



## General Conditions for Service Level Agreements

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## 1. INTRODUCTION

### 1.1. Purpose and Objectives

This Agreement outlines the terms and conditions under which the Supplier will provide specified Services (collectively referred to as “the Services”) to its Client or Clients Affiliates. The objective is to provide a basis and framework for the delivery of high quality services that meet the needs of the Client

### 1.2. Non-exclusive agreement

It is understood and agreed that this Agreement does not grant to the Supplier any exclusive rights to do business with the Client and also that the Client may contract with other suppliers for the procurement of similar services. Nothing in the Agreement prevents the Supplier from marketing, developing, using and performing similar services or products to other potential clients.

### 1.3. Definitions

“*Affiliate*” means a subsidiary organisation, sister organisation or an organisationally connected entity to either party.

“*Benchmarks, targets and metrics*” means the agreed numeric criteria against which performance under this Agreement is to be measured.

“*Change control procedures*” means the agreed process to be followed when changes are required either to this Agreement or to the Services.

“*Commencement date*” means the date that the Agreement is considered to be effective.

“*Defective or inadequate performance*” means the delivery of services where the performance levels do not meet an agreed minimum criteria.

“*Disclosing party*” means the party who has disclosed confidential information to the other party.

“*Force Majeure*” means an exceptional event or circumstance

- which is beyond a party’s control,
- which such party could not reasonably have provided against before entering into the Agreement,
- which, having arisen, such Party could not reasonable have avoided or overcome, and
- Which is not substantially attributable to the other party.

“*Initial period*” means the Agreement period from the commencement date to the first renewal date.

“*Intellectual property rights*” mean the registered or non-registered ownership of patents, trademarks, registered design, know-how or copyright.

“*Key personnel*” means those persons employed by the Supplier who have a key role in the delivery of the services to the Client.

“*Non-standard services*” means those services which are customised to meet the requirements of the Client.

“*Place of service delivery*” means the address or addresses of the Client’s or Supplier’s premises where the Service delivery is deemed to take place.

“*Problem escalation*” means the agreed procedure for alerting and notifying increasingly senior members of the Supplier’s management of the non-resolution of problems.

“*Problem management*” means the agreed procedures for providing support and problem resolution services to the Client.

*“Professional fees”* means the remuneration or compensation, other than reimbursable expenses, due to the supplier for the provision of the Services.

*“Receiving party”* means the party who has received confidential information from the other party.

*“Service availability”* means the times and periods that the Supplier will make the Services available to the Client.

*“Service component”* means a divisible and identifiable part of the overall Services to be delivered.

*“Service review meetings”* mean regular meetings that are held between representatives of the Supplier and the Client specifically to discuss issues arising from the delivery of the Services including the performance of the Service delivery

*“Specified services”* means those Services that are specified in Specification A and Specification B of this Agreement.

*“Standard services”* means those Services that the Supplier delivers to its Clients without significant customisation.

*“Support and Service desk services”* mean the specified support services provided by the Supplier to the Client to assist the Client’s personnel to understand, operate and execute the delivered Services.

## **2. SCOPE OF WORK**

### **2.1. Standard services**

Standard services to be delivered under this Agreement are as listed, described and specified in Specification A to this Agreement.

### **2.2. Non-standard services**

Non-standard services to be delivered under this Agreement are as listed, described and specified in Specification B to this Agreement.

### **2.3. Service Availability**

The availability, operational reliability and response times of the Services to be delivered under this Agreement are as specified in Specification C to this Agreement.

### **2.4. Place of Service delivery**

The Services covered by this Agreement are to be delivered at the address or addresses given in Specification D to this Agreement.

### **2.5. Changes to Services**

Either party may propose changes to the scope, nature or time planning of the Services being performed under this Service Level Agreement. The parties will mutually agree to any proposed changes, including adjustments to fees and expenses as a result of any changes to the Services. All changes are to be subject to the change control procedures included in Specification E to this Agreement and must be approved in writing by both parties.

### **2.6. Client delays to Services**

The Supplier will be entitled to an adjustment to any penalties or refunds due in respect of inadequate performance if the Supplier is prevented from performing specific Services for any reasons beyond the control of the Supplier which are caused by the Client.

### **3. PERFORMANCE, TRACKING AND REPORTING**

#### **3.1. Key Personnel Changes**

Key personnel are not required to be specifically named within this Agreement but the Supplier will notify the Client in advance of changes to any key personnel that could affect the delivery of the Services to the Client.

#### **3.2. Service monitoring methods**

The performance of each individual Service will be monitored. The methodology to be used in each case is outlined in Specification F to this Agreement.

#### **3.3. Benchmarks, targets and metrics to be utilised**

The benchmarks, targets and metrics to be used in the measurement of performance levels are defined in Specification F to this Agreement.

#### **3.4. Service Level Reporting**

Reports on actual service levels achieved will be provided to the Client on a monthly basis. This will cover each service component delivered and the performance achieved compared with target. These reports are to be provided to the Client within ten working days after the end of each month. The reports required in support of this Agreement are defined in Specification G to this Agreement.

#### **3.5. Service Review Meetings**

Service Review meetings will be held on quarterly basis at the Client's offices. The issues to be covered will include.

- Service performance levels
- Support performance levels
- Installation performance
- Equipment issues
- System issues
- Compensation issues
- Administrative Issues
- Security Issues
- Changes proposed

### **4. PROBLEM AND DISPUTE MANAGEMENT**

#### **4.1. Support and Service desk Services**

The Supplier will provide ongoing assistance to the Client to support the Services provided. This will include comprehensive Service desk facilities and On-site Maintenance and Support services. The Service desk and On-site Maintenance and Support services are defined in Specification H to this Agreement

#### **4.2. Problem and Dispute Definition**

The following standard problem and dispute definitions will apply to the services provided under the terms of this Agreement.

<b>Problem Priority</b>	<b>Status</b>	<b>Impact</b>
Priority 1	Critical to Business	Serious financial impact
Priority 2	Extremely urgent	Significant financial impact
Priority 3	Urgent	Medium financial impact
Priority 4	Medium priority	Minimal financial impact
Priority 5	Low Priority	No financial impact

**4.3. Problem and Dispute Escalation**

To ensure that the Client receives senior management attention on unresolved problems and disputes, the Supplier shall operate an escalation procedure in order that any unresolved problems and disputes are notified to the Supplier’s operational and management personnel on a priority basis dependent upon the severity of the problem or dispute. There are five levels of Priorities and three levels of escalation. This escalation process is specified in Specification I to this Agreement.

**5. COMPENSATION**

**5.1. Professional Fees**

The professional fees payable for performing either the Standard Services or the Non-standard Services are to be in accordance with the basis as defined in Specification J to this Agreement.

**5.2. Reimbursable expenses**

Reimbursable expenses mean agreed incidental services reasonably incurred by the Supplier in performing its obligations and not provided for in the professional fees, plus a 7½ % administrative fee. Expenses that may be considered as reimbursable are stated in Specification J to this Agreement.

**5.3. Invoices**

The Supplier will submit invoices to the client for professional fees and reimbursable expenses on cut-off dates agreed with the Client . Each invoice will clearly state the work performed, hours worked and reimbursable expenses incurred.

**5.4. Payment terms**

All fees and expenses are to be paid to the Supplier, in the currency quoted in this Agreement, to the account designated by the Supplier.

All invoices are payable within 90 calendar days from the date of receipt by Client of a complete, correct, and accurate invoice and any costs incurred in transferring money to accounts outside the UAE are for Supplier’s account..

Any invoice which is disputed, wholly or in part shall be rejected for payment by the Client and the 90 day payment period quoted above shall not start until Supplier and Client have satisfactorily resolved the dispute.. The disputed amount(s) shall be notified in writing to the Supplier within 15 days of receipt of the invoice giving the reasons for withholding payment. Upon receipt of the Client’s dispute notice, the Supplier and Client will work together in good faith to resolve such disputes in a prompt and mutually acceptable manner. The Client agrees to pay any disputed amounts within 14 calendar days once the issues have been resolved.

A dispute of any one particular invoice shall not affect any consequent invoices. Complete, correct, and accurate invoices shall be paid as set out here, regardless of whether there is a dispute in progress on a previous invoice.

### **5.5. Taxes**

The amounts specified in this Agreement for the provision of services are exclusive V.A.T but include full provision for all taxes, duties and levies that the Supplier is liable to pay as a result of the performance of services under this Agreement to municipal, provincial or national bodies having jurisdiction over the provision of services. This includes all costs of import/export of materials and equipment unless otherwise specified in the Incoterms(2000) agreed between Client and Supplier and applicable to the supply of materials and equipment

## **6. CLIENT DUTIES AND RESPONSIBILITIES**

### **6.1. Processing and authorisation of invoices**

The Client undertakes to process and settle invoices by the due dates.

### **6.2. Client personnel, facilities and resources**

The Client shall ensure the Supplier has timely access to appropriate Client personnel and will arrange for the Supplier personnel to have suitable and safe access to the Client's facilities and systems. The Client will also provide suitable office space and associated resources for Supplier personnel working on-site including all necessary computing and office support resources.

### **6.3. Training on specialised equipment or tasks**

The Client shall ensure that all Client personnel who work on the Supplier's systems or equipment are adequately qualified and receive suitable training both to ensure the safety of the Client's personnel and to safeguard the Suppliers systems or equipment.

### **6.4. Approvals and Information**

The Client shall respond promptly, and in any case, within five working days, to any Supplier requests to provide direction, information, approvals, authorisations or decisions that are reasonably necessary for the Supplier to perform the services.

## **7. WARRANTIES, REMEDIES AND INDEMNIFICATION**

### **7.1. Quality of Service**

The Supplier warrants that the Services will be performed in a professional and workmanlike manner consistent with the standard of care described in Article 12.1 below.

Specification F gives benchmarks to be achieved in the performance of services and Supplier warrants that these benchmarks shall be achieved as a minimum. Supplier does not warrant that targets set out in Specification F will be achieved.

Supplier warrants that the availability, operational reliability and response times set out in Specification C shall be maintained throughout the lifetime of this agreement.

If the Client considers that a breach of this warranty has occurred and notifies the Supplier in writing stating the nature of the breach, then the Supplier will be required urgently to correct any affected services in order that they comply with the warranty.

### **7.2. Remedies for breaches**

In the event of any defective performance from the Supplier or failure to furnish the agreed level of

service, the Supplier will expend its best efforts to restore the service to a good operating condition on an urgent basis. If any penalties and refunds are payable in the event of defective service, the amounts claimable are as defined in Specification K to this Agreement.

### **7.3. Indemnification**

If, as a result of the Supplier's negligence, the Client or Client's employees suffer injury or property damage, the Supplier shall be liable for and agrees to defend, indemnify and hold harmless Client, its affiliated companies, and all of their directors, officers, employees, agents and representatives, from and against:

- a) any claim, demand, cause of action, liability, loss or expense arising from actual or asserted failure to comply with the law, ordinance, regulation, rule or order( including but not limited to rules and regulations in force at Client's location), or with this Agreement, including but not limited to, fines or penalties by government authorities and claims arising from Supplier's actual or asserted failure to pay taxes; and
- b) any claim, demand, cause of action, liability, loss or expense arising from actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other intellectual property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment and temporary construction facilities, furnished by Supplier or its sub-suppliers in performance of the Services. Should any goods or services provided by Supplier become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other intellectual property right, Supplier shall, at Client's sole option, either procure for Client the right to continue using such goods or services, or replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services; and
- c) any claim, demand, cause of action, liability, loss or expense arising from injury to or death of persons (including employees of Client, Supplier and Supplier's sub-suppliers) or from damage to or loss of property (including the property of Client) arising directly or indirectly out of or in connection with this Agreement or out of any acts or omissions of Supplier or its sub-suppliers. Suppliers's liability, defence and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Client or arising from use by Supplier of construction equipment, tools, scaffolding or facilities furnished to Supplier by Client; and
- d) any claim, demand, cause of action, liability, loss or expense for actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Agreement or out of any acts or omissions of Supplier, or its sub-suppliers.

### **7.4. Exclusions**

The Supplier is not responsible for any infringements to third party copyrights, patents or trade secrets where the Client has made amendments to original documents and similar works prepared by the Supplier without the express approval of the Supplier, or where the Client fails to use the most recent versions of such works that have been delivered by the Supplier.

### **7.5. Force majeure**

Except in respect of payment liabilities, neither party will be liable for any failure or delay in its performance under this Agreement due to Force Majeure, provided the delayed party gives the other

party prompt notice of the reasons for such cause.

### **8. SECURITY**

#### **8.1. Physical Access**

The Client shall ensure that the Supplier's employees and sub-contractors are given reasonable authorised access to premises and equipment in order that the Services may be delivered and maintained in accordance with the terms of this Agreement.

#### **8.2. Logical Access**

The Client shall ensure that the Supplier's employees and sub-contractors are given necessary access to the software and systems in order that the Services may be delivered and maintained in accordance with the terms of this Agreement.

#### **8.3. Compliance with Client Security Policies**

In the event that the Client operates formal security policies, the Supplier shall ensure that its employees are made aware of such policies and shall also ensure ongoing compliance with these policy statements. The Client will provide the Supplier with up to date information on its security policies and will keep the Supplier informed about any changes to these policies.

#### **8.4. Information and data security measures**

The Supplier will manage information and data security with reasonable efforts to restrict unauthorized access. The Supplier will make best endeavours to ensure that its employees and representatives are fully aware of the risks associated with information and data security issues.

#### **8.5. Disaster recovery**

The Supplier will ensure that information and data under its responsibility is properly backed up on a daily basis and also that arrangements are made for recovery processes to be installed to minimise any potential disruption to the Client's business. The Supplier is required to ensure that proper measures are in place to enable continuation of services in the event of unexpected disruptive events. These measures should include implementation and pre-testing of formal disaster recovery and business continuity planning within the Supplier's business.

### **9. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**

#### **9.1. Intellectual property rights**

Both parties acknowledge the intellectual property rights of the other party whether registered or not.

#### **9.2. Confidentiality**

Both parties agree to keep confidential all information concerning the other party's business or its ideas, products, customers or services that could be considered to be "confidential information". "Confidential information" is any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature and that is furnished or disclosed to the other party. Confidential information will remain the property of the disclosing party and the receiving party will not acquire any rights to that confidential information.

#### **9.3. Court orders**

If the receiving party receives a Court Order to divulge any confidential information belonging to the disclosing party, the receiving party shall notify the disclosing party immediately. The receiving party is permitted to release such information to the court in accordance with any Court Order so served. However, the receiving party shall not release the information earlier than required by the court order.



### **9.4. Destruction of data and records or return on termination**

Upon termination of this Agreement, the receiving party, at the option of the disclosing party, will return or destroy all confidential information belonging to the other party.

## **10. LEGAL COMPLIANCE & RESOLUTION OF DISPUTES**

### **10.1. Governing law**

This Agreement shall be governed by UAE law.

### **10.2. Import/Export control**

Both Supplier and Client agree to comply fully with all relevant import and export laws and regulations of the country or countries where their offices are located.

In the event that any dispute shall arise in respect of the responsibilities of the parties in the export and import of goods and/or materials under this agreement, such disputes shall be resolved by reference to the trade terms published by the International Chamber of Commerce (ICC) and set out in Incoterms 2000. The Incoterm governing this Agreement is Delivered Duty paid, Abu Dhabi, UAE

### **10.3. Informal Resolution**

In the event of dispute, the parties will attempt to resolve any such disputes through informal negotiation and discussion. Formal proceedings should not be commenced until such informal negotiations and discussions are concluded without resolution.

### **10.4. Arbitration**

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

### **10.5. Limitation of Action**

Neither party may bring proceedings more than 18 months after the actual event occurred except for proceedings for non-payment. Neither party may bring proceedings after final payment due under this agreement has been made unless such proceedings result from surviving obligations under this agreement.

### **10.6. Limitation of liability**

Should the Client become entitled to claim damages from the Supplier, the Supplier will be liable only for the amount of the Client's actual direct damage up to the total agreed value of this agreement, current at the time of the Claim for damages, except for the amounts recoverable under insurances maintained by Supplier. The Supplier is not responsible for any damages caused by the failure of the Client or its Affiliates or other suppliers to perform their responsibilities. The limitation of liability included in this section will survive this Agreement.

### **10.7. Vendor Declaration**

Consultant confirms, by signature to this Agreement, that it has endorsed the Vendor Declaration required by Bilfinger SE and all its group companies and will abide by the declaration.

## **11. TERMINATION**

### **11.1. Termination after initial Agreement term**

This Agreement commences on the Commencement Date for an initial period of three years. Thereafter, the Agreement will be automatically renewed annually for successive one-year periods

unless notice is received 180 days before such annual expiry date. The Supplier will provide to the Client, 180 days written notice of any price changes due to take effect from each renewal date.

### **11.2. Termination for Convenience**

Either party may terminate this agreement at any time by giving 180 days written notice to the other party.

### **11.3. Termination for Cause**

If either party fails to perform its obligations under this Agreement, and does not, within 30 days of receiving written notice describing such failure, commence and diligently continue with measures to cure such failure, then this Agreement may be terminated forthwith.

### **11.4. Payment on termination**

In the event of termination of this Agreement for any cause, the Supplier will continue to be paid up to the effective date of termination for any fees or expenses due for services delivered up to that date excluding payment for any item of service that forms the basis for a termination for cause or termination within the term of the agreement..

## **12. GENERAL**

### **12.1. Standard of care**

Each party will act in good faith in the performance of its respective duties and responsibilities and will not unreasonably delay or withhold the giving of consent or approval required for the other party under this Agreement. In its dealings with the other party and its employees each party will employ its best efforts to provide an acceptable standard of care, that meets the detailed requirements of this Agreement and usual practice in the industry or business sector in which the party executes its business.

### **12.2. Assignment**

Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party. Consent will not unreasonably be withheld. In the event that consent for assignment is given, the Party making the assignment shall be liable to the other party to ensure that the terms of this Agreement will be binding upon each party's respective successor.

### **12.3. Severability**

The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the parties.

### **12.4. Changes to the Agreement**

All changes to this Agreement must be approved in writing by authorised officials of both parties and follow the formal change control procedure set out in Specification M to this Agreement.

### **12.5. Non-solicitation**

During the term of this Agreement and for two years after its expiration or termination, neither party will solicit any employee of the other party for the purposes of offering employment.

### **12.6. Survival**

- 1 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.