to rectify or replace the rejected Equipment and Materials and/or the Works or any part thereof, or undertake remedial measures as set out in Clause 29.1 above, within the timeframe given by the Employer, the Employer shall have the right to rectify such Equipment and Materials and/or the Works or parts thereof in accordance with Clause 42.

29.3 After completion of the necessary remedial work, the Employer has the right to: (i) subject the Equipment and Materials and the Works or parts thereof to further inspection, examination and testing by the Employer, its representatives or TPIA in accordance with the procedure set out under Clause 28; or (ii) perform any of the activities set out in Clauses 30,31, and/or 33 below, after all corrective measures to eliminate the Defects or deficiencies have been undertaken. All costs and expenses of such further inspection, examination and testing shall be to the Contractor's account.

29.4 The Contractor shall ensure that it performs its obligations under this Clause 29 in accordance with the schedule and the timelines for the Project, as specified by the Employer to the Contractor. The Contractor shall, and shall ensure that its Sub-Contractors, labourers and personnel shall, comply with the requirements specified by the Employer for the purposes of this Clause 29, including all site regulations as specified under Clause 38.1. The Contractor shall not be entitled to raise any Running Account Bills or invoice for any sums payable in respect of the portion of the Equipment and Materials and/or the Works which has been rejected by the Employer in accordance with the provisions of this Clause 29.

30. Mechanical Completion

30.1 The Contractor shall, if applicable, be responsible for achieving the erection, installation, construction and mechanical completion of the Works, as more particularly detailed in and in accordance with the Specifications, Codes and Standards and other terms and conditions of the SO Documents ("**Mechanical Completion**"). The Contractor shall ensure that the Mechanical Completion of the Works is carried out in a manner which is correct, complete and in conformance with the technical requirements of the Project and the terms of the SO Documents. On achievement of Mechanical Completion, the Contractor shall ensure, if applicable, that each item of the Works is thoroughly cleaned and then inspected jointly by the Employer and the Contractor for correctness and completeness of installation and acceptability for commencement of pre-commissioning activities for the Works. Pursuant to the same, the Contractor shall, if applicable, complete all pre-commissioning activities and ensure that the Works is ready for Commissioning.

30.2 When all the activities required to be performed in respect of the Works, as set out in Clause 30.1, including any retests pursuant to Clause 29, have been successfully carried out, the Contractor shall notify the Employer in writing of the same and shall request the Employer to issue the Mechanical Completion Certificate to the Contractor, certifying that the Contractor shall have achieved Mechanical Completion. Upon receipt of such request from the Contractor and the Contractor having complied with the conditions set forth in this Clause 30 to the Employer's satisfaction, the Employer shall issue the Mechanical Completion Certificate to the Contractor.

31. Trial Operation and Commissioning

31.1 Trial Operation

- (a) Upon completion of all activities as specified in Clause 30 above and, as a part of Commissioning, the Contractor shall, if applicable, operate the Works on a trial basis at part or full load for a period as may be specified by the Employer ("**Trial Operation**"), subject to the Specifications and other requirements of the Project. The Trial Operation shall be considered successful, provided that each item and part of the Works can operate continuously as per the specified characteristics for the duration of Trial Operation, with all operating parameters within the specified limits and at or near the predicted performance for the Works.
- (b) The Contractor shall notify the Employer fifteen (15) days prior to the scheduled commencement of Trial Operation. The Contractor shall undertake all such activities that the Employer may require the Contractor to perform in addition to the Trial Operation for ensuring the successful Commissioning of the Works, as stipulated below.

31.2 Commissioning

- (a) The Contractor shall, during the course of or upon completion of the Trial Operation conducted in accordance with Clause 31.1 above (if applicable), perform all other activities and tests as may be required for achieving Commissioning of the Works, within such timeline as may be specified in the Completion Schedule. The Contractor shall conduct such activities and tests for Commissioning in a manner consistent with safe and accepted operating procedures, in order to test the Works under design conditions and to demonstrate that the Works are capable of meeting the design and technical parameters as set out in the Specifications and the SO Documents.
- (b) If the Commissioning of the Works is:
 - (i) not successful, the Contractor shall, at the Employer's option, either:
 - a. undertake such measures as specified in Clause 29; or
 - b. pay Shortfall Liquidated Damages to the Employer in accordance with Clause 34.2, provided however that, in cases where separate Performance Guarantee Tests are being performed in terms of Clause 33, the Shortfall Liquidated Damages shall be payable in accordance with the provisions of Clause 34.2;
 - (ii) successful and the Works can be safely and reliably placed in commercial operation to the Employer's satisfaction, notwithstanding the Punch-List Items being outstanding and/or incomplete, the Employer shall take over the care, custody and control of the Works and issue a Provisional Acceptance Certificate in favour of the Contractor.
- (c) In case of any pending Punch-List Items pursuant to the issuance of the Provisional Acceptance Certificate, the Contractor shall complete all such Punch-List Items promptly, and in any case, not later than [thirty (30)] days from the date of the issuance of the Provisional Acceptance Certificate. The provisions with respect to the Contractor's liability for Defects, as set out in Clause 36, shall apply to such Punch-List Items.
- (d) If required by the Employer, the Contractor shall additionally depute its technical experts at the Site, for a duration which is the earlier of completion of Handing Over or a period of [ninety (90)] days from the issuance of the Provisional Acceptance Certificate, for the purpose of assisting the Employer's personnel with the smooth and continuous operation of the Project.

32. Title and Risk of Loss

32.1 Except as otherwise provided herein, title and proprietary interest in the Works (or any part thereof) created pursuant to performance of the Works, including any Drawings and Documents, shall become the property of the Employer, on the earlier of the following:

- (a) issuance of the Provisional Acceptance Certificate; or
- (b) SO Price payable for the Works (or such part thereof) is paid by the Employer to the Contractor.

32.2 Notwithstanding the foregoing, the Contractor shall be responsible for and shall bear any and all risk of Loss or damage to the Works until Commissioning thereof in accordance with the provisions of the SO Documents. Upon issuance of the Provisional Acceptance Certificate by the Employer to the Contractor, risk of Loss or damage shall pass to the Employer, provided that any Loss or damage to the Works caused due to reasons attributable to the Contractor shall be borne by the Contractor.

33. Performance Guarantee

33.1 Upon receiving the Provisional Acceptance Certificate for the Works, the Contractor shall, if applicable to the Works and at the request of the Employer, perform the Performance Guarantee Tests for the Works to demonstrate compliance with the Performance Guarantee, within such timeline as may be specified by the Employer. The Contractor guarantees that, during the Performance Guarantee Tests, the Works and all parts thereof shall achieve the Performance Guarantee. If the Performance Guarantee is not achieved (either in whole or in part), the Contractor shall, at the Employer's option, either:

- (a) undertake such measures as specified in Clause 29; or
- (b) pay Shortfall Liquidated Damages to the Employer in respect of the failure to meet the minimum Performance Guarantees in accordance with Clause 34.2.

33.2 If, for any reason not attributable to the Employer or the Other Contractors, even the minimum level of Performance Guarantee is not achieved, the Employer has the right to reject such Works without any liability whatsoever, in accordance with Clause 29. Notwithstanding anything contained to the contrary in the SO Documents, the Employer may, at its sole discretion, choose to accept such Works after the Parties have renegotiated the Basic Price for such Works and the Contractor has paid to the Employer the Shortfall Liquidated Damages for such Works.

33.3 The Contractor shall, if required for the successful completion of the Performance Guarantee Tests, bring to the Site the Contractor's Equipment (including any special equipment, apparatus, measuring instrument, tools and tackles) and upon the completion of the Performance Guarantee Tests, remove such Contractor's Equipment at its own cost and with prior approval from the Employer. The Employer shall furnish labour, electricity, water and fuel, without any cost to the Contractor, for conducting the Performance Guarantee Tests.

34. Liquidated Damages

34.1 If the Contractor fails to achieve Commissioning of the Works 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**").

34.2 In case the Works fail to achieve successful Commissioning or pass the Performance Guarantee Tests (as applicable), 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**"). Unless otherwise specified in the Service Order, it is hereby clarified that in the event Performance Guarantee Tests are applicable for the Works, the Shortfall Liquidated Damages shall be levied upon the Works failing to successfully achieve such Performance Guarantee Tests, and not upon any instance of unsuccessful Commissioning of the Works.

- 34.3 The combined maximum ceiling for the Delay Liquidated Damages and Shortfall Liquidated Damages shall be as specified in the Service Order.
- 34.4 In the event the Contractor breaches any of its obligations set out under Clause 20.2 or Clause 40, the Employer shall have the right to levy liquidated damages for such breach, as specified in the Service Order.
- 34.5 The Parties agree that the liquidated damages set out in the SO Documents are a genuine pre-estimate of the Losses that shall be suffered by the Employer on account of any delay in completion of the Scope of Work, failure to achieve Commissioning, failure to pass the Performance Guarantee Tests and/or breach of obligations set out under Clause 39 (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 caused by the Contractor's breaches; and (ii) have been mutually determined after joint discussions and calculations.
- 34.6 The Parties agree that the GST applicable on liquidated damages payable by the Contractor under this Clause 34 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 (as grossed up) 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 the available Bank Guarantees.
- 34.7 The payment of liquidated damages shall not relieve the Contractor from its obligation to complete Handing Over, 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.

35. Handing Over

- 35.1 The Contractor may, by written notice to the Employer, request the Employer to issue a Handing Over Certificate, provided that the following conditions (as may be applicable) shall have been fulfilled to the satisfaction of the Employer:
- (a) the Contractor shall have completed such portions of the Scope of Work which pertain to construction and Commissioning of the Works in accordance with Clauses 30 and 31, as per the Specifications and in accordance with the requirements of SO Documents;
 - (b) any and all liquidated damages and any other amounts payable under the SO Documents by the Contractor shall have been paid;
 - (c) the Contractor shall have, if applicable, successfully conducted the Performance Guarantee Tests;
 - (d) the Contractor shall have, if applicable, obtained all necessary Applicable Permits for the operation of the Works and shall have provided the Employer with the originals of the same and shall have provided all necessary assistance to the Employer for the transfer or novation of any such Applicable Permits that require transfer or novation as a result of the Employer's taking over of the Works;
 - (e) the Contractor shall have provided to the Employer final versions of all Drawings and Documents and all as-built documents and information on the Works as may be specified by the Employer;

- (f) the Contractor shall, at its own cost, clear away and remove from Site and any additional area provided by the Employer all the Contractor's Equipment, temporary installations at Site and surplus material that are not property of the Employer and debris, except those whose list has been agreed upon by the Employer for the purpose of the Works and shall have left the entire Site otherwise clean, tidy and in a condition satisfactory to the Employer;
- (g) any Punch-List Item as requiring rectification or completion hereunder shall have been so rectified or completed by the Contractor to the Employer's satisfaction; and
- (h) the Contractor shall have provided to the Employer such certification as the Employer may require certifying that the Contractor and each of its Sub-Contractors have complied with all Applicable Laws in connection with their performance of the Works.

35.2 The Employer shall, within [fifteen (15)] days after the receipt of the Contractor's request for issuance of the Handing Over Certificate either issue a Handing Over Certificate listing the items of the Works to be rectified or completed after Handing Over and the date by which they are to be rectified or completed, or reject the request giving its reasons.

35.3 The Contractor agrees that neither the performance of the Performance Guarantee Tests or inspection of the Works or any part of the Works, nor the attendance by the Employer, nor the issue of the Handing Over Certificate, shall relieve the Contractor from any of the Contractor's obligations under the SO Documents which otherwise survive, by the terms and conditions of the SO Documents.

36. Defect Liability

36.1 If the Works are in breach of the warranties set out in Clause 41.1 and/or any Defects are found in the 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 the Defects, promptly repair, replace or otherwise make good such Defects, deficiencies or damages as may be notified by the Employer on or before the expiry date of the Defect Liability Period for the Works or any part thereof, including any other damage to the Works caused by such Defects. 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 Works, spares, tools and tackles shall in no way relieve the Contractor of its obligations under this Clause.

36.2 The Employer shall provide the Contractor with necessary access to the Works at the Site or such other premises where the Works are performed as required for performance of the Contractor's obligations under this Clause. The Contractor may, with the consent of the Employer, remove from the Site or such other premises the Works or any part thereof that is Defective and/or damaged, if such repairs cannot be expeditiously carried out thereon.

36.3 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).

36.4 If the repair, replacement or making good of any Works that are Defective, is of such a character that it may affect the efficiency of 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 that part of the Works passes such tests. The tests shall be mutually agreed upon by the Parties.

- 36.5 If the Works or any part thereof cannot be used by reason of such Defect and/or making good of such Defect, the Defect Liability Period of the Works or such part, as applicable, shall be extended by a period equal to the period during which the Works or such part could be used by the Employer because of any of the aforesaid reasons. In the event any Sub-Contractor provides a longer guarantee with respect to the Works or any part thereof, the Contractor shall extend the benefit of such longer guarantee to the Employer. The Contractor shall, in this regard, obtain the best possible warranties and guarantees from the Sub-Contractors with respect to the design, materials, engineering and workmanship for the Works, for the benefit of the Employer. All such warranties and guarantees shall be so written as to survive all of the Parties' inspections, examinations, tests and approvals.
- 36.6 At the end of the Defect Liability Period, the Contractor's liability for Defects with respect to the Works ceases, except in case of Latent Defects. The Contractor shall make good such Latent Defects until the expiry of the Latent Defect Liability Period, in accordance with this Clause 36.

37. Final Acceptance

The Employer shall issue the Final Acceptance Certificate to the Contractor in accordance with the terms and conditions of the SO Documents, provided that each of the following conditions shall have been fulfilled by the Contractor to the satisfaction of the Employer (or waived by the Employer, as the case may be):

- (a) any balance Works specified in the Handing Over Certificate to be completed by the Contractor, shall have been completed on schedule and to the Employer's satisfaction;
- (b) any and all Defects or deficiencies in respect of the Works arising during the Defect Liability Period shall have been remedied and/or rectified to the Employer's satisfaction; and
- (c) there shall be no claim by the Employer against the Contractor outstanding under the SO Documents, nor any claim against the Employer by the Contractor and any of Sub-Contractors.

38. Compliance with Applicable Laws and Site Regulations

- 38.1 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 Works 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.
- 38.2 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 Works 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 Works 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.
- 38.3 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.

39. Compliance with Environmental, Social and Governance Requirements

- 39.1 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 Works 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.
- 39.2 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 Works.
- 39.3 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.
- 39.4 In furtherance to the objectives and requirements stipulated in this Clause 39, 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.

40. Compliance with Safety Requirements

- 40.1 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 Works, a: (i) job safety analysis for the Works 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 Works 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.
- 40.2 All safety plans, checklists and method statements prepared by the Contractor in respect of the Works 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 Works; (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 Sub-Contractors 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.
- 40.3 The Employer and/or its representatives shall have the right to conduct audits and inspections on a periodic basis and evaluation on a continuous basis, in order to assess the Contractor's compliance with the Safety Requirements and its obligations under this Clause 39. 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 39, the Employer shall also be entitled to levy liquidated damages upon the Contractor, in accordance with Clause 34.4.

40.4 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 Works. 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.

41. Representations, Warranties and Covenants

41.1 Representations and Warranties with respect to the Works

- (a) The Contractor represents and warrants that the Scope of Work performed by the Contractor and Sub-Contractors shall be executed in accordance with the provisions of Clause 12 and in conformity with the other terms of the SO Documents and free from defects and deficiencies, and further warrants that:
- (i) the design and engineering of the Works shall satisfy the minimum requirements set forth in the Specifications and shall be free of Defects and deficiencies. Such engineering and design shall be such that the Works shall function properly in accordance with the Specifications and terms of the SO Documents and shall meet the Performance Guarantees and all other safety, operability and performance criteria as specified in the SO Documents;
 - (ii) the fabrication, construction and installation of the Works shall be in accordance with the designs, Drawings and Documents and Specifications prepared in accordance herewith and approved by the Employer and all workmanship of the Contractor and Sub-Contractors shall be in full conformity with the requirements of the SO Documents and free of Defects and deficiencies (including the Latent Defects);
 - (iii) all equipment, materials and workmanship for the Works shall be in full conformity with the technical documents and other requirements of the SO Documents, shall be of suitable quality for the purposes and uses intended and shall be free of Defects and Latent Defects; and
 - (iv) the Works shall be fit for the purposes and uses intended and capable of operation in the manner contemplated hereby and as provided in the Specifications.
- (b) In the event of any breach of the representations and warranties set forth above for reasons attributable to the Contractor, the Employer shall have the right to reject such Works in accordance with Clause 29 and require replacements thereof, or require the Contractor to rectify and correct all such errors, omissions, Defects or deficiencies in the Works, such that the Works comply with the requirements of the SO Documents. The Contractor shall, if required by the Employer, undertake a root cause analysis for the purpose of determining the appropriate remedial action for such errors, Defects or deficiencies identified in the Works, and shall provide a report for the same to the Employer.
- (c) The Contractor's obligations, responsibilities, liabilities and warranties with respect to designing, engineering, procuring and constructing the Works correctly and in accordance with the SO Documents and its warranties set forth above shall not be reduced or affected by any supervision, superintendence, approval, inspection, test, direction, acceptance or

payment (or failure to supervise, superintend, approve, inspect, test, or give a direction, as the case may be) by the Employer and/or the Employer's Representative during the Term.

41.2 The Contractor hereby represents, warrants and covenants 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 and perform its obligations under the SO Documents and that the copies of such Applicable Permits have been delivered to the Employer;
- (c) it has full corporate power and authority to execute, deliver and perform its obligations under the SO Documents, and that the execution, delivery and performance of the SO Documents by the Contractor have been duly authorised by all necessary corporate action on part of the Contractor;
- (d) 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 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;
- (e) 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;
- (f) the Scope of Work shall be performed with professionalism, promptness, diligence and due care, in a skilled workmanlike and timely manner, in accordance with Good Industry Practice and the terms of the SO Documents;
- (g) there are no legal, arbitration 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) it has the financial standing and capacity to undertake the construction, design, engineering and performance the Works and remedy any Defects therein in accordance with the SO Documents;
- (k) it is fully aware of and shall comply with all Applicable Laws during the performance of the Scope of Work;
- (l) the Works shall be free and clear of any and all claims and encumbrances;

- (m) in entering into the SO Documents, it is acting in its own capacity and not in the capacity as trustee of any trust or as agent on behalf of any entity;
- (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 or 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.

41.3 The representations and warranties provided by the Contractor pursuant to Clause 41.1 and 41.2 shall be deemed to apply to all of the work performed by any Sub-Contractor employed or engaged by the Contractor as though the Contractor had itself performed such work.

41.4 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 by which the Employer or any of its assets are bound.

42. 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 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 Laws or the SO Documents, be entitled to complete the Works by itself or appoint another contractor to perform or complete the Works, 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.

43. Intellectual Property Rights

43.1 Project IP

All Intellectual Property Rights subsisting in the Works, Equipment and Materials, Specifications, and all other work and things prepared or developed by or on behalf of the Contractor under or in connection with the SO Documents (the "Project IP") vests in the Employer upon creation or, to the extent that any Intellectual Property Rights are not created at the time of the creation of Project IP, upon the later creation of those rights.

43.2 Contractor's IP

All Intellectual Property Rights created or developed by or on behalf of the Contractor:

- (a) prior to the Effective Date;
- (b) other than in connection with the SO Documents; and
- (c) which the Contractor makes available, contributes, brings to or uses in connection with the SO Documents,

collectively, the "**Contractor IP**", are and shall remain the property of the Contractor.

43.3 Employer's IP

All Intellectual Property Rights created or developed by or on behalf of the Employer and which the Employer makes available, contributes, brings to or uses in connection with the SO Documents (including all Intellectual Property Rights in the preliminary design and the Specifications) (the "**Employer IP**") are, and shall remain, the property of the Employer.

43.4 Licenses

- (a) The Contractor hereby grants to the Employer and its Affiliates a non-exclusive, assignable, irrevocable, royalty-free, perpetual, worldwide license (including the right to sub-license) to use, copy, sub-license and exercise all rights in the Contractor IP for any purpose in connection with the use, reproduction, operation, repair, maintenance or otherwise in respect of the Works, Specifications, the Scope of Work or the SO Documents.
- (b) If any right, title or interest in Project IP vests in the Contractor, the Contractor hereby unconditionally assigns, and shall procure assignment of, such right, title and interest in the Project IP to the Employer, at no cost, without need for any further assurance.
- (c) The Employer hereby grants to the Contractor a non-exclusive, non-transferable, revocable, royalty-free license for the Term to use the Employer IP and Project IP for the sole purpose of performing and completing its obligations under and in accordance with the SO Documents.
- (d) The Contractor shall, at the expense of the Employer, execute all documents and do all other things in order to enable the Employer, its Affiliates or its nominee to exercise its rights in relation to the Intellectual Property Rights being granted to the Employer in accordance with this Clause.
- (e) In the event the use of any Contractor IP or Project IP in the Works, any part thereof, any process or component forming part of or contained in any of the Works or in the reasonable contemplation of the Parties, is held to constitute an infringement of any third party's rights and its use is enjoined pursuant to any suit or proceeding, the Contractor shall promptly, at its own risk, cost and expense either:
 - (i) procure for the Employer the right to continue using such process or component; or
 - (ii) replace such process or component with a non-infringing process or apparatus of equal utility and efficiency to the satisfaction of the Employer; or
 - (iii) modify such process or component in a way satisfactory to the Employer, so that it becomes non-infringing.
- (f) In the event the Contractor becomes aware of any suspected, threatened or actual infringement of any of the Employer's IP or any Intellectual Property Rights of a third party due to incorporation of the Employer's IP in the Scope of Work, the Contractor shall notify the Employer and shall:
 - (i) provide all assistance requested by the Employer in relation to such claim; and

- (ii) use its best endeavours to render the infringing material non-infringing in a manner acceptable to the Employer.

43.5 *Representations and Warranties*

The Contractor represents and warrants to the Employer that:

- (a) it is the registered owner of or holds a valid license to all Intellectual Property Rights incorporated in the Works, Drawings and Documents, Specifications and designs to be used in the Scope of Work and shall grant valid license in all such Intellectual Property Rights incorporated in the Works, Drawings and Documents, Specifications and designs used in the Scope of Work to the Employer (for the purposes of the Project) without the Employer incurring any liability or obligation;
- (b) it shall not infringe any Intellectual Property Rights, moral rights or any other rights of any person in the performance of the Scope of Work;
- (c) the Works, the Project IP, the Contractor IP and the use of them by the Employer or its Affiliates, shall not infringe the Intellectual Property Rights, moral rights or any other analogous rights of any Person;
- (d) it has not granted and shall not grant any right, title or interest in the Scope of Work or the Intellectual Property Rights in the Scope of Work to any third party; and
- (e) there are no current or threatened claims or suits against the Contractor or any of its Affiliates in connection with infringement of any Intellectual Property Rights that would materially adversely affect the Contractor's ability to perform its obligation under the SO Documents.

43.6 *Reproduction and Return of Documentation*

- (a) Documentation owned or created by the Employer relating to the Scope of Work may only be used, copied, performed or reproduced by the Contractor for the purposes of performing the Scope of Work, unless the Contractor has obtained the prior written approval of the Employer.
- (b) The Employer shall have the unlimited right to translate, abridge and/or make as many copies of the Contractor IP as are necessary for the Employer's purpose in relation to the Scope of Work and the Works.

44. Indemnity

44.1 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) any failure of the Contractor, its Affiliates, Sub-Contractors or their respective personnel to: (i) pay any Taxes relating to income or any other Taxes required to be paid by such Person; (ii) make any payments in respect of Taxes which are to be paid by such Person in connection with the performance of its obligations relating to the SO Documents; or (iii) comply with its obligations under Clauses 6.1 and/or 7.2;

- (d) any infringement or alleged infringement of Intellectual Property Rights, which the Contractor is not licensed to use as a part of the Contractor IP or Project IP, or any claims, suits or proceedings by a third party alleging that a proprietary right or copyright has been infringed by any use, copying, reproduction or distribution by the Employer;
- (e) any breach of the SO Documents resulting from 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;
- (f) non-compliance with Applicable Laws by the Contractor, its Affiliates, Sub-Contractors or their respective personnel; and
- (g) any breach of representations, warranties or covenants given by the Contractor, its Affiliates, Sub-Contractors or their respective personnel under or in relation to the SO Documents.

44.2 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.

44.3 *Defense of Claims*

- (a) The Contractor shall, at its own expense, defend any suit or proceeding based on any claim asserted against the Employer and indemnified under this Clause 44 or any other provision of the SO Documents.
- (b) The Employer shall give the Contractor such assistance as the Contractor may reasonably require in the defence of such suit and shall have the right to be represented therein by counsel of its own choosing at its own expense.
- (c) If the Contractor fails to defend diligently any such suit or proceeding, the Employer may settle the claim, without the consent of the Contractor and without relieving the Contractor of its obligation to indemnify the Employer.

45. Limitation of Liability

45.1 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) any amount which is recovered or recoverable under a policy of insurance effected under the SO Documents or which would have been recoverable had the Contractor effected insurance in accordance with the terms of the SO Documents;
- (d) damage to or destruction of:
 - (i) the property of a third party caused by any act or omission of the Contractor or the Contractor's personnel; and
 - (ii) any property of the Employer (or a related party of the Employer) that does not form part of the Works;
- (e) costs and expenses incurred with respect to rectification of any Defect or Latent Defect;
- (f) any claim pursuant to Clause 25; and

- (g) any Losses and claims pursuant to the breach of the Contractor's indemnity obligations under the SO Documents.

45.2 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.

46. Change in Law

46.1 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.

46.2 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.

47. Force Majeure

47.1 "**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 consequence 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, sabotage, terrorism and civil war;
- (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; or
- (c) ionising radiation or contamination or radio activity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, other hazardous properties of any explosive assembly or nuclear component.

47.2 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.

47.3 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.

47.4 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.

47.5 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 Works, Equipment and Materials and other resources, but without prejudice to either Party's right to terminate the SO Documents under Clause 49.

47.6 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 49.2.

48. Suspension

48.1 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 Works), 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.

48.2 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.

48.3 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.

48.4 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.

49. Termination

49.1 *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 Works in a manner specified in the programme furnished under Clause 11 at such rates of progress that give assurance to the Employer that the Contractor can complete the Works in accordance with the Completion Schedule or perform the Scope of Work in accordance with the timelines provided by the Employer,

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 49.1(a), Clause 49.1(b) or Clause 49.1(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 Works already executed;
 - (ii) deliver to the Employer parts of the Works (or parts thereof) executed by the Contractor 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 Works 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; and
 - (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.
- (e) Upon such termination in terms of Clause 49.1, 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 42.

- (f) Subject to Clause 49.1(g) below, the Contractor shall be paid the SO Price attributable to the Works (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 Works, any reasonable costs incurred by the Contractor with respect to protection of the Works 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 49.1, 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 49.1(f), plus the reasonable costs incurred by the Employer in completing the Works, 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 49.1(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.

49.2 Termination for the Employer's Default

- (a) The Contractor may, without prejudice to any other rights or remedies it may possess, terminate the SO Documents by giving a [thirty (30)] days' notice to the Employer, if the Employer:
 - (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being 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 Employer takes or suffers any other analogous action in consequence of debt, and the consequences thereof are not cured within a period of [ninety (90) days] of commencement of such proceedings or action, or are incapable of being cured; or
 - (ii) has failed to pay the Contractor the amounts specified in any undisputed invoice as may have been invoiced by the Contractor in accordance with the terms and conditions of the SO Documents and the Employer has failed to remedy such default within [one hundred and twenty (120)] days after the receipt of the Contractor's notice requiring the Employer to remedy such default,

provided that, in the event the Contractor does not terminate the SO Documents within a period of thirty (30) days after the expiry of the cure period set out in Clause 49.2(a)(ii), the Contractor's notice of such remedial period shall lapse and the Contractor shall not have the right to terminate the SO Documents without providing a fresh notice to the Employer.

- (b) Upon issuing the notice of termination under Clause 49.2(a), the Contractor shall take all measures as specified in Clause 49.1(d).
- (c) In the event of termination of the SO Documents under Clause 49.2(a), the Employer shall pay to the Contractor all payments specified in Clause 49.3(c).

49.3 *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 49.3(a), the Contractor shall take all measures as specified in Clause 49.1(d).
- (c) In the event of termination of the SO Documents under Clause 49.3(a), the Employer shall pay the following amounts to the Contractor:
 - (i) the SO Price, properly attributable to the Works 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.

49.4 In this Clause 49, 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.

50. **Governing Laws**

The SO Documents shall be governed by and interpreted in accordance with the laws of the Republic of India. Subject to Clause 51.2, the courts at Ahmedabad, Gujarat, India shall have exclusive jurisdiction on all matters arising out of or relating to the SO Documents.

51. **Settlement of Disputes**

51.1 *Employer's Representative*

If any dispute whatsoever arises between the Parties 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 Handing Over has been completed for the Works 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 the Employer's Representative. The Employer's Representative shall provide his decisions within thirty (30) days of the referral of such dispute. Either Party, if not in agreement with the Employer's Representative's decision, may proceed to resolve such dispute in accordance with Clause 51.2, within thirty (30) days of such decision.

51.2 *Arbitration*

- (a) If either the Employer or the Contractor is dissatisfied with the Employer's Representative's decision, such dissatisfied Party may give notice to the other Party of its intention to commence arbitration as to the matter in dispute and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute, in respect of which a notice of intention to commence arbitration has been given in accordance with Clause 51.2(a) above, shall be finally settled by arbitration in accordance with Clause 51.2(c) below.
- (c) Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules and regulations made thereunder, as amended from time to time. The venue of arbitration shall be [Ahmedabad, Gujarat, India].
- (d) The arbitration proceedings shall be conducted by a sole arbitrator appointed by mutual agreement of the Parties. In the event the Parties are unable to agree on the

appointment of a sole arbitrator, each Party shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall appoint the third (3rd) arbitrator as the presiding arbitrator.

- (e) The arbitration shall be conducted in English and any award shall be made in English. The Parties agree that the decision and any award rendered by the arbitrator(s) in connection with a dispute shall be final and binding on the Parties.
- (f) The arbitration expenses shall be borne as provided in the award of arbitration. In the event the award is silent on the same, the arbitration expenses shall be borne by the losing Party.

51.3 Notwithstanding reference of any dispute to the Employer's Representative or to the arbitration herein, 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.

51.4 Notwithstanding anything to the contrary contained herein but subject to Clause 51.2, 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.

52. Assignment

52.1 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.

52.2 The Contractor shall not, without the prior written consent of the Employer, assign the SO Documents or any benefit or interest in or under the SO Documents. Any such purported assignment shall be void.

52.3 In the event of an assignment, the Contractor and the assignee shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the SO Documents.

53. Novation and Step-in Rights

53.1 Notwithstanding anything contained herein, the Parties agree and acknowledge that the Employer's lenders shall be entitled to step into the obligations of the Employer and substitute the Employer under and in accordance with the financing arrangements entered into by the Employer with such lenders, either by itself or through its nominated agencies.

53.2 In order to enable the Employer to satisfy its obligations under this Clause 53.1, 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.

54. Project Funding

- 54.1 The Contractor acknowledges that the times and method of payment provided for in the SO Documents have been fixed in contemplation that funds for the SO Documents will be made available through funding arrangements made with lenders. The Contractor agrees that, if requested by the Employer, it shall assist the Employer, or parties designated by the Employer, in the preparation of any studies or analyses required to obtain, make effective and maintain the effectiveness of such funding arrangements. The Contractor agrees to supply such documentation and information as the Employer may request to facilitate the applications for and to ensure compliance with any terms or regulations pertaining to such funding arrangements. The Contractor agrees to cooperate with representatives of the Employer, or other parties designated by the Employer, in connection with the obtaining, maintenance, administration and disbursement of funds pursuant to such arrangements.
- 54.2 If funds are not available on the basis contemplated and as a result, payments to the Contractor under the SO Documents are interrupted or delayed in a material way, then the Employer and the Contractor shall consult with one another to determine in good faith the alternative payment arrangements or procedures that may require to be implemented under such circumstances.
- 54.3 The Parties hereby acknowledge that the terms and conditions of the SO Documents may be subject to the approval of the lenders and agree to incorporate such revisions to the SO Documents as may be required without materially altering the commercial position agreed under the SO Documents. If as a result of a request from the lenders, changes to the SO Documents are required, the Parties shall incorporate such revisions as mandated by the lenders.

55. Confidentiality

- 55.1 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, the Contractor's Representative 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**").
- 55.2 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 strictly need to know such Confidential Information for the purposes of and exclusively for 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.
- 55.3 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.
- 55.4 The Receiving Party further agrees not to reverse engineer any Confidential Information furnished by the Disclosing Party and shall not, without the prior written consent of the Disclosing Party, disclose to any other Person, the Confidential Information or the fact that the

Confidential Information has been disclosed to it under the SO Documents, or any of the terms and conditions, status or other facts with respect thereto. 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.

55.5 The Confidential Information shall not be deemed to be within the categories of exceptions set out in Clause 55.4 above, merely because such Confidential Information is embraced by more general information in the public domain or in the Receiving Party's possession. In addition, no combination of features shall be deemed to be within the categories of exceptions merely because individual features are in the public domain or in the Receiving Party's possession. A combination of features shall only be deemed to be within the foregoing categories if the combination itself and its principles of operation are in the public domain or in the Receiving Party's lawful possession.

55.6 Prior to making any disclosure of Confidential Information to any Person, as permitted under the SO Documents, the Receiving Party shall procure that such Persons are: (a) made aware of the terms of the SO Documents; and (b) are either bound by professional responsibility to keep such information confidential or that such Persons agree in writing to keep such Confidential Information confidential on terms no less onerous than those contained in the SO Documents.

55.7 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.

55.8 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.

56. Notices

56.1 All notices to be given by one Party to the other Party in connection with or under the SO Documents shall be made in writing in English, and shall be sent, at the addresses set forth in the Service Order or to such other addresses, as notified from time to time by the Parties to each other, by either one or more of the means namely personal delivery, registered post, courier, or electronic mail.

56.2 A notice shall be treated as having been received, if sent by:

- (a) hand, when its delivery is confirmed by a signature on behalf of the recipient;
- (b) courier: (i) two (2) days after deposit with a reputed overnight courier if for inland delivery; and (ii) five (5) days after deposit with a reputed international courier if for overseas delivery;

- (c) registered post then, when the registered post would, in the ordinary course of post, be delivered whether actually delivered or not; and
- (d) email, when the sender receives an automated message confirming delivery (all electronic mail communication shall be followed by hand delivery, posting the courier or registered post in terms of Clauses 56.2(a), 56.2(b) and 56.2(c) hereof), provided always that the onus of proving deposit per Clause 56.2(b) hereof and posting by registered post per Clause 56.2(c) shall be that of the sender.

56.3 Notwithstanding anything contained in the SO Documents, no electronic mail communication shall be accepted as a legal notice or legal claim, unless it is additionally served at the appropriate address by hand, courier or by registered post.

57. Adjustments

57.1 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.

57.2 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 Laws 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.

58. Accounting Records and Audit

The Contractor shall maintain proper and updated records of, and in relation to, all Works performed to the Employer during the Term and for such period from the expiry or termination thereof as may be specified in the Service Order. The Employer reserves the right to carry out regular audit and inspection of the Contractor's records at any time during the Term without any notice in this regard. The Contractor shall provide access to the Employer to conduct such audits. In the event the Contractor fails to maintain regular and proper records and/or is in contravention of any Applicable Permits or Applicable Laws that require maintenance of such records, the Employer shall have the right to suspend the performance of the SO Documents at the sole risk and cost of the Contractor. The Contractor agrees to fully indemnify, hold harmless and defend the Employer from and against any and all Losses arising out of the Contractor's failure to comply with this Clause 58.

59. Anti-Bribery and Anti-Corruption

The Contractor covenants that neither the Contractor nor the Contractor's Representative, any of the Contractor's 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, the Contractor's Representative or any of the Contractor's Affiliates, Sub-Contractors, employees or representatives shall, in addition to any criminal liability which the Contractor may be subject to under Applicable Laws, provide a right to the Employer to terminate: (i) the SO Documents in accordance with Clause 49.1(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 Losses 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.

60. 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.

61. Constitution

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

62. 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.

63. 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. The Parties shall then use all reasonable endeavours to replace the illegal, invalid or unenforceable provisions by a legal, valid and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

64. 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.

65. 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.

66. Conflicts of Interest

The Parties shall exercise reasonable care and diligence to prevent any actions or situations which could result in a conflict with the best interests of the other Party. The Parties shall not offer, give, solicit or accept an advantage or excessive entertainment to or from any of the employees or agents of the other Party and other business associates. Any Party who becomes aware of any violations of this Clause 66 shall immediately notify the other Party in writing.

67. Further Assurance

Each Party shall do, sign, execute, deliver and procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them to carry out and give full effect to the SO Documents and the rights and obligations of the Parties under it.

68. Costs

Each Party shall bear and is responsible for its own costs in connection with the negotiation, preparation and execution of the SO Documents.

69. 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.

70. 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 Losses 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 25 (*Cooperation and Coordination with Employer and Other Contractors*), Clause 27 (*Insurance*), Clause 34 (*Liquidated Damages*), Clause 36 (*Defect Liability*), Clause 41 (*Representations, Warranties and Covenants*), Clause 43 (*Intellectual Property Rights*), Clause 44 (*Indemnity*), Clause 45 (*Limitation of Liability*), Clause 49 (*Termination*), Clause 50 (*Governing Laws*), Clause 51 (*Settlement of Disputes*), Clause 55 (*Confidentiality*) and Clause 70 (*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.

71. 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.