

**REQUEST FOR QUALIFICATION (RFQ)  
CUM  
REQUEST FOR PROPOSAL (RFP)  
FOR**

**APPOINTMENT OF MASTER SYSTEM INTEGRATOR  
FOR  
DESIGN, SUPPLY, INSTALL, TEST, INTEGRATE,  
COMMISSIONING, OPERATION AND MAINTENANCE  
OF ICT COMPONENTS IN CLUSTER A1 OF  
ACTIVATION AREA (Retender)**

**AT  
DHOLERA SPECIAL INVESTMENT REGION, GUJARAT  
ACTIVATION AREA**

**VOLUME-III  
CONDITIONS OF CONTRACT**

**Dholera Industrial City Development Limited (DICDL)  
6<sup>th</sup> Floor, Block No. 1 & 2, Udhog Bhavan,  
Sector-11, 'GH-4' Circle, Gandhinagar – 382017  
Gujarat, India**

**March 2020**

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## 1. Draft Contract Agreement

THIS CONTRACT AGREEMENT is made

the [insert: ordinal] day of [insert: month], [insert: year]. BETWEEN

1. -----], represented by its Managing Director (hereinafter called “the Employer”),

And

2. [Insert: name of MSI], a corporation incorporated under the laws of [insert: country of MSI] and having its principal place of business at [insert: address of MSI] (hereinafter called “the MSI” who is the successful Bidder, which expression unless repugnant to the context or meaning thereof, be deemed to mean and include its beneficiaries, successors, administrators and permitted assigns).

WHEREAS the Employer desires to engage the MSI to Design, Supply, Install, achieve Operational Acceptance of, and support the following System: **APPOINTMENT OF MASTER SERVICES INTEGRATOR FOR DESIGN, SUPPLY, INSTALL, TEST, INTEGRATE, COMMISSIONING, INTEGRATION, OPERATION AND MAINTENANCE OF ICT COMPONENTS At DHOLERA SPECIAL INVESTMENT REGION, GUJARAT ACTIVATION AREA** (“The System”), and the MSI has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HEREBY AGREED as follows:

### Article 1 : Contract Documents

A. Contract Documents (Reference GCC Clause 2.1.1. (m)) The following documents shall constitute the Contract between the Employer and the MSI, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices attached to the Contract Agreement;
- (b) General Conditions of Contract
- (c) Special Conditions of Contract;
- (d) Terms of Reference
- (e) The Bidder’s bid and original Financial Proposal;
- (f) [Add here: any other documents].

B. Order of Precedence

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.A (Contract Documents) above, provided that Appendix 5 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

C. Definitions (Reference GCC Clause 1)

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

### Article 2: Contract Price and Payment Terms

A. Contract Price (Reference GCC Clause 2.5.1.)

The Employer hereby agrees to pay to the MSI the Contract Price in consideration of the performance by the MSI of its obligations under the Contract. The Contract Price shall be the aggregate of: [insert: amount in figures], as specified in the Grand Summary Price Schedule. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified.

**Article 3. Effective Date for Determining Time for Operational Acceptance**

A. Effective Date (Reference GCC Clause 2.2.1. )

The time allowed for Design, supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the MSI;
- (b) The MSI has submitted to the Employer the performance security in accordance with GCC Clause 2.5.4. ;
- (c) [specify here: any other conditions, for example, opening/confirmation of letter of credit].

B. Each party shall use its best efforts to fulfill the above conditions for which it responsible as soon as practicable.

C. If the conditions listed under 3.1 are not fulfilled within two (2) months from the Effective Date as per GCC Clause 2.2.1., because of reasons not attributable to the MSI, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

**Article 4: Appendices**

- 1. The Appendices listed below shall be deemed to form an integral part of this Contract Agreement.
- 2. Reference in the Contract to any Appendix shall mean the Appendices listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

APPENDIXES

Appendix 1: List of Sub-Contractors

Appendix 2: Categories of Software

Appendix 3: Custom Materials

Appendix 4: Revised Price Schedules (if any)

Appendix 5: Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

IN WITNESS WHEREOF the Employer and the MSI have caused this Contract Agreement to be duly executed by their duly authorized representatives the day and year first above written.

For and on behalf of the Employer:

Signed:

in the capacity of [ insert: Name with title or other appropriate designation ]

For and on behalf of the MSI:

Signed:

in the capacity of [ insert: Name with title or other appropriate designation ]

## 2. General Contract Conditions

### 2.1. General Terms

#### 2.1.1. Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) **“Activity”** means an activity or action specified in the Volume II - Terms of Reference Section, which is to be performed by the MSI as a part of the scope of Work.
- (b) **“Applicable Law”** means all laws in force and effect in India, as on the date of the Contract, or which may be promulgated or brought into force and effect after the date of the Contract, including all regulations, rules and notifications made thereunder and all judgments, decrees, injunctions, writs, orders, directives and notifications issued by any court or Authority, as may be in force and effect during the subsistence of the Contract and applicable to either Party, their obligations or this Contract, from time to time.
- (c) **“Affiliates”** means, in relation to the MSI, a Person who Controls or is Controlled by such MSI, or a Person who is under the common Control of the same Person who Controls such MSI.
- (d) **“Authority”** means the GoI, GoG or any local authority or any department, instrumentality or agency thereof or any statutory body or corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Employer or the MSI) or commission under the direct or indirect control of the central, state or local government or any political sub-division thereof or any court, tribunal or judicial body within India.
- (e) **“Breakage Costs”** means the amount payable by the Employer to the MSI that is attributable to the losses, costs, claims and expenses that have been or will reasonably and properly be incurred by the MSI in respect of:
  - (i) Any contracts placed that cannot be terminated, without such losses, costs, claims and expenses being incurred.
  - (ii) Any expenditure incurred in anticipation of the performance of the Services, provided however that the MSI has used its reasonable endeavors to mitigate the losses, costs, claims and expenses incurred, as a result of the termination of the Contract due to a Employer default (as set out in GCC Clause 18 b), to the extent that such losses, costs, claims and expenses are or may be incurred in connection with the performance of the Services.
- (f) **“Clause”** means a clause of the GCC.
- (g) **“Employer”** is defined as a Special Purpose Vehicle viz. Dholera Industrial City Development Limited which has been set up.
- (h) **“Employer Event of Default”** has the meaning ascribed to it in Clause B of 2.2.9.
- (i) **“Employer Indemnified Party”** has the meaning ascribed to it in Clause 2.2.10.1.
- (j) **“Communication”** has the meaning ascribed to it in Clause 2.1.6.
- (k) **“Conflict of Interest”** shall have the meaning ascribed to it in GCC Clause 2.7.2 read with Volume I - ITB Clause 2.1.2. of the RFQ cum RFP.
- (l) **“Contract”** means the Contract Agreement entered into between the Employer and the MSI, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- (m) **“Contract Documents”** means the documents specified in Article 1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).
- (n) **“Contract Agreement”** means the agreement entered into between the Employer and the MSI using the form of Contract Agreement contained in the Sample Forms Section of the Bidding Documents and any modifications to this form agreed to by the Employer and the MSI. The date of the Contract Agreement shall be recorded in the signed form.



- (o) **“Contract”** means the Agreement entered into between the Employer and the MSI as recorded in the Contract form signed by the Employer and the MSI including all attachments and Annexes thereto, the Bid and all Annexes thereto and the agreed terms as set out in the Bid, all documents incorporated by reference therein and amendments and modifications to the above from time to time.
- (p) **“Control”** in relation to a Person, means:
  - (i) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or
  - (ii) the power, directly or indirectly, to direct or influence the management and policies of such person by operation of law, contract or otherwise. The term “Controls” and “Controlled” shall be construed accordingly.
- (q) **“Day”** means a working day unless indicated otherwise.
- (r) **“Defect Liability Period”** (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the MSI commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the MSI is responsible for defects with respect to the System (or the relevant Subsystem[s]) as provided in GCC Clause 2.11.3. (Defect Liability).
- (s) **“Deliverable”** means a work product (including materials, equipment, installations, reports, software, know-how, design, drawings, diagrams, maps, models, specifications, analysis, solutions, data base, programmes, technical information, data and other documents) to be prepared and submitted by the MSI as a part of the Services, in accordance with the terms of this Contract and the term “Deliverables” shall be construed accordingly. The list of deliverables to be provided by the MSI is set out in the Terms of Reference.
- (t) **“Deliverable Due Date”** means, with respect to a particular deliverable, the date by which such Deliverable (in a final and approved form) is required to be submitted by the MSI to the Employer for all the Modules, as specified in the Work schedule.
- (u) **“Effective Date”** means the date on which this Contract comes into force and effect pursuant to GCC Clause 10.
- (v) **“Force Majeure”** shall have the meaning ascribed to it in GCC Clause 2.12.4.
- (w) **“SCC”** means the Special Conditions of Contract
- (x) **“GCC”** means these General Conditions of Contract.
- (y) **“GoI”** means the Government of India.
- (z) **“GoG”** means the Government of Gujarat.
- (aa) **“Good Industry Practices”** means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used and exercised by a skilled and experienced MSI engaged in the performance of services of the type, size and nature similar to the Services required of MSI under this Contract.
- (bb) **“Indemnified Party”** has the meaning ascribed to it in GCC Clause 2.2.10.
- (cc) **“Indemnifying Party”** has the meaning ascribed to it in GCC Clause 2.2.10.
- (dd) **“Intellectual Property Rights”** means, in respect of these services, any copyright, trademarks, technology, know-how, industrial processes, proprietary information, licenses, patents, permissions from or agreements with licensors of any processes, methods and systems incorporated or to be incorporated in the performance of the Services, registered designs, franchises, trade secrets, data bases, source codes, brand names, service marks, trade names, and any other intellectual and industrial property rights, whether registrable or not, subsisting or recognized under the Applicable Law or laws of any other jurisdiction, including all applications, renewals, extensions and revivals thereof.
- (ee) **“ICT Consultant” is appointed by DMICDC/ DICDL to oversee the design, procurement, implementation and deployment by MSI**
- (ff) **“Key Expert”** means an individual engaged by the MSI to provide the Services or any part thereof (required of MSI under this Contract), who has the minimum qualification and experience as specified in in RFQ cum RFP.

- (gg) **“LOA”** means Letter of Award.
- (hh) **“Local Currency”** means the official currency of India (i.e., Indian Rupees).
- (ii) **“Work Package”** means a component of the Smart City ICT Components Project in relation to which the MSI is required to execute the Work and provide Services, as described in greater detail in the GCC, SCC and Terms of Reference.
- (jj) **“Operational Acceptance Certificate”** means a certificate issued by the Employer to the MSI upon the Employer’s approval of the relevant Deliverable/milestone, which may be endorsed by the Employer in accordance with GCC Clause 2.10.10.3.
- (kk) **“Party”** means the Employer or the MSI, as the case may be, and **“Parties”** means both of them.
- (ll) **“Payment Schedule”** means the schedule for payment of the Price to the MSI, as set out in the clause 3.1 of the Volume III.
- (mm) **“Performance Security”** means a duly executed, irrevocable and unconditional bank guarantee to be procured and maintained by the MSI in accordance with GCC Clause 2.5.4 , to secure the due and proper performance of the Contract.
- (nn) **“Person”** means any individual, company, corporation, firm, partnership, trust, sole proprietor, limited liability partnership, co-operative society, Government Company or any other legal entity.
- (oo) **“Personnel”** means, collectively, the managers, engineers, support team, and any other personnel of the MSI engaged by the MSI to perform the Work or Services or any part thereof under the Contract.
- (pp) **“The Post-Warranty Service Period”** means the number of years, following the expiration of the Warranty Period during which the MSI may be obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s). This shall also be referred as AMC Phase.
- (qq) **“Project Manager”** shall authorized representative of ICT Consultant appointed by Employer for this Project..
- (rr) **“Proposal”** means the submission made by the MSI pursuant to the RFQ cum RFP.
- (ss) **“RFQ cum RFP”** means Request for Qualification cum Request for Proposal dated along with schedules, annexures, appendices and any subsequent amendment issued by the Employer for appointment of the MSI.
- (tt) **“SCC”** means the special conditions of contract with specific details and information to supplement (and not override) the GCC.
- (uu) **“Section”** means a section of the Contract.
- (vv) **“Solution”** means the Goods and Services to be performed by the MSI pursuant to this Contract, as described in Volume III - Terms of Reference hereto.
- (ww) **“Taxes”** means all taxes, duties, imposts, levies and charges pursuant to any law (whether currently in force or coming into force on or after the Effective Date), including income tax, service tax, value added tax, central sales tax, GST ( Goods and Services Tax), customs duty excise duty, fees, cess, octroy, entry tax, and any interest, surcharge, penalty or fine in connection therewith.
- (xx) **“Third Party”** means any person or entity other than the Employer and the MSI.
- (yy) **“Technical Proposal”** means the technical proposal forming part of the Proposal submitted by the MSI in response to the RFQ cum RFP.
- (zz) **“Variation”** has the meaning ascribed to it in GCC Clause 2.2.5.2
- (aaa) **“Variation Order”** has the meaning to it in GCC Clause 2.2.5.5.
- (bbb) **“Base Date”** means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty eight) days
- (ccc) **“Bank Rate”** means the Repo rate of interest announced by the Reserve Bank of India for all its lending operations on the Base Date
- (ddd) **“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Employer

## **2.1.2. Relationship between the Parties**

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Employer and the MSI. The MSI, subject to this Contract, has complete charge of the Personnel, if any, performing the Services required of MSI under this Contract and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## **2.1.3. Governing Law**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law. The Contract shall be construed in accordance with the law in the state of Gujarat / India.

## **2.1.4. Language**

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this contract.

## **2.1.5. Headings**

The headings are for convenience of reference only and shall not limit, alter or affect the meaning of this Contract

## **2.1.6. Communications**

- 2.1.6.1. Any communication, approval, notice, report, consent, certificate or request required or permitted to be given or made pursuant to this Contract ("Communication") shall be in writing in the language specified in GCC Clause 2.1.4.. Unless otherwise specified in the Contract, any such Communication shall be sent by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the address specified below in 2.1.6.2. Any Communication sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address specified in the 2.1.6.2
- 2.1.6.2. A Party may change its address for Communication hereunder by giving the other Party notice of such change to the address specified below:

Managing Director  
Dholera Industrial City Development Limited,  
6th Floor, Block No. 1 and 2, Udyog Bhavan,  
Sector-11, 'GH-4' Circle, Gandhinagar – 382017  
Gujarat, India  
FAX NO: +91-79- 23222481  
PHONE: +91-79- 29750500

## **2.1.7. Locations**

The System shall be deployed at such locations as are specified in Volume II - Terms of Reference hereto and, where the location of a particular task is not so specified, at such locations, as the Employer may approve.

## **2.1.8. Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Employer or the MSI may be taken or executed by the officials specified as below:

For the Employer:

Managing Director  
Dholera Industrial City Development Limited,  
6th Floor, Block No. 1 and 2, Udyog Bhavan,  
Sector-11, 'GH-4' Circle, Gandhinagar – 382017  
Gujarat, India  
FAX NO: +91-79- 23222481

PHONE: +91-79- 29750500

For the MSI: [name, title]

## **2.2. Commencement, Completion and Termination of the Contract**

### **2.2.1. Effectiveness of Contract**

This Contract shall come into force and effect on the date (the “Effective Date”) the contract agreement is signed between the parties.

### **2.2.2. Commencement of Contract**

The MSI shall submit in writing an acceptance of LOA and start the Project with Kick-off meeting no later than 30 (Thirty) Days from issuance of LOA.

### **2.2.3. Expiration of Contract**

Unless terminated earlier pursuant to Clause 2.2.9., this Contract shall expire at the end of 75 months including defects liability period, which may be extended on mutually agreed terms and conditions, subject to satisfactory performance of the Services by the MSI. If the term of the Contract is extended pursuant to the Clause 2.2.4. of the GCC, then the MSI shall also extend the validity of the Performance Security for an equivalent period., unless extended in accordance with this Contract.

### **2.2.4. Entire Agreement**

This Agreement and the Annexures together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the MSI arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

### **2.2.5. Change or Modifications or Variations**

2.2.5.1. Any change or modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the System, may only be made by written agreement between the Parties.

2.2.5.2. Both the Employer and the MSI may, at any time during the term of the Contract, propose a variation to the System or solution and/or any other provision of the Contract (Variation).

2.2.5.3. No change made necessary because of any default of the MSI in the performance of its obligations under the contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.

2.2.5.4. Moreover, the Employer and MSI will agree, during development of the Project Plan, to a date prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.

2.2.5.5. Employer Proposed Variation:

2.2.5.5.1. The Employer may, at any time during the term of the Contract, instruct the MSI, by issuing a written notice, to carry out a Variation (a Variation Order). Provided that, the Employer shall not propose a Variation which is not technically or financially feasible, such feasibility being determined in accordance with Good Industry Practice, or any Variation that constitutes unrelated work;

- 2.2.5.5.2. Within fifteen (15) days of receipt of a Variation Order, the MSI shall submit a proposal setting out in sufficient detail the implications of the proposed Variation, including the (a) description of the work required or no longer required; (b) an estimate of the increase or decrease in the Total Value of Contract; (c) the Service Schedule; (d) the Supply Schedule and (e) Payment Schedule;
  - 2.2.5.5.3. Based on its review of the proposal submitted by the MSI, the Employer may: (a) accept the proposal and the corresponding adjustments to the Total Value of Contract, Services Schedule, Supply Schedule and Payment Schedule; (b) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the MSI; or (c) reject the proposal submitted by the MSI and withdraw the Variation Order, within fifteen (15) days from the date of receipt of the MSI's proposal under Clause
  - 2.2.5.5.4. If the Employer accepts the MSI's proposal under Clause 2.2.5.5.2. of this Section, it shall issue an instruction identifying the offer that is being accepted and requesting the MSI to proceed with the Variation. Upon the Employer's acceptance of the MSI's proposal, the MSI shall proceed with the Variation;
  - 2.2.5.5.5. To the extent the Employer seeks amendments and/or justification in the proposal submitted by the MSI, the MSI shall incorporate or address, in writing, the Employer's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 2.2.5.5.4., the MSI shall proceed with the Variation.
  - 2.2.5.5.6. On implementation of a Variation Order, the MSI shall be entitled to the agreed increase in the Total Value of Contract and/or adjustment to the Supply Schedule, Services Schedule or Payment Schedule for carrying out the Variation.
  - 2.2.5.5.7. Notwithstanding anything to the contrary in this Clause 2.2.5.5, the MSI shall be bound to implement any Variation that is necessitated by a Change in Law (discussed in Clause 2.2.6. below) and any consequent adjustment in the Total Value of Contract, Supply Schedule, Services Schedule or Payment Schedule, on account of such Variation, shall be determined in accordance with Clause 2.2.6. below.
- 2.2.5.6. MSI Proposed Variation:
- 2.2.5.6.1. The MSI may propose a Variation, which it considers necessary or desirable to improve the quality of the System and Solution to be deployed. While proposing a Variation, the MSI shall submit a proposal to the Employer and ICT Consultant, with a statement setting out: (a) detailed particulars of the Variation; (b) the work required or no longer required; (c) an estimate of any adjustment in the Total Value of Contract; (d) any adjustment to the Supply Schedule, Services Schedule or Payment Schedule; and (e) any other effect the proposed Variation would have on any other provision of the Contract;
  - 2.2.5.6.2. Based on its review of the Variation proposed by the MSI, the Employer may: (a) confirm the Variation; (b) provide its comments on the proposed Variation or (c) reject the proposed Variation, while giving reasons in writing for such rejection, within thirty (30) days of the submission of the proposal for a Variation. Upon the Employer's acceptance of the proposed Variation, the MSI shall proceed with the Variation.
  - 2.2.5.6.3. To the extent the Employer seeks amendments in the proposed Variation, the MSI shall incorporate or address, in writing, the Employer's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 2.2.5.6.2., the MSI shall proceed with the Variation;
  - 2.2.5.6.4. If the Parties are unable to reach agreement regarding the terms of a Variation Order, such disagreement shall be resolved pursuant to GCC Clause 2.2.11..
- 2.2.5.7. Notwithstanding anything contained in this Clause 2.2.5, a Variation made necessary due to any act, omission or default of the MSI in the performance of its obligations under the Contract will not result in any increase in the Total Value of Contract or extension of any Deliverable Due Date.

- 2.2.5.8. No Variation invalidates the Contract. The MSI agrees that a Variation may involve the omission of any part of the Scope and further, the MSI agrees that the Employer may engage others to perform that part of the Scope which has been omitted. The MSI further acknowledges that any omission or omissions will not constitute a basis to allege that the Employer has repudiated the Contract no matter the extent or timing of the omission(s).
- 2.2.5.9. Notwithstanding anything contained in this Clause 2.2.5., the Employer shall not agree to any Variation if: (i) the MSI seeks any Variation in its obligations which is due to any shortcoming or deficiency in the documents provided by the MSI; (ii) the Variation relates to repeat performance of the Solution due to the MSI's failure to comply with the Employer's requirements; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law.
- 2.2.5.10. If due to any reason the MSI and Employer are not able to finalize a change in the system (ex: including a hardware component or a software functionality which was not anticipated earlier), the Employer reserves a right to get the change executed by any other third party. However the component or functionality being a part of the comprehensive system, the original MSI shall have obligation to support any integration effort required whatsoever and extend full co-operation to the third party and the Employer.
- 2.2.5.11. The unit rates as indicated in the Contract shall be fixed during the MSI's performance of the Contract and shall not subject to increase on any account for any variation order during the currency of the Contract.

## **2.2.6. Change in Law**

- 2.2.6.1. For the purposes of this Contract, "Change in Law" means the occurrence of any of the following events after the Base Date: (i) the modification, amendment or repeal of any existing Applicable Law; (ii) the enactment, promulgation, bringing into effect, adoption of any new Applicable Law; (iii) change in the interpretation or application of any Applicable Law by any Authority; (iv) the introduction of a requirement for the MSI to obtain any new approval or permit or the unlawful revocation of an applicable approval or permit; or (v) the introduction of any new Tax or a change in the rate of an existing Tax.
- 2.2.6.2. Change in Law does not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the MSI; (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of the Contract and which is a matter of public knowledge; or (iii) a draft statutory instrument or delegated legislation that has been published prior to the date of the Contract, which is under the active consideration or contemplation of the GoI or GoG and which is a matter of public knowledge.
- 2.2.6.3. If, after the date of this Contract, there is any Change in Law which:
- (i) increases the cost incurred by the MSI in deploying the Project; and/or
  - (ii) affects the Project Schedule.
- then the MSI may notify the Employer and appropriate adjustments shall be made to the Total Value of Contract to account for the Change in Law. The notice shall be accompanied by all supporting documents, details and information required by the Employer to assess the claims of the MSI. Provided that, if a Change in Law becomes applicable as a result of a delay by the MSI, then the MSI shall not be entitled to any adjustment in the Total Value of Contract and/or the Project Schedule.
- 2.2.6.4. Where it is not possible to address the effect of a Change in Law (through an adjustment in the Total Value of Contract and/or the Project Schedule), the Parties shall agree on a mechanism, including amending the terms of the Contract, to mitigate the adverse effects of the Change in Law to MSI. If the Parties are unable to reach an agreement within thirty (30) days of the notification of a Change in Law, then the matter shall be referred to dispute resolution in accordance with GCC Clause 2.2.11.

## 2.2.7. Joint Venture

If the MSI is a Joint Venture/Consortium of three or more firms, all such firms shall be responsible for all obligations and liabilities in proportion to their scope of work and the Lead partner do hereby undertake to be severally responsible for all obligations and liabilities relating to the Project in accordance contract. All such firms shall be bound to the Employer for the fulfilment of the provisions of the Contract in proportion to their scope and shall designate one of such firms to act as a leader with authority to bind the Joint Venture/Consortium as well as each member of the Joint Venture / Consortium. The composition or constitution of the Joint Venture/Consortium shall not be altered without the prior consent of the Employer.

## 2.2.8. Suspension

The Employer may, by written notice of suspension to the MSI, suspend all payments to the MSI hereunder if the MSI fails to perform or is in breach of any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension: (i) shall specify the nature of the failure or breach, and (ii) shall request the MSI to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the MSI of such notice of suspension.

## 2.2.9. Termination

### A. By the Employer for MSIs default

2.2.9.1. A “MSI Event of Default” means any of the events set out below, unless such event has occurred as a consequence of a default by the Employer as set out in GCC Clause 2.2.9.8, a Change in Law or any event of Force Majeure (“MSI Event of Default”):

- (i) If the MSI fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 2.2.8. within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently granted in writing;
- (ii) If the MSI becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary or, if the MSI is a corporation, a resolution is passed or order is made for its winding up;
- (iii) If the MSI’s liability to pay delay liquidated damages reaches the cap on delay liquidated damages specified in GCC Clause 2.11.1.2 but the delay in respect of which the delay liquidated damages are payable continues to exist.
- (iv) If the MSI:
  - (a) has abandoned or repudiated the Contract.
  - (b) has without valid reason failed to commence work on the System promptly.
  - (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.
  - (d) refuses or is unable to provide sufficient materials of the same quality as proposed in the bid response, services, or labor to execute and complete the system in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 2.10.2. at rates of progress that give reasonable assurance to the Employer that the MSI can attain Operational Acceptance of the System by the time for achieving Operational Acceptance as extended.
  - (e) Fails to provide sufficient manpower, material and services for maintenance as required for meeting the SLA’s specified in RFQ cum RFP (Service Level Agreement) during the Maintenance Period (including warranty period and post-warranty service period);
  - (f) If the penalties calculated as per SLA’s specified in RFQ cum RFP Requirements (Service Level Agreement), exceed twenty percent (20%) of the Quarterly payment of Recurrent Cost (OPEX) for two consecutive Quarter.

- (v) If the MSI has engaged in corruption, fraudulent, collusive, coercive, undesirable or restrictive practice in competing for or in executing the Contract, including but not limited to wilful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.
  - (vi) If the MSI fails to furnish, renew and/or maintain the performance security in accordance with this Contract.
  - (vii) If the MSI assigns or transfers the Contract or its rights and obligations under this Contract without the prior written consent of the Employer.
  - (viii) If any of the MSI's representations and warranties are found to be false and/or misleading.
  - (ix) If the MSI is in breach of any Applicable Laws.
- 2.2.9.2. Without prejudice to other provisions of this Contract, upon the occurrence of a MSI Event of Default, the Employer may deliver a notice to the MSI specifying the nature of the breach and giving a cure period of thirty (30) days to the MSI to cure the MSI Event of Default. Provided that, in case of occurrence of a MSI Event of Default set out in Clauses 2.2.9.1(ii), or 2.2.9.1. (iv), the Employer shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.
- 2.2.9.3. Subject to Clause 2.2.9.2, and except in case of the event set out at Clause 2.2.9.1 (iii), if by the end of the cure period, the MSI has not remedied the MSI Event of Default or taken steps to remedy the MSI Event of Default to the satisfaction of the Employer, then the Employer shall have the right to issue a termination notice, upon which this Contract shall terminate forthwith.
- 2.2.9.4. Upon receipt of the notice of termination under GCC Clause 2.2.9.1, the MSI shall, either immediately or upon such date as is specified in the notice of termination:
- (a) 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 System already executed or any work required to leave the site in a clean and safe condition;
  - (b) Terminate all subcontracts, except those to be assigned to the Employer pursuant to GCC Clause 2.2.9.4.(d) below;
  - (c) deliver to the Employer the parts of the System executed by the MSI up to the date of termination.
  - (d) to the extent legally possible, assign to the Employer all right, title and benefit of the MSI to the System or Subsystems as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the MSI and its Sub-contractors;
  - (e) deliver to the Employer all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as at the date of termination in connection with the System.
- 2.2.9.5. The Employer may enter upon the site, expel the MSI, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the MSI that such MSI's equipment will be returned to the MSI at or near the site and shall return such MSI's Equipment to the MSI in accordance with such notice. The MSI shall thereafter without delay and at its cost remove or arrange removal of the same from the site.
- 2.2.9.6. (i) If the termination takes place prior to the Operational Acceptance subject to GCC Clause 2.2.9.7(i), the MSI shall be entitled to be paid the Contract Price attributable to the portion of the System executed as on the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 2.2.9.4(a). Any sums due to the Employer from the MSI accruing prior to the date of termination shall be deducted from the amount to be paid to the MSI under the Contract.
- (ii) If the termination takes place after the Operational Acceptance subject to GCC Clause 18.1.7(b), the MSI shall be entitled to be paid the Contract Price attributable for supply of the System (Supply and Installation Cost) if any and portion of the recurrent cost up to the date of termination, and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe



condition pursuant to GCC Clause 2.2.9.4(a). Any sums due to the Employer from the MSI accruing prior to the date of termination shall be deducted from the amount to be paid to the MSI under the Contract. In such event, all rights of MSI related to monetization pursuant to GCC Clause 2.7.1.7, shall stand terminated without any additional compensation to the MSI.

- 2.2.9.7. (i) If the termination takes place before the Operational acceptance, the cost of completing the System by the Employer as per the Contract shall be determined. If the sum that the MSI is entitled to be paid, pursuant to GCC Clause 2.2.9.6 (i), plus the reasonable costs incurred by the Employer in the completing the Scope of Work, exceeds the Total cost, the MSI shall be liable to reimburse such excess money to the Employer. If such excess is greater than the sums due to the MSI under GCC Clause 2.2.9.6, the MSI shall pay the balance to the Employer, and if such excess is less than the sums due to the MSI under GCC Clause 2.2.9.6(i), the Employer shall pay the balance to the MSI. The Employer and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.
- (ii) If the termination takes place after Operational acceptance, the cost of completing the remaining Scope of Work by the Employer as per the Contract shall be determined. If the pro-rata sum that the MSI is entitled to be paid for the maintenance period, pursuant to GCC Clause 2.2.9.6 (ii), plus the reasonable costs incurred by the Employer in the completing the Scope of Work, exceeds the total pro-rata Recurrent Cost of the Contract due, the MSI shall be liable to reimburse such excess money to the Employer. If such excess is greater than the sums due to the MSI for the maintenance period under GCC Clause 2.2.9.6 (ii), the MSI shall pay the balance to the Employer, and if such excess is less than the sums due to the MSI for the maintenance period under GCC Clause 2.2.9.6 (ii), the Employer shall pay the balance to the MSI. The Employer and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.

**B. By The MSI for Employer's Default**

- 2.2.9.8. A "Employer Event of Default" means any of the following events set out below, unless such event has occurred as a consequence of a default by the MSI as set out in Clause 2.2.9.1, a Change in Law or any event of Force Majeure:
- (i) if the Employer fails to pay any undisputed money due to the MSI pursuant to this Contract within forty five (45) calendar days after receiving written notice from the MSI that such payment is overdue;
  - (ii) if the Employer is in material breach of its obligations under this Contract and has not remedied the same within forty five (45) days (or such longer period as the MSI may have subsequently approved in writing) following the receipt by the Employer of the MSI's notice specifying such breach;
  - (iii) if the MSI is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System;
  - (iv) if the Employer becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; or, if the Employer is a corporation, a resolution is passed or order is made for its winding up;
  - (v) if the Employer suspends the performance of the Services for more than sixty (60) days, for reasons not attributable to the MSI.
- 2.2.9.9. Without prejudice to other provisions of this Contract, upon the occurrence of a Employer Event of Default, the MSI may deliver a notice to the Employer specifying the nature of the breach and giving a cure period of thirty (30) days to the Employer to cure the Employer Event of Default. Provided that, in case of occurrence of a Employer Event of Default set out in Clauses 2.2.9.8(iii) or 2.2.9.8 (iv), the MSI shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.

- 2.2.9.10. If the Contract is terminated under GCC Clause 18.1.8, then the MSI shall immediately:
- (i) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
  - (ii) terminate all subcontracts, except those to be assigned to the Employer pursuant to Clause 2.2.9.10(iv)(B);
  - (iii) remove all MSI's Equipment from the site and repatriate the MSI's and its Subcontractor's personnel from the site;
  - (iv) In addition, the MSI, subject to the payment specified in GCC Clause 2.2.9.11, shall:
    - A. deliver to the Employer the parts of the System executed by the MSI up to the date of termination;
    - B. to the extent legally possible, assign to the Employer all right, title, and benefit of the MSI to the System, or Subsystems, as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the MSI and its Subcontractors;
    - C. to the extent legally possible, deliver to the Employer all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System.
- 2.2.9.11. If the Contract is terminated under GCC Clause 2.2.9.8, the Employer shall pay to the MSI all payments specified in GCC Clause 2.2.9.17, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the MSI arising out of, in connection with, or in consequence of such termination.
- 2.2.9.12. Termination by the MSI pursuant to this GCC Clause 2.2.9. B is without prejudice to any other rights or remedies of the MSI that may be exercised in lieu of or in addition to rights conferred by GCC Clause 2.2.9. B.
- 2.2.9.13. In this GCC Clause 2.2.9., the expression "portion of the System executed" shall include all work executed, Services provided, and all Information Technology, or other Goods acquired (or subject to a legally binding obligation to purchase) by the MSI and used or intended to be used for the purpose of the System, up to and including the date of termination.
- 2.2.9.14. In this GCC Clause 2.2.9., in calculating any monies due from the Employer to the MSI, account shall be taken of any sum previously paid by the Employer to the MSI under the Contract.

**C. At Employer's Convenience**

- 2.2.9.15. The Employer may at any time terminate the Contract for any reason by giving the MSI a 30 days notice of termination that refers to this GCC Clause 2.2.9 C.
- 2.2.9.16. Upon receipt of the notice of termination under GCC Clause 2.2.9.15, the MSI shall either as soon as reasonably practical or upon the date specified in the notice of termination:
- (a) 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 System already executed, or any work required to leave the site in a clean and safe condition;
  - (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to GCC Clause 2.2.9.16 (d) (ii) below;
  - (c) remove all MSI's Equipment from the site, repatriate the MSI's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
  - (d) in addition, the MSI, subject to the payment specified in GCC Clause 2.2.9.17, shall
    - (i) deliver to the Employer the parts of the System executed by the MSI up to the date of termination;
    - (ii) to the extent legally possible, assign to the Employer all right, title, and benefit of the MSI to the System, or Subsystem, as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the MSI and its Subcontractors;

- (iv) deliver to the Employer all nonproprietary drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System;
- (v) If termination takes place after operational acceptance is achieved, the MSI shall fully comply with the Exit Management Plan as specified in GCC.

2.2.9.17. In the event of termination of the Contract under GCC Clause 2.2.9.15, the Employer shall pay to the MSI the following amounts:

- (a) the Contract Price, properly attributable to the parts of the System executed by the MSI and payable recurrent cost on pro-rata basis, if project is in Maintenance Period, as on the date of termination;
- (b) the costs reasonably incurred by the MSI in the removal of the MSI's Equipment from the site and in the repatriation of the MSI's and its Subcontractors' personnel;
- (c) any amount to be paid by the MSI to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- (d) costs incurred by the MSI in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 2.2.9.16 (a); and
- (e) the cost of satisfying all other obligations, commitments, and claims that the MSI may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clause 2.2.9.17 (a) through (d) above.

**D. Termination by Force Majeure**

2.2.9.18. If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty (180) days, then either Party may issue a notice of termination to the other Party. Upon receipt of this notice, the Parties shall have a period of fifteen (15) days to agree on the manner in which the Contract may be progressed upon cessation of the Force Majeure event and the variations, if any, required to the Contract to address the consequences of the Force Majeure event. If on the expiry of the fifteen (15) day period, the Parties fail to arrive at an agreement, either Party may immediately terminate this Contract by written notice to the other Party.

Notwithstanding anything to the contrary in this Contract, in case of occurrence of a Force Majeure event which affects one or more of the Modules but not the entire Contract, the Contract may be partially terminated with respect to the Modules affected by such Force Majeure event. Such partial termination shall not impact the validity of the Contract or the obligations of the MSI with regard to the Modules which are not affected by the Force Majeure event.

**E. Cessation of Rights and Obligations**

2.2.9.19. Upon termination of this Contract pursuant to Clause 2.2.9., or upon expiration of this Contract pursuant to Clause 2.2.3., all rights and obligations of the Parties hereunder shall cease, except (i) any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any provision of the Contract as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry or termination of the Contract, (ii) the obligation of confidentiality set forth in Clause 2.7.3., (iii) the MSI's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 2.7.6., (iv) the indemnity obligations of the Parties as set out in Clause 2.2.10; (v) the obligations in relation to intellectual property rights under Clause 2.7.3.; and (vi) any right which a Party may have under the Applicable Law.

**F. Cessation of Services**

2.2.9.20. Upon termination of this Contract by either Party, the MSI shall: (i) immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum; and (ii) transfer to the Employer all documents, data, programmes, applications, software, equipment etc. developed or acquired by the Employer for the purposes of performing the System

along with the right to use the Intellectual Property in such documents, data, programmes, applications, software, equipment for the Project.

## **2.2.10. Indemnity and Limitation of Liability**

### **2.2.10.1. MSI's indemnity:**

The MSI must indemnify and hold harmless the Employer and the Employer's staff, their Affiliates and directors of their Affiliates (each a "Employer Indemnified Party") from and against any and all claims and losses suffered or incurred by the Employer Indemnified Party, including claims by a third party, arising out of:

- (i) any failure of the MSI to pay taxes or any statutory dues;
- (ii) any non-compliance or violation of Applicable Law or applicable permits by the MSI;
- (iii) breach of the MSI's representations and warranties set out in the Contract;
- (iv) bodily injury, sickness or death of any person whatsoever engaged by MSI, Employer or any of their subcontractor on the site during duty hours;
- (v) breach of the MSI's obligations under the Contract;
- (vi) physical damage to the Project Office or any property therein;
- (vii) loss of or physical damage to property of any third party; or
- (viii) infringement of the Intellectual Property Rights of any third party by the MSI under the Contract.

### **2.2.10.2. Employer's indemnity:**

The Employer agrees to indemnify and hold harmless the MSI and the Personnel (each a "MSI Indemnified Party") from and against any and all claims or losses suffered or incurred by the MSI Indemnified Party arising out of:

- (i) breach of the Employer's representations and warranties under the Contract; or
- (ii) any non-compliance or violation of Applicable Laws or any Employer's applicable permits or consents by the Employer.

2.2.10.3. On receipt of a notice of any claim, which would entitle any Party ("Indemnified Party") to claim indemnification from the other Party ("Indemnifying Party"), the Indemnified Party shall, within a reasonable time, provide a written notice of the claim to the Indemnifying Party along with all the documents available with it in respect of the claim, specifying in detail the claim, the amount claimed by the third party, the date on which the claim arose and the nature of the default to which such claim relates (including a reference to the applicable provision of the Contract) and the Indemnifying Party shall settle the claim accordingly. The Indemnifying Party shall be entitled to but not obliged to participate in and control the defence of any such suit, action or proceeding at its own expense or direct the Indemnified Party to defend such claim, at the cost of the Indemnifying Party. If the Indemnifying Party elects to control the defence of any such suit, action or proceeding, the Indemnified Party shall render all necessary assistance for the purposes of enabling the Indemnifying Party to take the action referred to in this Clause 2.2.10.3. The Indemnifying Party may also request the Indemnified Party, at the cost of the Indemnifying Party to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against the third party the Indemnifying Party's rights in relation to the matter and in connection with proceedings related to the matter, use reputable advisers and lawyers chosen by the Indemnifying Party. The Indemnified Party shall not settle any such suit, action or proceeding without the prior written consent of the Indemnifying Party.

2.2.10.4. The Indemnifying Party agrees and acknowledges that it shall fully indemnify the Indemnified Party for all amounts paid and/or costs incurred by the Indemnified Party in accordance with this Clause 2.2.10.

2.2.10.5. Unless otherwise specified in the Contract, neither Party shall be liable to the other Party for any kind of indirect, punitive or consequential loss or damage or for any economic loss, loss of profit,

loss of revenue, loss of use or business interruption which may be suffered by the other Party in connection with this Contract, except for losses caused by the fraud or wilful misconduct of the Party.

- 2.2.10.6. The Party entitled to the benefit of an indemnity under this Clause 19 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.
- 2.2.10.7. The obligation to indemnify stipulated in this Clause 2.2.10. is:
- (i) continuing, separate and independent obligation of the Parties from their other obligations and shall survive the termination of this Contract; and
  - (ii) 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 to reduce claims made against the affected Party.
- 2.2.10.8. For the purpose of this Clause 2.2.10.: (i) "claim" means any claim, liability, proceeding, cause of action, action, suit, demand at law or in equity, in each case brought against either Party (including by any third party); and (ii) "loss" means all losses (excluding consequential losses, indirect losses and loss of profit), damages, liabilities, fines, interest, awards, penalties, costs (including, reasonable legal costs, lawyers' and arbitrators' fees), charges and expenses of whatever nature or howsoever occasioned including any of the above suffered by the non-defaulting Party or a third party as a result of any act or omission in the course of or in connection with the performance, non-performance or deficiency in the performance of obligations under this Contract.

## **2.2.11. Settlement of Disputes**

Disputes shall be settled by arbitration in accordance with the following provisions:

- a) The seat of the arbitration shall be India and the arbitration proceedings shall be held in Gandhinagar
- b) The English language shall be the official language for all purposes;
- c) The arbitration shall be governed by the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time;
- d) Responsibility of payment for all costs of arbitration shall be as per the arbitration award; and
- e) The decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

## **2.3. Exit Management and Operational Acceptance**

### **2.3.1. Under Contract Completion**

- a) Before 6 months prior to the contract ending, the MSI shall fully train Employer's staff or any other agency designated by Employer who is designated to take over the maintenance of the System.
- b) The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ Employer to carry out the requisite functions.
- c) All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to Employer at least 3 months before contract completion.
- d) Employer shall release the performance security to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.
- e) The Parties may, if mutually agreed, extend the contract in accordance with the terms and conditions.

### **2.3.2. Under Termination upon MSI's Default/ Employer's Convenience (as per GCC Clauses 2.2.9 (A) and 2.2.9. (C))**

- a) After termination notice by the Employer, the MSI shall as soon as possible and within 90 days (of Termination Period) fully train Employer's staff or any other agency designated by Employer who is designated to take over the maintenance of the System.
- b) The MSI shall be responsible for continuing the maintenance as per the scope of the contract during the Termination period as per the SLA's in the RFQ cum RFP.
- c) The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ Employer to carry out the requisite functions.
- d) All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to Employer within 1 month after termination notice.
- e) Employer shall release the requisite payments to the MSI pursuant to the GCC Clause 22.9 to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.

### **2.4. Subcontracting Policies**

- 2.4.1.** Appendix 1 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Employer. If no Subcontractors are listed for an item, the MSI shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The MSI may from time to time propose additions to or deletions from any such list. The MSI shall submit any such list or any modification to the list to the Employer for its approval in sufficient time so as not to impede the progress of work on the System. The Employer shall not withhold such approval unreasonably. Such approval by the Employer of a Subcontractor(s) shall not relieve the MSI from any of its obligations, duties, or responsibilities under the Contract.
- 2.4.2.** The MSI may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 2.4.1. If the MSI wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Employer's prior approval under GCC Clause 2.4.3.
- 2.4.3.** For items for which pre-approved Subcontractor lists have not been specified in Appendix 1 to the Contract Agreement, the MSI may employ such Subcontractors as it may select, provided: (i) the MSI notifies the Employer in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Employer has granted its approval in writing or fails to respond. The MSI shall not engage any Subcontractor to which the Employer has objected in writing prior to the end of the notice period. The absence of a written objection by the Employer during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Employer of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Employer or MSI as they are specified in GCC Clauses 2.4.1 and 2.4.2, or in Appendix 1 of the Contract Agreement.

### **2.5. Payments to MSI**

#### **2.5.1. Total Value of the Contract**

- 2.5.1.1. The Contract Price shall be as specified in the Contract Agreement.
- 2.5.1.2. The Contract Price shall be a firm lump sum not subject to any alteration, except:

(a) in the event of a Change in the System pursuant to GCC Clause 2.2.5. or to other clauses in the Contract;

2.5.1.3. The MSI shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

## **2.5.2. Taxes and Duties**

2.5.2.1. The MSI is responsible for meeting any and all Tax liabilities (including GST) arising out of the Contract in India or elsewhere.

2.5.2.2. All payments made by the Employer to the MSI shall be subject to deductions and withholding of applicable Taxes in accordance with Applicable Laws.

2.5.2.3. If any tax exemptions, reductions, allowances, or privileges may be available to the MSI in the Employer's Country, the Employer shall use its best efforts to enable the MSI to benefit from any such tax savings to the maximum allowable extent.

2.5.2.4. For the purpose of the Contract, it is agreed that the Contract Price as specified in Contract Agreement is inclusive of all taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the Employer's Country. If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the MSI, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

## **2.5.3. Currency of Payment**

Any payment under this Contract shall be made in Indian Rupees.

## **2.5.4. Securities**

2.5.4.1. The MSI shall, within ten (10) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and shall be denominated in the currency of the contract for an amount equal to 10 percent of the Contract Price.

2.5.4.2. The security shall be a bank guarantee in the form provided in the Sample Forms Section of the Bidding Documents, or it shall be in another form acceptable to the Employer;

2.5.4.3. Once all the obligations of the MSI under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period, the security shall be returned to the MSI no later than sixty (60) days;

## **2.5.5. Mode of Billing and Payment**

2.5.5.1. The MSI's request for payment shall be made to the Employer in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 2.10.5 and upon fulfilment of other obligations stipulated in the Contract.

The Contract Price shall be paid as specified in Clause 3 of Volume III

2.5.5.2. No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the System or any Subsystem(s).

2.5.5.3. Notwithstanding anything to the contrary in the Contract, the Employer may withhold from any payment due to the MSI any amounts that the Employer deems reasonably necessary or appropriate because of any one or more of the following reasons:

- (i) Any penalties applicable on the MSI as per SLA;
- (ii) Failure by the MSI to provide certificates of insurance;
- (iii) Any overpayments made by the Employer in a previous payment;

- (iv) Any payment required to be withheld under any Applicable Law;
- (v) The invoice is not accompanied by all necessary supporting documents;
- (vi) A dispute exists as to the accuracy or completeness of any invoice; or
- (vii) Any amounts due to the Employer from the MSI under the Contract.

2.5.5.4. All payments under this contract shall be made by wire transfer to the accounts of the MSI specified in Clause 3.1

2.5.5.5. Within 7 (seven) days of receipt of the Stage Payment Statement from the Contractor the Project Manager shall broadly determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Project Manager. Within 7 (seven) days of the receipt of recommendation of the Project Manager, the Employer shall make electronic payment directly to the Contractor's bank account.

Within 15 (fifteen) days of the receipt of the Stage Payment Statement the Project Manager shall determine and shall deliver to the Employer and the Contractor an Payment statement certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the Stage Payment Statement shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefor.

In cases where there is a difference of opinion as to the value of any stage, the Project Managers's view shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.

The Project Manager may, for reasons to be recorded, withhold from payment:

- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Project Manager had notified the Contractor; and
- (b) the estimated cost of rectification of work done being not in accordance with this Agreement.

Payment by the Employer shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction with the work done.

## **2.5.6. Delayed Payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to Bank Rate plus 5 (five) percent, calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

## **2.5.7. Advance Payment**



- 2.5.7.1. The Employer shall make an interest bearing advance payment @ Bank Rate + 5% per annum -(the "Advance Payment"), equal in amount to 10 (ten) percent of the Cluster A1 Contract Price, for mobilisation expenses and for acquisition of equipment. The advance Payment shall be made in three instalments.
- 2.5.7.2. The first instalment shall be an amount equal to 2% (two percent) of the Cluster A1 Contract Price, the second instalment shall be an amount equal to 3% (three percent) of the Cluster A1 Contract Price, and the third instalment shall be equal to 5% (five percent) of the Cluster A1 Contract Price
- 2.5.7.3. The MSI may apply to the Employer for the Advance Payment at any time after the Appointed Date, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, in the form provided at Appendix B, to remain effective till the complete and full repayment thereof.
- 2.5.7.4. At any time after 30 (thirty) days from the Appointed Date, the MSI may apply for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment in the form provided at Appendix B, to remain effective till the complete and full repayment thereof along with proof of satisfactory utilization of first instalment of the Advance Payment
- 2.5.7.5. At any time after 60 (sixty) days from the Appointed Date, the MSI may apply to the Employer for the third instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 100% (one hundred and ten percent) of such instalment, in the form provided at Appendix B to remain effective till the complete and full repayment Advance Payment. No advance shall be given after 40% of the Original Contract amount has been paid.
- 2.5.7.6. The first, second and the third instalments shall be paid by the Employer to the MSI within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 2.5.7.
- 2.5.7.7. The recovery of all Advances shall commence when 20% (twenty per cent) of the original Contract Price of the work has been paid, or at ten months after the Commencement Date of the Contract whichever is the earlier, and it will be completed by the time 80% of the original contract value has been paid or by the time of original Completion Date whichever is earlier. The recovery of advances shall be limited to 30% (thirty per cent) of an account bill.
- 2.5.7.8. If the Advance Payment has not been fully repaid prior to Termination under Clause 2.12.4. or Article 2.2.9, as the case may be, the whole of the balance then outstanding including interest shall immediately become due and payable by the MSI to the Employer.

## **2.6. Intellectual Property**

### **2.6.1. Copyright**

- 2.6.1.1. The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 2.6.1.2. The Employer agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 2.6.2, except that additional copies of Standard Materials may be made by the Employer for use within the scope of the project of which the System is a part, in the event that the MSI does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.
- 2.6.1.3. The Employer may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the MSI's prior written consent, under the following circumstances:
  - (a) To any agency that shall be responsible to operate the project in the future in the event of dilution of the Employer or the responsibility being transferred from Employer to other agency;
  - (b) To any location or to any third party service provider if the Employer decides to outsource the ICT maintenance to a third party;

(c) Integrating with additional similar or non-similar hardware for additional functional needs as deemed suitable by the Employer;

(d) In the event of termination of contract during the operational period.

The MSI shall protect the Employer from any liabilities arising there from. The MSI shall indicate all those components in the software, if any, that cannot be bound by this condition explicitly while responding to the bid, and supporting with the corresponding evidence for the same.

2.6.1.4. As applicable, the Employer's and MSI's rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials. The Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 18 and 19 (Volume I) of the Contract Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Employer.

The MSI shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Employer may consider necessary or desirable to perfect the right, title, and interest of the Employer in and to those rights. In respect of such Custom Software and Custom Materials, the MSI shall ensure that the holder of a moral right in such an item does not assert it, and the MSI shall, if requested to do so by the Employer and where permitted by applicable law, ensure that the holder of such a moral right waives it.

2.6.1.5. The Parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are specified. Certified Software escrow contract is required for the execution of the Contract in case the MSI is not willing to handover the source code to the Employer. All costs associated with such Escrow Account shall be borne by the MSI. If Employer intends to continue the Escrow account services after completion of the contract period, the Employer can pay the fee for Escrow account services.

## 2.6.2. Software Licenses Agreement

2.6.2.1. Except to the extent that the Intellectual Property Rights in the Software vest in the Employer, the MSI hereby grants to the Employer license to access and use the Software, including all inventions, designs, and marks embodied in the Software. All software licenses and applications specific to this Project shall be provided with perpetual, royalty free licenses. Such license to access and use the Software shall:

(a) be:

(i) nonexclusive;

(ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates before Operational Acceptance pursuant to GCC Clauses 2.2.9. b and 2.2.9. c

(iii) valid throughout the territory of the Employer's Country; and

(b) permit the Software to be:

(i) used or copied for use on or with the computer(s) for which it was acquired (if specified in the Terms of Reference and/or the MSI's bid), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup;

(ii) the Software license shall permit the Software to be used or copied for use or transferred to a replacement computer: provided the replacement computer falls within approximately the same or a higher class of machine and maintains approximately the same number of users, if a multi-user machine;

(iii) if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;

- (iv) reproduced for safekeeping or backup purposes;
- (v) customized, adapted, or combined with other computer software for use by the Employer, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract;
- (vi) the Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by: support service MSIs or their subcontractors, exclusively for such MSIs or subcontractors in the performance of their support service contracts, subject to the same restrictions set forth in this Contract;
- (vii) In addition to the persons specified in GCC Clause 2.6.2. (b) (vi), the Software may be disclosed to, and reproduced for use by, Employer or its SPV entities or any other party which would take over the project in the future subject to the same restrictions as are set forth in this Contract.

2.6.2.2. The MSI's right to audit the Standard Software will be subject to the following terms:

- (i) Maximum of 1 audit per calendar year is allowed by the Authority and the duration of such audit shall not exceed 3 consecutive working days;
- (ii) The MSI shall get a prior written approval from DICDL at least 1 week in advance on the nature, number of people and duration of the audit.

The Employer does not have any financial implication for conducting any such audit and can only extend necessary logistic support pertaining to relevant technical man power resources.

### **2.6.3. Confidential Information**

2.6.3.1. The "Receiving Party" (either the Employer or the MSI) shall keep confidential and shall not, without the written consent of the other party to this Contract ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information") connected with this Contract, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract.

2.6.3.2. For the purposes of GCC Clause 2.6.3.1, the MSI is also deemed to be the Receiving Party of Confidential Information generated by the MSI itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, MSIs, employees, or other contacts of the Employer or the Employer's use of the System.

2.6.3.3. Notwithstanding GCC Clauses 2.6.3.1 and 2.6.3.2:

(a) The MSI may furnish to its Subcontractor Confidential Information of the Employer to the extent reasonably required for the Subcontractor to perform its work under the Contract; and

(b) The Employer may furnish Confidential Information of the MSI: (i) to its support service MSIs and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries,

in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause 2.6.3. as if that person were party to the Contract in place of the Receiving Party.

2.6.3.4. The Employer shall not, without the MSI's prior written consent, use any Confidential Information received from the MSI for any purpose other than the operation, maintenance and further development of the System. Similarly, the MSI shall not, without the Employer's prior written consent, use any Confidential Information received from the Employer for any purpose other than those that are required for the performance of the Contract.

2.6.3.5. The obligation of a party under GCC Clause 2.6.3.1 through 2.6.3.4 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of the Receiving Party;
- (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not

previously obtained, directly or indirectly, from the Disclosing Party;

(c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

2.6.3.6. The above provisions of this GCC Clause 2.6.3 shall not in any way modify any undertaking of confidentiality given by either of the Parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

2.6.3.7. The provisions of this GCC Clause 2.6.3. shall survive the termination, for whatever reason, of the Contract for three (3) years or such longer period.

## 2.7. Rights and Obligations of MSI

### 2.7.1. General

#### a. Standard of Performance

2.7.1.1. The MSI shall perform the Work with all due diligence, efficiency and economy, in accordance with Best Industry Practices and this Contract, and shall observe sound management practices, and employ appropriate information technology, systems, support, maintenance, training and other related services or in accordance with Best Industry Practices. In particular, the MSI shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

2.7.1.2. The MSI confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Employer and on the basis of information that the MSI could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the MSI relating to the System as at the date twenty-eight (28) days prior to bid submission. The MSI acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.

2.7.1.3. The MSI shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Clause 2.10.2.2) within the time schedule specified in the Implementation Schedule in the Terms of Reference Section. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 2.2.9. A

2.7.1.4. The MSI shall adhere to the SLA requirements as specified in RFQ cum RFP.

2.7.1.5. The MSI shall comply with Exit Management Plan as specified in GCC .

2.7.1.6. Sub-Contracting allowed for services As per the list specified in Bid Fact Sheet for ITB (Volume I).

2.7.1.7. Other obligations of the selected MSI as follows:

2.7.1.7.1. The MSI or any of its subcontractor or affiliate or consortium member or joint venture partner singly or together shall not be entitled to any compensation; or damages liquidated or otherwise; or monetization right which shall cease to exist upon termination of the Contract under either GCC 2.2.9. a, 2.2.9. b or 2.2.9. c.

2.7.1.7.2. The MSI shall not monetize any other hardware, software or solution under this Contract.

2.7.1.7.3. The MSI shall get the technical product data sheets approved by Employer and its representative before supply of any material on-site. Employer reserves the right to not evaluate the technical product data sheets during bid evaluation stage.

2.7.1.7.4. As specified in Volume II - Terms of Reference.

2.7.1.8. MSI shall be responsible for providing a complete integrated system & Infrastructure that incorporates all Requirements, including but not limited to:

a) Provide all components as per the Project requirements;

- b) Deployment of a competent team of experts for each system solution with relevant prior experience and depth of knowledge in each functional area and domain. Team of experts shall be able to supervise end-to-end business processes for all project components;
- c) Scheduling the activities and accordingly deploying the resources in a pragmatic manner in order to complete the implementation of the smart city ICT component within the required scope, quality and time constraints;
- d) Project Team and Management: Since the continuity of the key members of the project team is essential, MSI to follow diligent process for ensuring continuity of key personnel assigned for implementation of the project. For project team, MSI shall carry out following responsibilities:
  - i. At the project initiation, the MSI will share the profiles of the “Key Personnel” with the Employer and these key profiles shall meet the minimum eligibility criteria highlighted in the RFQ cum RFP as well as the proposal submitted by the MSI;
  - ii. Regular meetings between key personnel from MSI PMO team and the Employer PMO Team or its representative to discuss project implementation and progress. Any disputes can be taken up further as per escalation matrix agreed
- e) Deployment of a project structure for effective governance, monitoring, review and risk Mitigation;
- f) Provision of all Testing services for various stages of testing.
- g) Provision of all Installation and Configuration services defined as part of RFP
- h) Provision of detailed documentation for the MSI’s Solution
- i) Provision of all training and associated documentation
- j) MSI shall provide Project Quality services as following:
  - i. Adoption of standard methodology encompassing project documentation at various phases, following robust review mechanisms and ensuring quality at all the stages of the project;
  - ii. The MSI is expected to deploy all the quality assurance mechanisms as per international quality standards for the project;
  - iii. ICT systems shall be deployed in such a manner that they are scalable and upgradations of hardware and software are possible with minimal efforts. MSI shall include product upgrade as part of scope during installation;
  - iv. Detailed quality assurance plan for all the phases of the project shall be provided by the MSI as part of project inception
- k) MSI shall be responsible for the following feedback, monitoring and adoption Mechanism:
  - i. Stakeholder Mapping: The MSI will put together a structure and mechanism for ensuring that all the relevant stakeholders are consulted, feedback adopted and key differences identified and resolved, so as to facilitate standardization as well as user adoption;
  - ii. MSI shall indicate the deliverables which shall go for internal review and accordingly the level of expertise that will be deployed for the reviews and the deliverables which will follow quality assurance plans;
  - iii. If any of the deliverables are not accepted by the Employer, it shall have the right to seek deployment of experts from MSI to review the deliverables. Employer shall also hire third party experts to review the deliverables, if required;
  - iv. Mechanism to adopt feedback/audit findings: There are three types of feedback for the deliverables from the user’s/stake holders, from the internal experts of the MSI and the third-party experts hired

by ICT Consultants/Employer. The following is expected from the MSI on these feedbacks/audit findings:

- A. All the feedback shall be discussed with Employer and based on the guidance of Employer, the feedback shall be incorporated into the project;
  - B. Since the feedbacks/audit findings for any rework is by nature correcting the inadequacy of quality of the work produced in the first place, Employer will not accept any change notice requests for these reworks;
  - C. MSI shall build in adequate mechanisms to control the risks of time over runs possibly due to effort required to rework bad quality deliverables;
  - D. MSI shall indicate in the beginning of each phase how it plans to take feedback and the mechanisms to incorporate the feedbacks into the project plan and deliverables;
  - E. MSI shall report to Employer how the feedbacks have been incorporated into the project deliverables and take a sign off from Employer.
- 
- l) Warranty for all equipment and software, up to and following System Acceptance, and provision of a System Warranty following System Acceptance;
  - m) All Spare Parts for the MSI Solution to meet the SLA requirements;  
Technical Support services following System Acceptance;
  - n) MSI to coordinate with Employer to complete the civil and electrical work as required;
  - o) MSI to coordinate with all necessary stakeholders involved in the project for successful and smooth implementation;
  - p) MSI shall work closely with EPC Contractor to meet the requirements of the Project;
  - q) MSI shall provide all the integration support and develop necessary API, Program and necessary development to integrate with city operations with all the Dholera City applications;
  - r) MSI shall be responsible for demonstrating software development/implementation to the Employer periodically in Gandhinagar/Dholera as per the project requirements;
  - s) Training for relevant personnel;
  - t) Secure storage of all equipment on-site;
  - u) Opening and maintain of project office in Gandhinagar/Dholera throughout the course of the Contract. Maintaining any on-site office during construction (temporary) shall also be the responsibility of the MSI;
  - v) MSI shall depute an on-site project Director in Gandhinagar/Dholera during the entire Implementation period;
  - w) Maintenance support for system and field equipment;
  - x) Employer may at any time during the contract period choose to undertake an independent third-party audit of the implemented system including both application and Infrastructure audit. The MSI shall support this audit.

MSI shall carry out the following responsibilities on a daily/ weekly/ monthly basis:

- y) Updates on regular meetings between key personnel and the Employer or its representative to discuss on the project requirements, project implementation and its progress
- z) Documenting and sharing of Risks as well as open line items which are to be discussed/deliberated with various stakeholders from DICDL for early resolution and averting major issues in project implementation.
- aa) Status on the project deliverables on regular basis. (weekly/monthly/quarterly)
- bb) MSI needs to share a weekly plan for project implementation and delivery of project line items to Employer as well as project management consultants.
- cc) Scheduling of daily/weekly meetings with Employer/project management consultants to discuss on any issues/open points for swift project implementation.
- dd) Generating and sharing monthly status reports on the SLA's from EMS/NMS system being deployed for project management purpose
- ee) MSI will setup entire IT infrastructure in line with the ITIL ISO 20K as well as ISO 27K standards and will take full cognizance of ISO 37120. Employer/ICT consultant will guide and ensure the MSI to qualify for certification.

**b. Law Applicable**

- 2.7.1.9. The MSI shall comply with all laws in force in India. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the MSI. The MSI shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the MSI or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 2.9.1. The MSI shall not indemnify the Employer to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Employer.
- 2.7.1.10. Throughout the duration of the Contract, the MSI shall comply with the prohibitions in India in relation to the import of goods and services when as a matter of law or official regulation, there is a prohibition on entering into or maintaining commercial relations with the country from where the import is proposed to be made.
- 2.7.1.11. The MSI shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings that are necessary for the performance of the Contract, including, without limitation, visas for the MSI's and Subcontractor's personnel and entry permits for all imported MSI's Equipment. The MSI shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC Clause 2.9.1.2 and that are necessary for the performance of the Contract.

## **2.7.2. Conflict of Interest**

- 2.7.2.1. The MSI shall hold the Employer's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests
- (a) **MSI not to benefit from Commissions, Discounts etc.**  
The Contract Price pursuant to GCC Clause 2.5.1. shall constitute the MSI's only payment in connection with this Contract and the MSI shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the MSI shall use its best efforts to ensure that the Personnel and agents or either of them, similarly shall not receive any such additional payment.
- (b) **MSI and affiliates not to Engage in certain activities**  
The MSI agrees that, during the term of this Contract and after its termination/ completion, the MSI and its Affiliates, The Employer reserves the right to determine on a case-by-case basis whether the MSI should be disqualified from providing consultancy related to the Services, for the implementation of the Smart City ICT Components Project.
- (c) **Prohibition of Conflicting Activities**  
The MSI shall not engage, and shall cause its Personnel to not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- (d) **Strict Duty to Disclose Conflicting Activities**  
The MSI has an obligation and shall ensure that its Personnel shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the MSI or the termination of this Contract.

## **2.7.3. Confidentiality**

- 2.7.3.1. Except with the prior written consent of the Employer, the MSI and the Personnel shall not at any time communicate to any person or entity any proprietary or confidential information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Employer to the Personnel; any

information provided by or relating to the Employer, its technology, technical processes, business affairs or finances or any other information acquired in the course of the Services, nor shall the MSI and the Personnel make public the recommendations formulated in the course of, or as a result of, the Solution subject to:

- (a) all Confidential Information shall be identified as confidential at the time of disclosure;
- (b) each Party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, applicable to either Party, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to certain countries, or for certain end uses or end users.

Notwithstanding the aforesaid, the MSI and the Personnel may disclose such information to the extent that such information:

- (i) was in the public domain prior to its delivery to the MSI/Personnel or becomes a part of the public domain from a source other than the MSI/Personnel;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed under Applicable Laws or judicial/ administrative/ arbitral process or by any government instrumentality, provided that such disclosure is made: (a) after giving a prior written notice to the Employer; and (b) using reasonable efforts to ensure that such disclosure is accorded confidential treatment;
- (iv) is provided to the professional advisers, agents, auditors or representatives of the MSI on a needs basis as is reasonable under the circumstances, provided that the MSI shall require such professional advisers, agents, auditors or representatives to undertake in writing to keep the information provided confidential, and further provided that the MSI shall use best efforts to ensure compliance with such undertaking;
- (v) is independently developed by the recipient or is already in the possession of the recipient.

#### **2.7.4. Liability of the MSI**

The overall liability of the MSI and the Employer under this Contract shall not exceed the Contract Price, provided that this limitation shall not apply to any obligation of the MSI to indemnify the Employer with respect to intellectual property rights infringement.

#### **2.7.5. Insurance to be taken out by the MSI**

2.7.5.1. The MSI shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

as applicable, 110 percent of the price of the Information Technology components components and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.

(b) Installation "All Risks" Insurance

as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.

(c) Third-Party Liability Insurance

The MSI shall obtain Third-Party Liability Insurance in the amount of INR 10 crores. The Insurance shall cover the entire Contract Period, covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any Subsystems that have been accepted by the Employer) occurring in connection



with the supply and installation of the Information System.

(d) Automobile Liability Insurance

In accordance with the statutory requirements prevailing in the Employer's Country, covering use of all vehicles used by the MSI (whether or not owned by them) in connection with the execution of the Contract.

(e) Other Insurance Terms:

- (i) The MSI shall meet the Employer's liability and workers' compensation insurance in respect of its personnel of the MSI including subcontractors if any, in accordance with the relevant provisions of various labor laws as applicable, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate;
- (ii) The MSI while employing the man-power required for the Maintenance of the project shall be responsible for following all the required mandates as per the prevailing laws of the land. Ex: Income Tax rules, Labour Laws, Employee benefits, employee related insurances etc.; and
- (iii) Insurance against loss of or damage to (a) equipment purchased in whole or in part with funds provided under this Contract, (b) the sub-systems that have been accepted by the Employer (c) any documents (software of the IT systems) prepared by the MSI in the performance of the Services with a minimum coverage of two times the value of the contract.
- (iv) The insurance shall cover the entire contract period commencing from the date of the signing of the contract till the effective date of the expiry of the contract.
- (v) The MSI shall maintain standard forms of comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc. The certificates of insurance shall indicate that the insurance company will notify the Employer if, for any reason, the insurance coverage lapses.

2.7.5.2. The Employer shall be named as co-insured under all insurance policies taken out by the MSI pursuant to GCC Clause 2.7.5.1, except for the Third-Party Liability,. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

2.7.5.3. The MSI shall deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.

2.7.5.4. If the MSI fails to take out and/or maintain in effect the insurance referred to in GCC Clause 2.7.5.1, the Employer may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the MSI under the Contract any premium that the Employer shall have paid to the insurer or may otherwise recover such amount as a debt due from the MSI.

2.7.5.5. Unless otherwise provided in the Contract, the MSI shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 2.7.5., and all monies payable by any insurers shall be paid to the MSI. The Employer shall give to the MSI all such reasonable assistance as may be required by the MSI in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Employer's interest is involved, the MSI shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the MSI's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the MSI.

## **2.7.6. Accounting and Auditing**

2.7.6.1. The MSI shall keep accurate and systematic accounts and records in respect of the Services required of MSI under this Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs and the basis thereof.

2.7.6.2. The MSI shall permit, the Employer and/or persons appointed by the Employer to inspect all accounts and records relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer, if requested by the Employer. Any act intended to materially impede the exercise of the Employer's inspection and audit rights provided for under this Clause 2.7.6..2 shall

constitute a material breach of the Contract, which would give the Employer the right to terminate the Contract.

### **2.7.7. Time for Commencement and Operational Acceptance**

- 2.7.7.1. The MSI shall commence work on the System within: 30 days from the date of signing of the Contract., the MSI shall thereafter proceed with the System in accordance with the time schedule specified in the implementation Schedule in the Terms of Reference Section and any refinements made in the Agreed and Finalized Project Plan.
- 2.7.7.2. The MSI shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) on or before: D + 24 months, where D is the Effective Date and in accordance with the time schedule specified in the Implementation Schedule in the Terms of Reference Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the MSI shall be entitled under GCC Clause 2.11.2. (Extension of Time for Achieving Operational Acceptance).

## **2.8. Key Personnel and Replacement of Personnel**

### **2.8.1. Description of Key Personnel/ Experts/ Resources**

- 2.8.1.1. The title, agreed job description and minimum qualification of each Key Expert to carry out the Work are described in ITB (Volume I).
- 2.8.1.2. All Key Experts as proposed by the Bidder should be full time employees of the Bidder (or JV/Consortium members).

### **2.8.2. Replacement of Key Personnel/ Experts/ Resources**

- 2.8.2.1. Except as the Employer may otherwise agree in writing and no changes shall be made in the Key Experts without the prior consent of the Employer.
- 2.8.2.2. A request for substitution of a Key Expert during the term of the Contract may be considered based on the MSI's written request.
- 2.8.2.3. The Employer may make a request in writing for the substitution of a Key Expert with an equal or better qualification and experience. On receiving request, the MSI shall provide substitution within 30 days of receipt of request for the respective Key Expert.
- 2.8.2.4. In case any proposed resource resigns, then the MSI has to inform Employer within one week of such resignation and the MSI shall promptly initiate a search for a replacement to ensure that the role of any member of the Key Personnel is not vacant at any point in time during the contract period, subject to reasonable extensions requested by the MSI and its approval by the Employer. The knowledge transfer to the replacement should be completed before the Key expert leaves the work location/ project.
- 2.8.2.5. If Employer objects to any such replacement appointment, the MSI shall not assign the individual to that position and shall seek an alternative candidate in accordance with the resource requirements.
- 2.8.2.6. The MSI needs to ensure at least 4 weeks of overlap period in such replacements. Employer will not be responsible for any knowledge transition to the replacement resource and any impact/escalation of cost incurred by the MSI due to resource replacement.
- 2.8.2.7. If in the first 6 month period from the Contract Effective Date and in any rolling 12 months period during the Term of the Contract, 15 percent or more of the members of the Key Personnel cease or reduce their involvement in the Services required of MSI under this Contract for any reason other than with Employer's prior written consent, the MSI shall:
- 2.8.2.8. provide Employer with a reasonably detailed explanation as to the reasons for such change, including, where applicable and permitted, notes from any exit interviews conducted by the MSI with any departing member of the Key Personnel; and

- 2.8.2.9. if such change to Key Personnel has or is likely to have any material adverse impact on the provision of the Services required of MSI under this Contract or any substantial part thereof, undertake, at its own costs, such remediation acts as are reasonably necessary in order to improve the retention of the Key Personnel including making reasonable changes to the human resources policies and procedures applicable to the Key Personnel (including those related to compensation, benefits and other conditions so that they are competitive with the market) as may be necessary to ensure that such policies and procedures comply with Good Industry Practice.

### **2.8.3. Removal of Personnel**

- 2.8.3.1. If the Employer finds that any of the Personnel has committed Personnel serious misconduct or has been charged with having committed a criminal action, or if the Employer determines that MSI's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices while performing the Work, the MSI shall, at the Employer's written request, provide a replacement for such Personnel.
- 2.8.3.2. In the event that any of Personnel is found by the Employer to be incompetent or incapable in discharging assigned duties, the Employer, specifying the grounds therefore, may request the MSI to provide a replacement.
- 2.8.3.3. The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by the Employer.

## **2.9. Rights and Obligations of Employer**

### **2.9.1. Assistance and Services**

- 2.9.1.1. The Employer shall:
- (i) Assist the MSI with obtaining any applicable permits, including work permits and such other documents as shall be necessary to enable the MSI to perform the Services required of MSI under this Contract;
  - (ii) The Employer shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 2.10.2.2) within the time schedule specified in the Implementation Schedule in the Terms of Reference Section.
- 2.9.1.2. If requested by the MSI, the Employer shall use its best endeavors to assist the MSI in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the MSI or Subcontractors or the personnel of the MSI or Subcontractors, as the case may be, to obtain.
- 2.9.1.3. In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the MSI, as specified in the Terms of Reference, Agreed and Finalized Project Plan, or other parts of the Contract, the Employer shall use its best endeavors to assist the MSI in obtaining such services in a timely and expeditious manner.
- 2.9.1.4. The Employer shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the MSI. Delay by the Employer may result in an appropriate extension of the Time for Operational Acceptance, at the MSI's discretion.
- 2.9.1.5. The Employer assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 2.10.10.2, and shall be responsible for the continued

operation of the System after Operational Acceptance. However, this shall not limit in any way the MSI's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.

- 2.9.1.6. The MSI is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles.
- 2.9.1.7. All costs and expenses involved in the performance of the obligations under this GCC Clause 2.9.1. shall be the responsibility of the Employer, save those to be incurred by the MSI with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Clause 2.10.10.
- 2.9.1.8. The Employer may depute Project Management Consultant (PMC) or competent personnel to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Terms of Reference Section's Implementation Schedule and the Agreed and Finalized Project Plan.
- a) Employer shall assist the MSI in:
- i. Obtaining necessary permits or permissions for any activities requiring outside authorization;
  - ii. Coordinating logistical arrangements to receive project related equipment at project facilities;
  - iii. Providing access to field implementation locations as required;
  - iv. Timely acquisition of required technical data from EPC Contractor or other parties;
  - v. Obtaining any new, changed, or updated operational information necessary for the MSI to configure and initialize the system; and
  - vi. Scheduling and coordination for staff participating in training sessions as per the agreed training schedule.
- b) Employer shall provide basic infrastructure (power, space, access) required at each facility for installation of System equipment and for Training;
- c) Employer shall provide plot area for the POP room;
- d) Shall approve any provision of raw electricity up to mains power distribution panel at POP rooms, other sites;

## **2.9.2. Access to Project Office**

MSI to establish own office and maintain it throughout the contract period in Dholera which shall be used to deliver this project. Employer may visit MSI office periodically to check the existence.

## **2.9.3. Counterpart Personnel**

- 2.9.3.1. Unless otherwise specified in the Contract or agreed upon by the Employer and the MSI, the Employer shall provide sufficient, properly qualified operating and technical personnel, as required by the MSI to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Terms of Reference Section's Implementation Schedule and the Agreed and Finalized Project Plan.
- 2.9.3.2. The Employer will designate appropriate staff for the training courses to be given by the MSI and shall make all appropriate logistical arrangements for such training as specified in the Terms of Reference, the Agreed and Finalized Project Plan, or other parts of the Contract.

## **2.10. Design, Supply Installation, Testing, Commissioning and Acceptance**

### **2.10.1. Representatives**

- 2.10.1.1. Project Manager

The employer shall appoint and notify the Project Manager within fourteen (14) days from the Effective Date. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the

MSI without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the MSI. The Project Manager shall have the authority to represent the Employer on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Employer.

2.10.1.2. MSI's Representative

2.10.1.2.1. If the MSI's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the MSI shall appoint the MSI's Representative and shall request the Employer in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the MSI's Representative. If the Employer does not object to the appointment within fourteen (14) days, the MSI's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the MSI shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Clause

2.10.1.2.2. The MSI's Representative shall have the authority to represent the MSI on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the MSI;

2.10.1.2.3. The MSI shall not revoke the appointment of the MSI's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents to such an action, the MSI shall appoint another person of equal or superior qualifications as the MSI's Representative, pursuant to the procedure set out in GCC Clause 2.10.1.1;

2.10.1.2.4. The MSI's Representative and staff are obliged to work closely with the Employer's Project Manager and staff, act within their own authority, and abide by directives issued by the Employer that are consistent with the terms of the Contract. The MSI's Representative is responsible for managing the activities of its personnel and any subcontracted personnel;

2.10.1.2.5. The MSI's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the MSI'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 the notice of it has been delivered;

2.10.1.2.6. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 2.10.1.2.5 shall be deemed to be an act or exercise by the MSI's Representative.

2.10.1.3. Objections and Removals

2.10.1.3.1. Employer may by notice to the MSI object to any representative or person employed by the MSI in the execution of the Contract who, in the reasonable opinion of the Employer, may have behaved inappropriately, be incompetent, or be negligent. The Employer shall provide evidence of the same, whereupon the MSI shall remove such person from work on the System;

2.10.1.3.2. If any representative or person employed by the MSI is removed in accordance with GCC Clause 2.10.1.3.1, the MSI shall, where required, promptly appoint a replacement.

## 2.10.2. Project Planning

2.10.2.1. In close cooperation with the Employer and based on the Preliminary Project Plan included in the MSI's bid, the MSI shall develop a Project Plan encompassing the activities specified in the Contract. Chapters in the Project Plan shall address the following subjects:

- (i) Project Organization and Management Plan;

- (ii) Delivery and Installation Plan;
- (iii) Training Plan;
- (iv) Pre-commissioning and Operational Acceptance
- (v) Testing Plan;
- (vi) Maintenance support Service Plan;
- (vii) Implementation schedule;
- (viii) Technical Support Plan.

Any other submission relevant to the project as required by the Employer or its Project Manager post contract award.

2.10.2.2. The MSI shall perform all the Project Management activities necessary for proper planning, management and control of the work. Below are some of the typical tasks that are required to be performed by MSI:

1. Participate in the project kick-off workshop with project stakeholders designated by Employer. The kick-off workshop shall accomplish the following objectives:
  - i. Common understanding of the project goals and objectives
  - ii. Define respective roles and responsibilities and
  - iii. Agree on the methods of communication and reporting throughout the project duration.
2. Participate in monthly status review meetings and present the project progress update in the meeting. The frequency of project status review meetings may change based on actual requirements.
3. **Schedule:** The MSI shall submit a Level 3 schedule that cover's the full scope of MSI work within 30 calendar days from the effective date. This will be reviewed within 15 calendar days by Employer. The MSI shall incorporate the comments and resubmit the schedule no later than 15 calendar days after receiving the comments from Employer. Upon approval, the level 3 schedule will become the baseline schedule for all the future monitoring and tracking.

The MSI should keep to the following guidelines

- i. Develop and incorporate a detailed Work Breakdown Structure (WBS) for all project schedules that are submitted.
- ii. All schedules shall be created, maintained and submitted to Employer in the latest version of Oracle Primavera P6 or equivalent in an electronic format.
- iii. All schedules shall follow the Critical Path Method (CPM) of scheduling and shall have meaningful and realistic logical ties and relationships between activities.
- iv. The use of negative lags is not permitted in the baseline and all other versions of the schedule.
- v. Defining activities instead of lags between Finish to Start ties is necessary
- vi. The schedule must contain all the long lead procurement items identified.
- vii. Shall exercise reasonableness while assigning constraints in schedule and milestones
- viii. Upon approval, the copy of the Baseline schedule will become the first Current Schedule.
- ix. The Current schedule shall be actively updated and maintained by the MSI every month.

- x. The updated Primavera P6 or equivalent schedule file should be submitted every month along with Monthly progress report in electronic format. A pdf copy of the updated schedule with all activities also needs to be submitted
  - xi. A schedule narrative document shall accompany the updated electronic schedule describing the work performed in the reporting period.
4. **Cash Flow:** Prepare project cash flow at the start of the project. Prepare monthly statements to show the actual versus plan spending; update the cost periodically
  5. **Lessons Learned Database:** The MSI shall develop and actively maintain a “lessons learned” database on a monthly basis (to be included in the monthly project report) and submit it to Employer at the end of the project during closeout.
  6. **Risk Register:** Maintain an active risk register addressing the risks and mitigation measures (could be in excel format) that lists the project risks related to their Scope of Work.
  7. **Inter-Project Links:** Identify potential inter-project links, inter-dependencies or conflicts/interference to work or work areas and narrate them in the monthly progress report.
  8. **Monthly Progress Report:** Prepare and submit a monthly progress report (standard format and template will be provided by Employer at a later date). Items 3 to 7 mentioned above shall be the minimum information that will need to be included in the monthly progress report. In addition to the standard template requirement, the MPR shall carry the following information besides many other things that will be notified to MSI later:
    - I. **Other issues or potential problems the MSI foresees that could impact on project progress and/or effectiveness.**
    - II. **Inspection and quality assurance reports;**
    - III. **System failure or fault reports;**
    - IV. **Monthly log of service calls and problem resolutions.**
  9. For better collaboration, MSI shall use the Program and Document Management system that will be provided by Employer at a later date and pay for the cost of procuring licenses to use the system.
  10. Timely submission of monthly progress report and the monthly updated electronic schedule file in the required and acceptable format is required.
- 2.10.2.3. If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 2.2.5. and The MSI shall undertake to design, supply, install, test, and commission the System in accordance with the Agreed and Finalized implementation scheule and the Contract.

### 2.10.3. Subcontracting

- 2.10.3.1. Appendix 1 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Employer. If no Subcontractors are listed for an item, the MSI shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The MSI may from time to time propose additions to or deletions from any such list. The MSI shall submit any such list or any

modification to the list to the Employer for its approval in sufficient time so as not to impede the progress of work on the System. The Employer shall not withhold such approval unreasonably. Such approval by the Employer of a Subcontractor(s) shall not relieve the MSI from any of its obligations, duties, or responsibilities under the Contract.

- 2.10.3.2. The MSI may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 2.10.3.1. If the MSI wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Employer's prior approval under GCC Clause 2.10.33.
- 2.10.3.3. For items for which pre-approved Subcontractor lists have not been specified in Appendix 1 to the Contract Agreement, the MSI may employ such Subcontractors as it may select, provided: (i) the MSI notifies the Employer in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Employer has granted its approval in writing or fails to respond. The MSI shall not engage any Subcontractor to which the Employer has objected in writing prior to the end of the notice period. The absence of a written objection by the Employer during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Employer of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Employer or MSI as they are specified in GCC Clauses 2.10.3.1 and 2.10.3.2, or in Appendix 1 of the Contract Agreement.

## **2.10.4. Design and Engineering**

### **2.10.4.1. Technical Specifications and Drawings**

- 2.10.4.1.1. The MSI shall execute the detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice; The MSI shall be responsible for any discrepancies, errors or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the MSI by or on behalf of the Employer.
- 2.10.4.1.2. The MSI shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

### **2.10.4.2. Codes and Standards**

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified below:

During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 2.2.5.

### **2.10.4.3. Approval/ Review of Technical Documents by the Project Manager.**

- 2.10.4.3.1. The MSI shall prepare and furnish to the Project Manager the documents as specified below for the Project Manager's approval or review;  
The MSI shall prepare and furnish to the Project Manager all the necessary documents for which the MSI must obtain the Project Manager's approval before proceeding with work on the System or any Sub-system covered by the documents. All the phases of project lifecycle for MSI must be



adhered to. The following is an indicative but not an exhaustive list of documentation and the Project Manager will request for additional submissions during the course of the project:

- i. System detailed design;**
- ii. System Operation manuals;**
- iii. Project Organization and Management Plan;**
- iv. Delivery and Installation Plan;**
- v. Training Plan;**
- vi. Pre-commissioning Plan;**
- vii. Prototype Approval Tests and Plan;**
- viii. Factory Acceptance Tests and Plan;**
- ix. Pilot Tests and Plan;**
- x. Burn-in Tests and Plan;**
- xi. System Acceptance Tests and Plan;**
- xii. Maintenance Support Service Plan;**
- xiii. Task, Time, and Resource Schedules;**
- xiv. Technical Support Plan;**
- xv Preventive Maintenance Plan**
- Xvi. Exit Management Plan**

Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents.

GCC Clause 2.10.4.3.2 through 2.10.4.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

2.10.4.3.2. Within thirty (30) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 2.10.4.3.1, the Project Manager shall either return one copy of the document to the MSI with its approval endorsed on the document or shall notify the MSI in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the thirty (30) days, then the document shall be deemed to have been approved by the Project Manager;

2.10.4.3.3. The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice;

2.10.4.3.4. If the Project Manager disapproves the document, the MSI shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause. If the Project Manager approves the document subject to modification(s), the MSI shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 2.10.4.3.5. The procedure set out in GCC Clause 2.10.4.3.2 through shall be repeated, as appropriate, until the Project Manager approves such documents;

2.10.4.3.5. If any dispute occurs between the Employer and the MSI in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the Parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 2.2.11. If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The MSI shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the MSI's view on the dispute, then the MSI shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as

the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended accordingly;

- 2.10.4.3.6. The Project Manager's approval, with or without modification of the document furnished by the MSI, shall not relieve the MSI of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the MSI by or on behalf of the Employer;
- 2.10.4.3.7. The MSI shall not depart from any approved document unless the MSI has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 2.10.4.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 2.2.5. shall apply to such request.
- 2.10.4.3.8. All the Good for Implementation (GFI) drawing should be taken up for build, installation and commissioning only after approval from employer/ICT consultant.

## **2.10.5. Procurement Delivery and Transport**

- 2.10.5.1. Subject to related Employer's responsibilities pursuant to GCC Clauses 2.9.1. to 2.9.3. and Clause 2.5.2., the MSI shall manufacture or procure and transport all the Information Technology components, Materials, and other Goods in an expeditious and orderly manner to the Project Site.
- 2.10.5.2. Delivery of the Information Technology components, Materials, and other Goods shall be made by the MSI in accordance with the Volume II - Terms of Reference.
- 2.10.5.3. Early or partial deliveries require the explicit written consent of the Employer, which consent shall not be unreasonably withheld.
- 2.10.5.4. Transportation
  - 2.10.5.4.1. The MSI shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Employer's instructions to the MSI.
  - 2.10.5.4.2. The MSI will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Incoterms.
- 2.10.5.5. The MSI will provide the Employer with shipping and other documents, as specified below:
  - 2.10.5.5.1. For Goods supplied from outside the Employer's Country:

Upon shipment, the MSI shall notify the Employer and the insurance company contracted by the MSI to provide cargo insurance by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The MSI shall promptly send the following documents to the Employer by mail or courier, as appropriate, with a copy to the cargo insurance company:

    - (a) Two copies of the MSI's invoice showing the description of the Goods, quantity, unit price, and total amount;
    - (b) Usual transportation documents;
    - (c) Insurance certificate;
    - (d) Certificate(s) of origin; and
    - (e) Estimated time and point of arrival in the Employer's Country and at the site.
  - 2.10.5.5.2. For Goods supplied locally (i.e., from within the Employer's country):

Upon shipment, the MSI shall notify the Employer by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The MSI shall promptly send the following documents to the Employer by mail or courier, as appropriate:

    - (a) Two copies of the MSI's invoice showing the Goods' description, quantity, unit price, and total amount;
    - (b) Delivery note, railway receipt, or truck receipt;
    - (c) Certificate of insurance;

- (d) Certificate(s) of origin; and
- (e) Estimated time of arrival at the site.

2.10.5.6. Customs Clearance:

The MSI will bear responsibility for, and cost of, customs clearance into the Employer's country in accordance the particular Incoterm(s) used for Goods supplied from outside the Employer's country in the Price Schedules.

## 2.10.6. Product Upgrades

- 2.10.6.1. At any point during performance of the Contract, should technological advances be introduced by the MSI for Information Technology components originally offered by the MSI in its bid and still to be delivered, the MSI shall be obligated to offer to the Employer the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 2.2.5.
- 2.10.6.2. At any point during performance of the Contract, for Information Technology components still to be delivered, the MSI will also pass on to the Employer any cost reductions and additional and/or improved support and facilities that it offers to other Employers of the MSI in the Employer's Country, pursuant to GCC Clause 2.2.5..
- 2.10.6.3. During performance of the Contract, the MSI shall offer to the Employer all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the MSI to other Employers of the MSI in the Employer's Country, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the MSI in the Recurrent Costs tables in its bid.
- 2.10.6.4. The MSI shall provide the Employer: with all new versions, releases, and updates for all Software used in the system during the Maintenance Period at no additional cost to the Employer.
- 2.10.6.5. The Employer shall introduce all new versions, releases or updates of the Software within nine (09) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the MSI shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the MSI stop supporting or maintaining a version or release of the Software less than twenty four (24) months after the Employer receives a production-ready copy of a subsequent version, release, or update. The Employer shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.
- 2.10.6.6. All the ICT components proposed by the MSI and to be installed must be ensured that they have 5 years of life left and spares will be available after 5 years of installation.

## 2.10.7. Implementation, Installation and Other Services

- 2.10.7.1. The MSI shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.
- 2.10.7.2. Prices charged by the MSI for Services, if not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the MSI in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the MSI to other Employers in the Employer's Country for similar services.

## 2.10.8. Inspections and Tests

- 2.10.8.1. The Employer or its representative shall have the right to inspect and/or test any components of the System, as specified in the Volume II - Terms of Reference, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.
- 2.10.8.2. The Employer or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Employer shall bear all costs and expenses incurred in connection with its attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 2.10.8.3. Should the inspected or tested components fail to conform to the Contract, the Employer may reject the component(s), and the MSI shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Employer.
- 2.10.8.4. The Project Manager may require the MSI to carry out any inspection and/or test not specified in the Contract, provided that the MSI's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impede the progress of work on the System and/or the MSI's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
- 2.10.8.5. If any dispute shall arise between the Parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the Parties within a reasonable period of time, either Party may invoke the process pursuant to GCC Clause 2.2.11. (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.
- 2.10.8.6. Employer may employ qualified inspectors to inspect and certify the Information Technology components, Materials, and other Goods prior to shipment. A Prototype Approval Test might be requested by the Employer to be conducted before shipment. If such a test is required, the expenses of the trip for the Inspectors shall be borne by the MSI.

## **2.10.9. Installation of the System**

- 2.10.9.1. As soon as the System, or any Subsystem, has, in the opinion of the MSI, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Volume II - Terms of Reference and the Agreed and Finalized Project Plan, the MSI shall so notify the Employer in writing.
- 2.10.9.2. The Project Manager shall, within fourteen (14) days after receipt of the MSI's notice under GCC Clause 2.10.9.1, either issue an Installation Certificate in the form specified in the Sample Forms Section in the Bidding Documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified, has achieved Installation by the date of the MSI's notice under GCC Clause 2.10.9.1, or notify the MSI in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The MSI shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the MSI of. The MSI shall then promptly carry out retesting of the System or Subsystem and, when in the MSI's opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Employer in writing, in accordance with GCC Clause 2.10.9.1. The procedure set out in this GCC Clause 2.10.9.2 shall be repeated, as necessary, until an Installation Certificate is issued.
- 2.10.9.3. If the Project Manager fails to issue the Installation Certificate and fails to inform the MSI of any defects and/or deficiencies within fourteen (14) days after receipt of the MSI's notice under GCC Clause 2.10.9.1, or if the Employer puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the MSI's notice or repeated notice, or when the Employer put the System into production operation, as the case may be.

## 2.10.10. Commissioning and Operational Acceptance

### 2.10.10.1. Commissioning

2.10.10.1.1. Commissioning of the System (or Subsystem if specified pursuant to the GCC Clause 2.10.10.2.1) shall be commenced by the MSI:

- (a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 2.10.9.2; or
- (b) as otherwise specified in the Terms of Reference or the Agreed and Finalized Project Plan; or
- (c) immediately after Installation is deemed to have occurred, under GCC Clause 2.10.9.3.

2.10.10.1.2. The Employer shall supply the operating and technical personnel and all materials and information reasonably required to enable the MSI to carry out its obligations with respect to Commissioning; Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.

### 2.10.10.2. Operational Acceptance Tests

2.10.10.2.1. The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Employer (in accordance with GCC Clause 2.9.1.5), but shall be conducted with the full cooperation of the MSI during Commissioning of the System (or major components or Subsystem[s]). Operational Acceptance Testing shall be conducted in accordance with System, Sub-systems, tests, test procedures, and the required results for acceptance as specified in the Volume II - Terms of Reference (Scope of Work - Testing), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Terms of Reference and meets the standard of performance quoted in the MSI's bid, including, but not restricted to, the functional and technical performance requirements. Operational Acceptance Testing shall be conducted in accordance with System, Sub-systems, tests, test procedures, and the required results for acceptance as specified in the Volume II - Terms of Reference (Testing Requirements);

At the Employer's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System. The O&M phase is for Five (5) consecutive calendar years counted from the Effective Date ( which will start after the successful completion of Acceptance of Performance Tests / criterion)

2.10.10.2.2. If for reasons attributable to the Employer, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to clause above) cannot be successfully completed within thirty days ( 30 ) from the date of System Acceptance, from the date of Installation or any other period agreed upon in writing by the Employer and the MSI, the MSI shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Terms of Reference and/or the Agreed and Finalized Project Plan, and GCC Clause 2.11.1.2 and 2.11.1.3 shall not apply.

### 2.10.10.3. Operational Acceptance

2.10.10.3.1. Subject to GCC Clause 2.10.10.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when:

- (a) the Operational Acceptance Tests, as specified in the Terms of Reference, and/or the Agreed and Finalized Project Plan have been successfully completed; or
- (b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Employer within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 2.10.10.2.2 above; or
- (c) the Employer has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the MSI shall notify the Employer and document such use.

- 2.10.10.3.2. At any time after any of the events set out in GCC Clause 2.10.10.3.1 have occurred, the MSI may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate;
- 2.10.10.3.3. After consultation with the Employer, and within fourteen (14) days after receipt of the MSI's notice, the Project Manager shall:
- (a) issue an Operational Acceptance Certificate; or
  - (b) notify the MSI in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
  - (c) issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 2.10.10.3.1 (b) arises.
- 2.10.10.3.4. The MSI shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the MSI of. Once such remedies have been made by the MSI, the MSI shall notify the Employer, and the Employer, with the full cooperation of the MSI, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the MSI shall notify the Employer of its request for Operational Acceptance Certification, in accordance with GCC Clause 2.10.10.3.3. The Employer shall then issue to the MSI the Operational Acceptance Certification in accordance with GCC Clause 2.10.10.3.3(a), or shall notify the MSI of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 2.10.10.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued;
- 2.10.10.3.5. If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 2.10.10.2, then either:
- (a) the Employer may consider terminating the Contract, pursuant to GCC Clause 2.2.9. a; or
  - (b) if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Employer to fulfill its obligations under the Contract, then the MSI shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clause 2.11.3.3 shall not apply.
- 2.10.10.4. Partial Acceptance
- 2.10.10.4.1. If so specified in GCC Clause 2.10.10.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 2.10.10.4.2;
- 2.10.10.4.2. The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 2.10.10.4.1 shall not relieve the MSI of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole once all major components and Subsystems have been supplied, installed, tested, and commissioned;
- 2.10.10.4.3. In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The MSI shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Employer or MSI.

## **2.11. Guarantees and Liabilities**

### **2.11.1. Operational Acceptance and Time Guarantee**

- 2.11.1.1. The MSI guarantees that it shall complete the supply, Installation, Integration, Commissioning, and achieve Operational Acceptance of System ( or Subsystems mentioned in Volume II) within the time periods specified in the Implementation Schedule in the Terms of Reference Section and/or the Agreed and Finalized Project Plan, or within such extended time to which the MSI shall be entitled under GCC Clause 2.11.2. (Extension of Time for Achieving Operational Acceptance). If the MSI fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the clause above) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Terms of Reference or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 2.11.2. (Extension of Time for Achieving Operational Acceptance), the MSI shall pay to the Employer liquidated damages at the rate assessed at 1.0 percent per week of Total Milestone Payment during implementation and DLP phase. The maximum liquidated damages are 10 percent of the Contract Value during the implementation and DLP phase of the project as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the Contract Value. Once the Maximum is reached, the Employer may consider termination of the Contract, pursuant to GCC Clause 2.2.9.
- 2.11.1.2. Liquidated damages payable under GCC Clause 2.11.2.2. shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Terms of Reference and/or Agreed and Finalized Project Plan. This Clause 2.11.2.3 shall not limit, however, any other rights or remedies the Employer may have under the Contract for other delays. Liquidated damages shall also be applicable to the Mile Stones as defined in the Volume II - Terms of Reference. Liquidated damages shall be assessed at 1.0 percent per week of the total milestone payment. Maximum liquidated damages shall be 10 percent of the total milestone payment. Liquidated damages shall also be applicable in case of any delay in providing services by MSI during AMC Phase (Post Warranty Service Period). Liquidated damages during the AMC Phase (Post Warranty Service Period) of the Project shall be capped at 10 percent of the total quarterly amount to be paid during AMC phase.
- 2.11.1.3. If liquidated damages are claimed by the Employer for the System (or Subsystem), the MSI shall have no further liability whatsoever to the Employer in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the MSI from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

### **2.11.2. Extension of Time for Achieving Operational Acceptance**

- 2.11.2.1. The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the MSI is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:
- (a) Any Change in the System as provided in GCC Clause 2.2.5. (Change in the Information System);
  - (b) Any occurrence of Force Majeure as provided in GCC Clause 2.12.4. (Force Majeure);
  - (c) Default of the Employer; or
  - (d) Any other matter specifically mentioned in the Contract.
- 2.11.2.2. By such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the MSI.
- 2.11.2.3. Except where otherwise specifically provided in the Contract, the MSI shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the MSI shall agree upon the

period of such extension. In the event that the MSI does not accept the Employer’s estimate of a fair and reasonable time extension, the MSI shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 2.2.11.

2.11.2.4. The MSI shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

### 2.11.3. Defect Liability

2.11.3.1. The MSI warrants that the System, including all Information Technology components, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems.

2.11.3.2. The MSI also warrants that the Information Technology components, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System’s or Subsystem’s ability to fulfill the Technical Requirements.

2.11.3.3. In addition, the MSI warrants that: (i) all Goods components to be incorporated into the System form part of the MSI’s and/or Subcontractor’s current product lines, (ii) they have been previously released to the market, and (iii) The MSI warrants that the following items have been released to the market for the following specific minimum time periods: specific types of technologies and specific minimum time periods as mentioned below.

S. No	Equipment Name	Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere
1		
2		

The MSI shall provide proven products, successfully working under the Environmental conditions similar to that of this Project, for the equipment’s listed in the table above -- satisfying the commercial operations periods. The hardware functionality of all the equipment is specified in Volume II - Terms of Reference of the RFQ cum RFP document. Software customization to meet the technical and functional requirements specified in Volume II - Terms of Reference is allowed.

2.11.3.4. The Defect Liability (Warranty) Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for 12 months.

2.11.3.5. If during the Defect Liability (Warranty) Period any defect as described in GCC Clause 2.11.3.1 should be found in the design, engineering, Materials, and workmanship of the Information Technology components and other Goods supplied or of the Services provided by the MSI, the MSI shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the MSI shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technology components or other Goods that have been replaced by the MSI shall remain the property of the MSI.

2.11.3.6. The MSI shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the System arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the System by the Employer;
- (b) normal wear and tear;
- (c) use of the System with items not supplied by the MSI, unless otherwise identified in the Terms of Reference, or approved by the MSI; or
- (d) modifications made to the System by the Employer, or a third party, not approved by the MSI.



- 2.11.3.7. The MSI's obligations under this GCC Clause 2.11.3 shall not apply to:
- (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
  - (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the MSI has disclaimed responsibility, in accordance with GCC Clause 2.10.4.1.2.
- 2.11.3.8. The Employer shall give the MSI a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Employer shall afford all reasonable opportunity for the MSI to inspect any such defect. The Employer shall afford the MSI all necessary access to the System and the site to enable the MSI to perform its obligations under this GCC Clause 2.11.3.
- 2.11.3.9. The MSI may, with the consent of the Employer, remove from the site any Information Technology components and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Employer may give the MSI notice requiring that tests of the defective part be made by the MSI immediately upon completion of such remedial work, whereupon the MSI shall carry out such tests. If such part fails the tests, the MSI shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Employer and the MSI.
- 2.11.3.10. If the MSI fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period, the Employer may, following notice to the MSI, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Employer in connection with such work shall be paid to the Employer by the MSI or may be deducted by the Employer from any monies due the MSI or claimed under the Performance Security.
- 2.11.3.11. If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Employer because of such defect and/or making good of such defect.
- 2.11.3.12. Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- 2.11.3.13. At the request of the Employer and without prejudice to any other rights and remedies that the Employer may have against the MSI under the Contract, the MSI will offer all possible assistance to the Employer to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Employer of the benefit of any warranties given by such producers or licensors to the MSI.

## **2.11.4. Functional Guarantees**

- 2.11.4.1. The MSI guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Employer's requirements set forth in the Terms of Reference and it conforms to all other aspects of the Contract. The MSI acknowledges that GCC Clause 2.10.10 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.
- 2.11.4.2. If, for reasons attributable to the MSI, the System does not conform to the Terms of Reference or does not conform to all other aspects of the Contract, the MSI shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Terms of Reference and meet all functional and performance standards. The MSI shall notify the Employer upon completion of the necessary changes, modifications, and/or additions and shall request the Employer to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.

- 2.11.4.3. If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Employer may consider termination of the Contract, pursuant to GCC Clause 2.2.9., and forfeiture of the MSI's Performance Security in accordance with GCC Clause 2.5.4. (c) in compensation for the extra costs and delays likely to result from this failure.

## **2.11.5. Intellectual Property Rights Warranty**

The MSI hereby represents and warrants that:

- (a) the System as supplied, installed, tested, and accepted;
- (b) use of the System in accordance with the Contract; and
- (c) copying of the Software and Materials provided to the Employer in accordance with the Contract.

do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Employer to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the MSI shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

## **2.11.6. Intellectual Property Rights Indemnity**

- 2.11.6.1. The MSI shall indemnify and hold harmless the Employer and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Employer or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:

- (a) installation of the System by the MSI or the use of the System, including the Materials, in the country where the site is located;
- (b) copying of the Software and Materials provided the MSI in accordance with the Agreement; and
- (c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Employer's breach of GCC Clause 2.11.6.2.

- 2.11.6.2. Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied by the MSI, where the infringement arises because of such association or combination and not because of use of the System in its own right.

- 2.11.6.3. Such indemnities shall also not apply if any claim of infringement:

- (a) is asserted by a parent, subsidiary, or affiliate of the Employer's organization;
- (b) is a direct result of a design mandated by the Employer's Terms of Reference and the possibility of such infringement was duly noted in the MSI's Bid; or
- (c) results from the alteration of the System, including the Materials, by the Employer or any persons other than the MSI or a person authorized by the MSI.

- 2.11.6.4. If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Clause 2.11.6.1, the Employer shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the MSI fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the MSI has so failed to notify the Employer within the twenty-eight (28) days, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Employer shall, at the MSI's request, afford all available assistance to the MSI in conducting such proceedings or claim and shall be reimbursed by the MSI for all reasonable expenses incurred in so doing.

- 2.11.6.5. The Employer shall indemnify and hold harmless the MSI and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the MSI or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the MSI in connection with this Contract by the Employer or any persons (other than the MSI) contracted by the Employer, except to the extent that such losses, liabilities, and costs arise as a result of the MSI's breach of GCC Clause 2.11.6.8.
- 2.11.6.6. Such indemnity shall not cover:
- (a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
  - (b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Employer or any other person contracted by the Employer, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.
- 2.11.6.7. Such indemnities shall also not apply:
- (a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the MSI's organization;
  - (b) to the extent that any claim of infringement is caused by the alteration, by the MSI, or any persons contracted by the MSI, of the design, data, drawing, specification, or other documents or materials provided to the MSI by the Employer or any persons contracted by the Employer.
- 2.11.6.8. If any proceedings are brought or any claim is made against the MSI arising out of the matters referred to in GCC Clause 2.11.6.5, the MSI shall promptly give the Employer notice of such proceedings or claims, and the Employer may at its own expense and in the MSI's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Employer fails to notify the MSI within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the MSI shall be free to conduct the same on its own behalf. Unless the Employer has so failed to notify the MSI within the twenty-eight (28) days, the MSI shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The MSI shall, at the Employer's request, afford all available assistance to the Employer in conducting such proceedings or claim and shall be reimbursed by the Employer for all reasonable expenses incurred in so doing.

## **2.11.7. Limitations of Liability**

Provided the following does not exclude or limit any Liability of either Party in ways not permitted by applicable law:

- (a) the MSI shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the MSI to pay liquidated damages to the Employer; and
- (b) the aggregate liability of the MSI to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the MSI to indemnify the Employer with respect to intellectual property rights infringement.

## **2.12. Risk Distribution**

### **2.12.1. Transfer of Ownership**

- 2.12.1.1. With the exception of Software and Materials, the ownership of the Information Technology components and other Goods shall be transferred to the Employer at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.

- 2.12.1.2. Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 2.6. and any elaboration in the Terms of Reference.
- 2.12.1.3. Ownership of the MSI's Equipment used by the MSI and its Subcontractors in connection with the Contract shall remain with the MSI or its Subcontractors.

## **2.12.2. Care of the System**

- 2.12.2.1. The Employer shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Employer shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 2.10.10 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the MSI, its employees, or subcontractors.
- 2.12.2.2. If any loss or damage occurs to the System or any part of the System by reason of:
  - (a) (insofar as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced MSI could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 2.12.4.;
  - (b) any use not in accordance with the Contract, by the Employer or any third party;
  - (c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Employer, or any such matter for which the MSI has disclaimed responsibility in accordance with GCC Clause 2.10.4.1.2.

The Employer shall pay to the MSI all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Employer requests the MSI in writing to make good any loss or damage to the System thereby occasioned, the MSI shall make good the same at the cost of the Employer in accordance with GCC Clause 2.2.5.. If the Employer does not request the MSI in writing to make good any loss or damage to the System thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 2.2.5., excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Employer shall terminate the Contract pursuant to GCC Clause 2.2.9.

- 2.12.2.3. Till the end of the Contract, the storage, safety and security of the equipment and the entire system shall be the responsibility of the MSI. All the equipment supplied by the MSI under the Contract shall be insured for sufficient value till the end of the AMC period. All associated costs shall be borne by the MSI.

## **2.12.3. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

- 2.12.3.1. The MSI and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Employer's Country.
- 2.12.3.2. Subject to GCC Clause 2.12.3.3, the MSI shall indemnify and hold harmless the Employer and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Employer or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the MSI or

its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Employer, its contractors, employees, officers, or agents.

- 2.12.3.3. If any proceedings are brought or any claim is made against the Employer that might subject the MSI to liability under GCC Clause 2.12.3.2, the Employer shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the MSI fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the MSI has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Employer shall, at the MSI's request, afford all available assistance to the MSI in conducting such proceedings or claim and shall be reimbursed by the MSI for all reasonable expenses incurred in so doing.
- 2.12.3.4. The Employer shall indemnify and hold harmless the MSI and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the MSI or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Employer, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 2.7.5. (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the MSI.
- 2.12.3.5. If any proceedings are brought or any claim is made against the MSI that might subject the Employer to liability under GCC Clause 2.12.3.4, the MSI shall promptly give the Employer notice of such proceedings or claims, and the Employer may at its own expense and in the MSI's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Employer fails to notify the MSI within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the MSI shall be free to conduct the same on its own behalf. Unless the Employer has so failed to notify the MSI within the twenty-eight (28) days, the MSI shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The MSI shall, at the Employer's request, afford all available assistance to the Employer in conducting such proceedings or claim and shall be reimbursed by the Employer for all reasonable expenses incurred in so doing.
- 2.12.3.6. The party entitled to the benefit of an indemnity under this GCC Clause 2.12.3 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

## **2.12.4. Force Majeure**

- 2.12.4.1. "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the MSI, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:
- (a) War, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
  - (b) Rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
  - (c) Confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority;
  - (d) Strike, sabotage, lockout, embargo, import restriction, port congestion, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;

- (e) Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
  - (f) Failure, by the MSI, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technology components or other Goods, or MSI's Equipment provided that the MSI has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.
- 2.12.4.2. If either Party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.
- 2.12.4.3. The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract 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 Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 2.11.2. (Extension of Time for Achieving Operational Acceptance).
- 2.12.4.4. The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Clause 2.12.4.6.
- 2.12.4.5. No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
- (a) constitute a default or breach of the Contract;
  - (b) (subject to GCC Clauses 2.12.2.2, 2.12.4.3, and 2.12.4.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance. if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 2.12.4.6. If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- 2.12.4.7. In the event of termination pursuant to GCC Clause 2.12.4.6, the rights and obligations of the Employer and the MSI shall be as specified in GCC Clause 2.2.9
- 2.12.4.8. Notwithstanding GCC Clause 2.12.4.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the MSI under this Contract.

## **2.13. Fairness and Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

## **2.14. Miscellaneous legal Terms**

### **2.14.1. Amicable Settlement**

2.14.1.1. The Parties shall seek to resolve any dispute amicably by mutual consultation.

2.14.1.2. If either Party objects to any action or inaction of the other Party, the objecting Party may send a written notice of dispute to the other Party providing in detail the basis of the dispute. The Party receiving the notice of dispute will consider it and respond in writing within fourteen (14) days after receipt. If such Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, GCC Clause 2.2.11 shall apply.

## 2.14.2. Performance Security

### (a) Performance Security

MSI shall, for the performance of its obligations hereunder during the contract period, provide to the Employer, within 10 (ten) days of the date of this Agreement, an irrevocable and unconditional guarantee from a Bank in the form set forth in Appendix A (the “Performance Security”) for an amount equal to 10% (ten percent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the defect liability period. Until such time the Performance Security is provided by the MSI pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Employer shall release the Bid Security to the MSI. For the avoidance of doubt, the parties expressly agree that the MSI shall provide, no later than 30 (thirty) days prior to the expiry of the Performance Security for the contract completion date

Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the MSI to provide the Performance Security in accordance with the provisions of this contract and within the time specified therein or such extended period as may be provided by the Employer. The Employer may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the MSI under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the MSI, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

In the event the MSI fails to provide the Performance Security within 10 (ten) days of this Agreement, it may seek extension of time for a period not exceeding 20 (twenty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for each day until the Performance Security is provided.

## 2.14.3. Assignment

- 2.14.3.1. Except as expressly permitted in the Contract, the MSI shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under the Contract, without the prior written consent of the Employer.
- 2.14.3.2. The Employer shall be entitled to assign, transfer or novate its rights and obligations under the Contract or any part thereof to any third party or to an affiliate, without the requirement of any further consent from the MSI, provided that where such assignment is made to a third party, the Employer shall use its best efforts to ensure that the third party to whom the benefits and obligations under the Contract or any part thereof has been assigned, has the necessary financial capability to comply with the obligations under the Contract.

## 2.14.4. Representation and Warranties

### 2.14.4.1. Employer’s Representations and Warranties

The Employer makes the following representations and warranties to the MSI:

- A. It has been incorporated as a company under the laws of India and is validly existing under those laws;
- B. It has power to enter into this Contract and comply with its obligations under it;
- C. This Contract and the transactions under it do not contravene its constituent documents or any Applicable Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- D. It has in full force and effect the authorizations necessary for it to enter into this Contract and the transactions under it; and
- E. Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract.

#### **2.14.4.2. MSI's Representations and Warranties**

The MSI makes the following representations and warranties to the Employer:

- A. It has been incorporated/registered as a company/firm under the laws of [Insert country of incorporation/registration] and is validly existing under those laws;
- B. It has power to enter into this Contract and comply with its obligations under it;
- C. This Contract and the transactions under it do not contravene its constituent documents or any applicable law of its jurisdiction or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- D. It has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it;
- E. Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;
- F. It is not in breach of any Applicable Law in a way which may result in a material adverse effect on its business or financial condition;
- G. There is no pending or threatened proceeding affecting the MSI or any of its assets that would affect the validity or enforceability of this Contract, the ability of the MSI to fulfil its commitments under this Contract, or that could have a material adverse effect on the business or financial condition of the MSI;
- H. It has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under the Contract;
- I. It has the necessary skill and experience to perform the Services in accordance with this Contract;
- J. It owns or has the right to use and license to the Employer all Intellectual Property Rights in relation to the Services and the Deliverables to be provided under this Contract;
- K. The performance of the Services shall not infringe the Intellectual Property Rights of any third party and that the MSI has not received notice of any claim, and is not aware of any facts or circumstances that may give rise to such claim;
- L. It will perform its obligations under the Contract and conduct its business with a high level of integrity which is reasonably expected of an international MSI of similar size and profile, conducting a similar line of business, and will not engage in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices; and
- M. Without prejudice to any express provision contained in the Contract, the MSI acknowledges that prior to the execution of the Contract, the MSI has after a complete and careful examination made an independent evaluation of the Technical Requirements and any information provided by or on behalf of the Employer and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the MSI in the course of performance of its obligations hereunder.

#### **2.14.5. Conditions Precedent**

2.14.5.1. This Contract is subject to the fulfillment of the following conditions precedent

2.14.5.1.1. Execution of a Deed of Indemnity in terms of Clause 2.2.10

2.14.5.1.2. Obtaining of all statutory and other approvals required for the performance of the Services under this Contract.

2.14.5.1.3. Furnishing of such other documents, including definitive documents as the Employer may specify.

2.14.5.1.4. Where the designated MSI is a subsidiary of a company or a member of a group of companies or is a joint venture company or is special purpose vehicle (SPV) [formed to execute the obligations under this Contract] and where the Employer may specify (on account of the MSI's failure to fulfill all selection criteria specified in the Bid), the parent or flagship company/ majority shareholder of such MSI having furnished an unconditional, irrevocable and continuing guarantee of an amount



equivalent to Rs \_\_\_/- on behalf of the MSI in a form and manner acceptable to the Employer which would remain valid until such time, beyond the term of the Contract, as may be stipulated by the Employer.

- 2.14.5.1.5. The Employer reserves the right to waive any or all of the conditions specified in Clause 2.14.5. in writing and no such waiver shall affect or impair any right, power or remedy that the Employer may otherwise have.

## **2.14.6. Key Performance Measurements**

- 2.14.6.1. Unless specified by the Employer to the contrary, the MSI shall perform the Services and carry out the Schedule of Requirements in accordance with the terms of this Contract, Scheduled Requirements and the Service Specifications as laid down in Service Level Agreement (Section 4).
- 2.14.6.2. If the Contract, Scheduled Requirements, Service Specification includes more than one document, then unless the Employer specifies to the contrary, the later in time shall prevail over a document of earlier date to the extent of any inconsistency.
- 2.14.6.3. The Employer reserves the right to amend any of the terms and conditions in relation to the Contract / Service Specifications and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfillment of the Schedule of Requirements. The Employer reserves the right to amend any of the terms and conditions in relation to the Service Specifications and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfillment of the Schedule of Requirements.

## **2.14.7. Reporting of Progress**

- 2.14.7.1. MSI shall monitor progress of all the activities specified in the contract and submit a free of cost monthly progress report about the various aspects of the work to the Employer. The Employer on mutual agreement between both parties may change the periodicity of such reports. Extracts of the progress report to be termed, as "Executive Summary" shall be submitted in 3 copies, along with 3 copies of monthly progress report. The same is required to be submitted in soft copy as well. Formats for such reporting shall be discussed at the Kick-Off meeting.
- 2.14.7.2. The MSI shall reply to the written notice giving details of the measures he proposes to take to expedite the progress so as to complete the works by the prescribed time.
- 2.14.7.3. The MSI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to the Employer or Employer's representative that the actual progress of work does not conform to the approved programme the MSI shall produce at the request of the Employer's representative a revised programme showing the modification to the approved programme necessary to ensure completion of the works within the time for completion or steps initiated to ensure compliance/improvement to the stipulated requirements.
- 2.14.7.4. The submission seeking an approval by the Employer or Employer's representative of such programme as the furnishing of such particulars shall not relieve the MSI of any of his duties or responsibilities under the Contract.
- 2.14.7.5. All time and cost effect in this respect shall be borne, by the MSI unless otherwise expressly provided in the Contract.

## **2.14.8. Knowledge of Site Conditions**

- 2.14.8.1. The MSI's undertaking of this Contract shall be deemed to mean that the MSI possesses the knowledge of all for site as stipulated in the Bid Document including but not limited to environmental, demographic and physical conditions and all criteria required
- 2.14.8.2. The MSI shall be deemed to have understood the requirements and have satisfied himself with the data contained in the Bidding Documents, the quantities and nature of the works and materials necessary for the completion of the works, etc., and in-general to have obtained himself all necessary information of all risks, contingencies and circumstances affecting his obligations and responsibilities therewith under the Contract and his ability to perform it. However, if during the process of commissioning, MSI detects any obstructions affecting the work, the MSI shall take all measures to overcome them.
- 2.14.8.3. MSI shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price for the works. The consideration provided in the Contract for the MSI undertaking the works shall cover all the MSI's obligation and all matters and things necessary for proper execution and maintenance of the works in accordance with the Contract and for complying with any instructions which the Employer's Representative may issue in accordance with the connection therewith and of any proper and reasonable measures which the MSI takes in the absence of specific instructions from the Employer's Representative.

## **2.14.9. Program of Work**

- 2.14.9.1. Within fifteen days after the award of work under this Contract or prior to kick-off meeting whichever is earlier, the MSI shall submit to the Employer for its approval a detailed programme showing the sequence, procedure and method in which he proposes to carry out the works as stipulated in the Contract and shall, whenever reasonably required by the Employer's Representative furnish in writing the arrangements and methods proposed to be made for carrying out the works. The programme so submitted by the MSI shall conform to the duties and periods specified in the Contract. The Employer and the MSI shall discuss and agree upon the work procedures to be followed for effective execution of the works, which the MSI intends to deploy and shall be clearly specified. Approval by the Employer's Representative of a programme shall not relieve the MSI of any of his duties or responsibilities under the Contract. If the MSI's work plans necessitate a disruption/ shutdown in Employer's operation, the plan shall be mutually discussed and developed so as to keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of the MSI to develop/adhere such a work plan shall be to his account.

## **2.14.10. Statutory Requirements**

- 2.14.10.1. During the tenure of this Contract nothing shall be done by the MSI in contravention of any law, act and/ or rules/regulations, there under or any amendment thereof governing inter-alia customs, stowaways, foreign exchange etc. and shall keep Employer indemnified in this regard.
- 2.14.10.2. The MSI and their personnel/representative shall not alter / change / replace any hardware component proprietary to the Employer and/or under warranty or AMC of third party without prior consent of the Employer.
- 2.14.10.3. The MSI and their personnel/representative shall not without consent of the Employer install any hardware or software not purchased / owned by the Employer.

### **2.14.11.Publicity**

- 2.14.11.1. The MSI shall not make or permit to be made a public announcement or media release about any aspect of this Contract unless the Employer first gives the MSI its written consent.

### **2.14.12.Time is of the Essence**

- 2.14.12.1. Time shall be of the essence in respect of any date or period specified in this Contract or any notice, demand or other communication served under or pursuant to any provision of this Contract and in particular in respect of the completion of the Services by the MSI by the completion date.

### **2.14.13.Responsibilities of the Parties**

#### **2.14.1.1. MSI**

MSI shall be responsible for completion of desired scope of work including but not limited to design, procurement, implementation, execution, training, handover etc. of the contract and delivering the services, while maintaining the specified performance targets on an ongoing basis. The MSI is also responsible for:

- Management and Compliance of the Service Levels on an ongoing basis
- Reporting problems to Employer within the stipulated time
- Providing early warning of any organisational, functional or technical changes that might affect MSI's ability to deliver the services.
- Assisting Employer to address and resolve issues on an ongoing basis.
- Provide all components as per the Project requirements;
- Deployment of a competent team of experts for each system solution with relevant prior experience and depth of knowledge in each functional area. Team of experts shall be able to supervise end to end business processes for all project components;
- Scheduling the activities and accordingly deploying the resources in a pragmatic manner in order to complete the implementation of the smart solutions components within the required scope, quality and time constraints
- Project Team and Management: Since the continuity of the key members of the project team is essential, MSI to follow diligent process for ensuring continuity of key personnel assigned for implementation of the project. For project team, MSI shall carry out following responsibilities:
  - At the project initiation, the MSI will share the profiles of the "Key Personnel" with Client and these key profiles shall meet the minimum eligibility criteria highlighted in the RFP as well as the proposal submitted by the MSI;
  - Regular meetings between key personnel and the Client or its representative to discuss project implementation and progress;
  - Deployment of a project structure for effective governance, monitoring, review and risk mitigation;
  - Provision of all Testing services, up to and including the System Acceptance Test;
  - Provision of all Installation and Configuration services defined as part of RFP;
  - Provision of detailed Documentation for the MSI's solution;
  - Provision of all Training and associated documentation for Client's personnel;
  - MSI shall provide Project Quality services
  - Adoption of standard methodology encompassing project documentation at various phases, following robust review mechanisms and ensuring quality at all the stages of the project;
  - The MSI is expected to deploy all the quality assurance mechanisms as per international

quality standards for this project;

- Smart solutions systems shall be deployed in such a manner that they are scalable and upgradations of hardware and software are possible with minimal efforts. MSI shall include product upgrade as part of scope during installation;
- Detailed quality assurance plan for all the phases of the project shall be provided by the MSI
- MSI shall be responsible for the following feedback, monitoring and adoption mechanism

**Stakeholder Mapping :**

- The MSI will put together a structure and mechanism for ensuring that all the relevant stakeholders are consulted, feedback adopted and key differences identified, so as to facilitate standardization as well as user adoption;
- MSI shall indicate the deliverables which shall go for internal review and accordingly the level of expertise that will be deployed for the reviews and the deliverables which will follow quality assurance plans
- If any of the deliverables are not accepted by the Client, it shall have the right to seek deployment of experts from MSI to review the deliverables. Client shall also hire third party experts to review the deliverables, if required;
- Mechanism to adopt feedback/audit findings: There are three types of feedback for the deliverables – from the users/stake holders, from the internal experts of the MSI and the third party experts hired by DICDL. The following is expected from the MSI on these feedbacks/audit findings:
  - All the feedback shall be discussed with Client and based on the guidance of Client, the feedback shall be incorporated into the project;
  - Since the feedbacks/audit findings for any rework is by nature correcting the inadequacy of quality of the work produced in the first place, Client will not accept any change notice requests for these reworks
  - MSI shall build in adequate mechanisms to control the risks of time over runs possibly due to effort required to rework bad quality deliverables
  - MSI shall indicate in the beginning of each phase how it plans to take feedback and the mechanisms to incorporate the feedbacks into the project plan and deliverables
  - MSI shall report to Client how the feedbacks have been incorporated into the project deliverables and take a sign off from the designated authority of Client.
- Warranty for all equipment and software, up to and following System Acceptance, and provision of a System Warranty following System Acceptance
- All Spare Parts for the MSI Solution to meet the SLA requirements
- Technical Support services following System Acceptance
- MSI to coordinate with Client to complete the civil and electrical work as required
- MSI to coordinate with all necessary stakeholders involved in the project for successful and smooth implementation
- MSI shall provide all the integration support and develop necessary API, Program and necessary development to integrate with city operations with the CIOC, ERP systems and e-Governance applications
- MSI shall be responsible for demonstrating software development/implementation to the client periodical as per the project requirement
- Training for relevant personnel
- Secure storage of all equipment on-site
- Cost of consumables required for this project shall be borne by the MSI for the period of the contract. The MSI shall maintain adequate storage and replenish the consumables in discussion with the Client to ensure smooth functioning of the impacted systems.

- Opening and maintain of project office in Dholera throughout the course of the Contract. Maintaining any on-site office during construction (temporary) shall also be the responsibility of the MSI;
- Maintenance support for system and field equipment
- MSI to depute Maintenance Support staff, Helpdesk Support staff and Facility Maintenance Staff during Comprehensive Maintenance phase as per the requirements in the RFP.
- Client may at any anytime during the contract period choose to undertake an independent third party audit of the implemented system including both application and infrastructure audit. The MSI shall support this audit.

## **2.14.14. Employer**

Employer shall be responsible for:

- Reporting defects and problems to the MSI as soon as possible
- Assisting MSI in management of the Service Levels
- Providing early warning of any organizational, functional or technical changes that might affect MSI's ability to deliver the services
- Assisting MSI to address and resolve issues from time to time
- Through its authorized personnel and representatives Employer shall:
  - Provide basic infrastructure (power, space, access, etc) with dust free environment required at each facility for installation of System equipment and for Training
  - provide Infrastructure like Service area building for the POP room
  - approve any provision of raw electricity up to mains power distribution panel at CIOC, Server Room, POP rooms, Service area Building and other sites;
  - pay the electricity bill for the smart city ICT components under the scope of this contract;
  - Assign a SPOC with the authority to make decisions (and/or designate representatives with such authority) on behalf of Employer;
  - Participate in all scheduled project activities, attend scheduled meetings and promptly respond to new meeting requests, requests for information, technical support or other necessary communication activities;
  - Provide staff, and facilities for all Training held in accordance with the Training Plan;
  - Participate and approve the results of all tests, in accordance with the Test Plan;
  - Provide payment gateway for all financial transactions;
  - Provide Cloud Data centre and Disaster Recovery Centre Facility for Connecting Server Room and POP.
  - Any coordination or permits required for performing works in the project area;
  - assist the MSI in Obtaining necessary permits or permissions for any activities requiring outside authorization;
  - Coordinating logistical arrangements to receive project related equipment at project facilities;
  - Providing access to field implementation locations as required;
  - Timely acquisition of required technical data from EPC Contractor or other parties;
  - Obtaining any new, changed, or updated operational information necessary for the MSI to configure and initialize the system; and Scheduling and coordination for staff participating in training sessions as per the agreed training schedule.

## **2.14.15. ICT Consultant/Project Manager**

- ICT consultant will act as a Project Management Unit which will oversee the design,

procurement, implementation and deployment of the system by MSI. They will be the point of contact for MSI during the implementation & will report the progress to Employer.

- ICT Consultant shall review and provide necessary inputs to the design and validate the submissions by MSI to fulfil the defined requirements of the Project.
- ICT Consultant shall organize weekly and monthly progress status review meetings with MSI and report the progress to the Employer.
- ICT Consultant shall make sure a successful project management approach. It shall act as a function that provides decision support information.
- ICT Consultant shall underpin the project delivery mechanisms by ensuring that all business change in an organization is managed in a controlled way.
- ICT consultant shall support the project management teams and the people to make decisions about funding, prioritization and resourcing.
- ICT Consultant shall review and approve the quality assurance plan submitted by MSI and shall further review, approve the datasheets of all the ICT components submitted by MSI. ICT Consultant shall also assist the Employer in carrying out the test, training, handover plan.
- ICT consultant shall review and evaluate the invoice submitted by the MSI and provide recommendation to Employer for payment processing.
- ICT Consultant shall provide:
  - i. Governance:- ICT Consultant shall ensure that decisions are taken by the right people, based on the right information. The governance role can also include audits or peer reviews, developing project and program structures and ensuring accountability at all levels.
  - ii. Transparency:- ICT Consultant shall be responsible for providing information. Information should be relevant and accurate to support effective decision-making, and provided to people in a way they can understand.
  - iii. Reusability:- ICT Consultant shall facilitate the sharing of knowledge.
  - iv. Delivery support:- ICT Consultant shall make it easy for project teams to do their jobs by providing training, coaching, mentoring and quality assurance.
  - v. Traceability:-ICT Consultant shall provide the function for managing documentation, project history and organizational knowledge.
- ICT Consultant shall perform a variety of functions on a day-to-day basis including:
  - i. Gathering data about project progress and reports
  - ii. Developing standards and processes
  - iii. Encouraging (or enforcing where necessary) the use of those standards and processes
  - iv. Managing resources for projects
  - v. Facilitate MSI in training and mentoring project team members
  - vi. Managing dependencies across multiple projects

### 3. SCC- Special Contract Conditions

#### 3.1. Milestones, Deliverables and Payment Terms

Subject to the provisions of GCC Clause 2.5.5, the Employer shall pay the Contract Price to the MSI according to the categories and in the manner specified below. The Total Contract Price shall be categorized as:

- I. Capex cost for all the workpackage components : System Supply, Installation, Testing and commissioning (SITC) Cost (for providing the smart city ICT components and achieving Operational Acceptance), which includes all the costs up to the Operational Acceptance;
  - II. Operation and Maintenance Cost for Five years: Total of all Annual Recurrent Costs during DLP/Warranty Period and Post-Warranty Service (Comprehensive Maintenance) Period.
- Total Contract Price = Capex +O&M Cost

Note: Bidder shall submit the Financial Bid only on the online portal i.e. [www.nprocure.com](http://www.nprocure.com), no hardcopy should be submitted

##### 3.1.1. Milestone Payment Schedule for Cluster A 1

Activities / Milestones / Deliverables	Date of Delivery / Completion from Contract Signing	Milestone payments (Weightage in percentage of Total Contract price)
Inception Report, Project Schedule, Project Management Plan, Resource mobilization, Opening of Project office	D+1 month	5%
Network Infrastructure Work-Package: Detailed Engineering Design, Procurement Plan, & Acceptance Plan	D+2 months	5%
City Application work-package: Detailed Engineering Design, Procurement Plan & Acceptance Plan		
Integrated Operations Work-Package: Detailed Engineering Design, Procurement Plan & Acceptance Plan		
Procurement, shipment and onsite delivery of all the products, hardware, software, licenses etc. for all work packages	D+4 Months	20%*
End to end Go Live and Operational acceptance of Basic Networks infrastructure (Passive components) work package with its ICT components for cluster A1 including Distribution and Backbone network infrastructure	D+6 Months	2.5%

End to end and successful Go Live of Server room and connectivity between Datacenter and server room along with all associated equipment's like Active components, Switching, routing, Server, Storage, applications, HVAC, Access control, IBMS etc.	D+8 months	10%
Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer including Standard Operating Procedures and Training Manuals, testing, Commissioning etc.,		
Any other activities and items needed for the completeness of Basic Network Infrastructure work package related to the server room infrastructure		
End to end Go Live and Operational acceptance of City Applications Work Package with its ICT components	D+10 Months	10%
End to end successful Go live cluster A1 Covering all the components of City applications work package like ERP, integration with e - Governance, mobile app, web portal and associated city applications, fully integrated, 100% complete and fully functional		
Submission of documentation for milestone deliverables as per applicable stages of MSI project life cycle in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer including Standard Operating Procedures and Training Manuals.		
Any other items needed for the completeness of City applications work package		



<p>End to end and successful Go Live of cluster A1 as part of Integrated Operations Work Package like city's dash board along with city wide integration, operational optimization, controls, monitoring / display, (including SCADA systems of various services) and city wide sensors and actuators for complete Activation Area and associated installations such as Water Treatment Plant (WTP), Sewage Treatment Plant (STP), Common Effluent Treatment Plant (CETP), Raw Water Transmission Line Mains (RWTM), Road &amp; Services (R&amp;S) in activation area, ABCD Building, Variable message sign boards</p>	<p>D+12 Months**</p>	<p>5%</p>
<p>Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer including Standard Operating Procedures and Training Manuals, testing, Commissioning etc.,</p>		<p>2.5</p>
<p>Successful Go Live in integrated manner of end to end covering Basic Networks infrastructure work package like Active Network Infrastructure and video surveillance, Variable Messaging System, sensors etc. for Cluster A1 of Activation Area and associated installations</p>		<p>D+15 months</p> <p>5%</p>
<p>Parallel run (successful operations of all the ICT components) of all work packages</p>		
<p>End of implementation and Total system deployed at DSIR and Live trial run Operational Acceptance, UAT, Operational Management Plan, SLA's, Maintenance Plan. Training plan and all necessary signoffs</p>		
<p>Training Completion and Preparation of training manuals and imparting training to Employer</p>		
<p>Successful Parallel run for 3 months</p>		
<p>Submission of documentation of Parallel run by MSI</p>		
<p>As-built drawings, manuals and documents with key resource Training</p>		
<p>Third party audit and certification from STQC/Cert-In certified agency.</p>		
<p>Any other activities and items needed for the completeness of milestone</p>		

Successful Operation and Maintenance for 1st year	D+27 months	Total 7% (1.75% at the end of every Qtr.)
First Leg of Operations and Certifications Assessment readiness		
Go Live and successful full-scale operations		
Completion of successful assessment of ISO and other certifications and providing requisite support to SI for Tier III Construction (second stage) Certification etc.		
Handholding / transition of operations to IT governance unit of city SPV		
Second leg of Operations, Transition of Governance to SPV etc.		
Successful full-scale operations (second leg 6 months)		
Receipt of all of ISO and other certificates by City SPV as per RFP		
Transition completion to IT governance unit of city SPV		
Balance deliverables, if any, not covered above, but part of this RFQ cum RFP otherwise asked by ICT Consultant/Employer		
Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer		
Any other activities and items needed for the completeness of milestone		
Successful Operation and Maintenance for 2nd year	D+39months	Total 7% (1.75% at the end of every Qtr.).
Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer		
Any other activities and items needed for the completeness of milestone		
Successful Operation and Maintenance for 3rd year	D+51 months	Total 7% (1.75% at the end of every Qtr.)
Submission of documentation for milestone deliverables as per applicable stages of in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer		
Any other activities and items needed for the completeness of milestone		
Successful Operation and Maintenance for 4th year	D+63 months	Total 7% (1.75% at the end of every Qtr.)
Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer		
Any other activities and items needed for the completeness of milestone		
Successful Operation and Maintenance for 5th year	D+75 months	

Submission of documentation for milestone deliverables as per applicable stages in this RFQ cum RFP and asked otherwise by ICT Consultant/Employer		Total 7% (1.75 % at the end of every Qtr.).
Any other activities and items needed for the completeness of milestone		

\* The MSI shall, after approval of his detailed engineering design, furnish to the ICT Consultant/ Employer/ Employee Representative a Bill of Quantities of all the major items, along with percentage breakdown in commensurate with value of respective equipment to facilitate progressive payments for approval.

\*\* Further if there is any time gap in readiness of the supporting Infrastructure for ICT works like Service Area Buildings, SCADA inputs from various utilities i.e. WTP, STP, CETP, RWTM, R&S in activation area the contractor shall be provided suitable time period to execute the affected works without levy of any Liquidated damages and without any cost implication to the employer.

**Refer Volume II for detail scope under each milestone**

All payments to be made upon respective approvals by Employer and it’s representatives

All payments under this Contract shall be made by wire transfer to the accounts of the MSI specified as follows:

[insert account details viz.,

- (i) account name;
- (ii) account number;
- (iii) bank name and branch; and
- (iv) IFSC Code

## 4. Service Level Agreements

The benefits of SLA are as follows:-

- a) To be process oriented with a quality approach for managing end to end ICT and associated infrastructure in scope.
- b) To obtain satisfactory level of services for Employer.
- c) To reduce the risk of not meeting its business requirements which are completely IT dependant
- d) Helps Employer control the levels and performance of MSI services.
- e) Makes explicit the expectations that Employer has for performance.
- f) Triggers a process that applies Employer and the MSI management attention to aspect of performance when that aspect drops below an agreed upon threshold, or target.
- g) To improve communication and information flow between operations , Employer officials & the other stakeholders.
- h) To provide guidance on processes, standards and guidance to Employer IT & Management staff.
- i) To increase productivity through better use of skills and experience.
- j) Service Levels to be achieved by MSI have been defined in this documents as well as other volumes of this RFQ cum RFP.

Employer shall regularly review the performance of the services being provided by the MSI and the effectiveness of this SLA. It would also form a baseline for Employer to compute payments as applicable.

### 4.1. Purpose

- 4.1.1. The purpose of Service Levels is to define the levels of service provided by the MSI to the Employer for the duration of the contract. The benefits of this are:
  - a. Help the Employer control the levels and performance of MSI's services;
  - b. Create clear requirements for measurement of the performance of the system and help in monitoring the same during the Contract duration.
- 4.1.2. The Service Levels are between the Employer and MSI.

### 4.2. Service Level Agreements & Targets

- 4.2.1. This section is agreed to by Employer and MSI as the key performance indicator for the project;
- 4.2.2. The following section reflects the measurements to be used to track and report system's performance on a regular basis. The targets shown in the following tables are for the period of Contract.

### 4.3. General Principles of Service Level Agreements

#### 4.3.1. Liquidated Damages

- 4.3.1.1. Liquidated damages will be as per GCC Clause 2.11.1.

#### 4.3.2. Service Level Agreements

- 4.3.2.1. Service Level Agreement (SLA) shall become the part of the Contract between the Employer and the MSI. SLA defines the terms of MSI's responsibility in ensuring the timely delivery of the deliverables and the correctness of the deliverables based on the agreed performance indicators as detailed in this section.
- 4.3.2.2. The MSI shall comply with the SLAs to ensure adherence to project timelines, quality and availability of services throughout the duration of the Contract. For the purpose of the SLA, definitions and terms as specified in the document along with the following terms shall have the meanings set forth below:
  - 4.3.2.2.1. "Total Time" – Total number of hours in consideration for evaluation of SLA performance.
  - 4.3.2.2.2. "Downtime" – Time period for which the specified services/components/system are not available in the concerned period, being considered for evaluation of SLA, which shall exclude downtime owing to Force Majeure and reasons beyond control of the MSI.

- 4.3.2.2.3. "Scheduled Maintenance Time" – Time period for which the specified services/components/system with specified technical and service standards are not available due to scheduled maintenance activity. The MSI shall take at least 15 days prior approval from the Employer for any such activity. The scheduled maintenance shall be carried out during non-peak hours and shall not exceed more than four (4) hours and not more than four (4) times in a year.
- 4.3.2.2.4. "Uptime" – Time period for which the specified services are available in the period being considered for evaluation of SLA.
- 4.3.2.2.5. Uptime (%) =  $[1 - \{(Total\ Downtime) / (Total\ Time - Scheduled\ Maintenance\ Time)\}] * 100$ .
- 4.3.2.2.6. Penalties shall be applied for each criteria individually and then added together for the total penalty for a particular quarter.
- 4.3.2.2.7. "Incident" – Any event/abnormalities in the service/system being provided that may lead to disruption in regular/normal operations and services to the end user.
- 4.3.2.2.8. "Response Time" – Time elapsed from the moment an incident is reported to the Helpdesk either manually or automatically through the system to the time when a resource is assigned for the resolution of the same.
- 4.3.2.2.9. "Resolution Time" – Time elapsed from the moment incident is reported to the Helpdesk either manually or automatically through system, to the time by which the incident is resolved completely and services as per the Contract are restored.
- 4.3.2.3. Measurements & Targets
  - 4.3.2.3.1. During Implementation phase any delay in deliverables and milestones shall attract liquidated damages.
  - 4.3.2.4. Operation & Maintenance phase related SLAs (During DLP & AMC Period)
    - 4.3.2.4.1. These SLAs shall be used to evaluate the performance of the services post the Implementation Phase and commencement of the O&M Phase. These SLAs and associated performance shall be monitored on monthly basis. Penalty levied for non-performance as per SLA shall be deducted through subsequent payments due from the Employer or through the Performance Bank Guarantee.
    - 4.3.2.4.2. The Scheduled Maintenance Time shall be agreed upon with the Employer as per the definition given as part of this section of the Contract.
    - 4.3.2.4.3. The details to follow provides the Service Level's (SLA) to be adhered by the MSI during the operational hours of the project/system/sub-system/components. The scheduled maintenance and the scheduled down time shall be carried out by the MSI during the non-operational hours of the project.
  - 4.3.2.5. Service Levels Monitoring
    - 4.3.2.5.1. The Service Level parameters defined shall be monitored on a periodic basis, as per the individual parameter requirements. MSI shall be responsible for providing appropriate web based online SLA measurement and monitoring tools for the same. MSI shall be expected to take immediate corrective action for any breach in SLA. In case issues are not rectified to the complete satisfaction of Employer, within a reasonable period of time defined in this RFP, then the Employer shall have the right to take appropriate penalizing actions, or termination of the contract.

## 4.4. Service Levels Monitoring

- 4.4.1. The Service Level parameters shall be monitored on a monthly basis. As part of the Project requirements, MSI shall supply and make sure of appropriate system (software/hardware) to automate the procedure of monitoring SLAs during the course of the Contract and submit reports for all SLAs as mentioned in this section. This software (EMS) along with any system specific software shall be used by the MSI for monitoring and reporting these SLAs. The Employer reserves the right to audit these tools for accuracy and reliability at any time. If at any time during the audit the accuracy and reliability of tools shall be found to be compromised, the Employer reserves the right to invoke up to double penalty of the respective quarterly phase.

In case issues are not rectified to the complete satisfaction of Employer, within a reasonable period of time defined in the RFQ cum RFP, the Employer shall have the right to take appropriate penalizing actions including liquidated damages, or termination of the Contract.

For issues i.e. breach of SLAs beyond control of the MSI, the MSI shall submit a justification for the consideration of the Employer. In case it is established that the MSI was responsible for such breach, respective penalties shall be applied to the MSI.

#### 4.5. Pre-Implementation Phase SLA's

- 4.5.1. The Service Level Agreement parameters shall be monitored regularly. Penalties associated with performance for SLAs shall be deducted from the applicable payments of the quarter or through the Performance Bank Guarantee.
- 4.5.2. SLAs shall be used to evaluate the timelines for completion of deliverables that are listed in the deliverable.
- 4.5.3. As part of the Project requirements, MSI shall supply and deploy a system to automate the procedure of monitoring SLAs during the contract and submit the said reports for all SLAs as mentioned in this section monthly. EMS system which shall be supplied by the MSI and be used for monitoring and reporting the SLA
- 4.5.4. MSI and be used for monitoring and reporting the SLAs. DICDL officials reserves the right to test and audit these tools for accuracy and reliability at any time. If at any time during the test and audit the accuracy and reliability of tools shall be found to be compromised, DICDL reserves the right to invoke up to double the penalty of the respective quarter from MSI.
- 4.5.5. MSI shall endeavor to exceed these levels of service wherever possible. MSI undertakes to notify DICDL officials of any difficulties, or detrimental/adverse findings being identified at their end at the earliest possible time.
- 4.5.6. MSI shall provide a supplemental report on any further information received, as soon as the information becomes available.
- 4.5.7. For delay of every week in completion & submission of the deliverable mentioned in the RFP, the MSI would be charged with a penalty as described later in this document
- 4.5.8. In case MSI reaches the limit of penalty during pre-implementation phase, authorized officials at DICDL reserves the right to invoke the termination clause.
- 4.5.9. Delay of every week would also account in increase of additional 2 weeks in the maintenance period which will be over and above the maintenance period of 5 (Five) years. This duration would be accounted without incurring any charges to DICDL.
- 4.5.10. For issues i.e. breach of SLAs beyond control of the MSI, the MSI shall submit a justification for the consideration of DICDL. In case it is established that the MSI was responsible for such breach, respective penalty shall be applied to the MSI.

#### 4.6. Implementation Phase SLAs

- 4.6.1. These SLAs shall be used to evaluate the timelines for completion of deliverables during the Implementation phase of the Project. These SLAs are for individual milestones/deliverables that are under the scope of the MSI and are listed as part of the contract
- 4.6.2. Please note that the SLAs and penalties are stated differently at multiple places in this document and elsewhere. The employer will consider the one that has higher penalty amount.

Sr. No.	Project Milestone	Description	Scheduled Timeline	Penalty
<b>Implementation Phase</b>				
1	Team Mobilization & commencement of work	MSI is expected to mobilize project team for commencement of work. Commencement of work shall mean reporting and	Within 30 days from the date of contract agreement,	<ul style="list-style-type: none"> <li>➤ &lt;= 6 days Nil</li> <li>➤ Penalty beyond 6 days will be 0.5% per week</li> </ul>

		availability of MSI's resources.		
2	Design, Development, Procurement and implementation of the required solution	MSI is expected to design, develop and implement the desired/required comprehensive system at DSIR within a time duration mentioned in the project timelines	Within the defined time lines for phase wise/stage wise deployment of the designed solution for multiple domains	<ul style="list-style-type: none"> <li>➤ &lt;= 6 days: Nil</li> <li>➤ Penalty beyond 6 days will be 0.5% per week</li> </ul>
3	Sharing of system/user documents	MSI is expected to prepare and submit various system/user documents during the project implementation tenure. (Viz. SDD, HLD, LLD, User manuals, training manuals, etc.)	Relevant documents need to be shared within the designated/agreed timelines as per the contract agreement	<ul style="list-style-type: none"> <li>➤ &lt;= 6 days: Nil</li> <li>➤ Penalty beyond 6 days will be 0.5% per week</li> </ul>
4	Imparting Training to resources	MSI is expected to impart training to government employees who would be working at various offices of DSIR.	General as well as module specific training needs to be imparted to relevant department officials	<ul style="list-style-type: none"> <li>➤ &lt;= 6 days: Nil</li> <li>➤ Penalty beyond 6 days will be 0.5% per week</li> </ul>

4.6.3. Delay of every week would also account in increase of additional 2 weeks in the maintenance period which will be over and above the maintenance period of 5 (Five) years. This duration would be accounted without incurring any charges to DICDL.

## 4.7. Post Implementation SLAs

- 4.7.1. All these SLAs shall be used to evaluate the performance of the services on monthly basis.
- 4.7.2. These SLAs shall be used to evaluate the performance of the services post the Implementation Phase and commencement of the O&M Phase.
- 4.7.3. Penalty levied for non- performance as per SLA requirements shall be deducted through subsequent payments due from DICDL or through the Performance Bank Guarantee.
- 4.7.4. The SLA parameters shall be measured for each of the sub systems' SLA parameter requirements and measurement methods, through appropriate SLA Measurement tools. Tools required for monitoring the performance
- 4.7.5. The upper limit of penalty would be capped at 10% of the OPEX value for each quarter. In case the calculated penalty crosses 10% penalty of the OPEX value in 2 subsequent quarters, DICDL reserves the right to invoke the termination clause.
- 4.7.6. Scheduled Maintenance Time shall be agreed upon between DICDL and the MSI as per the definition given as part of the contract.
- 4.7.7. Maximum level of performance penalty to be established/booked for MSI is described in the below table;

Severity Level	Penalty as a percentage of applicable payment (Monthly/Quarterly)
9	Event of default and termination (for > 5%)
8	5.0%
7	4.0%
6	2.0%

5	1.0%
4	0.5%
3	0.4%
2	0.3%
1	0.2%
0	No Penalty

4.7.8. SLA for various domains/sections as well as different parameters which can attract/accumulate to penalty are described in different sections and as shown below;

Sr. No.	Measurement criteria	Description	Target (Uptime/Parameters)	Severity
<b>Application/System Performance Levels</b>				
1	Availability of critical applications such as ERP, CRM, BI, Portal (Land Related and revenue related functions), Billing, etc.	Application downtime shall be measured from the time the solution becomes unavailable for business processing to end user for performing all activities and tasks. Each application shall be measured separately for penalty.	>= 99.5%	0
			>= 99% & <99.5%	2
			>= 98% & <99%	3
			>= 96% & <98%	4
2	Availability of all other city related end to end applications (except for those specified later in this document), UPS etc. and all devices and systems in scope of MSI that have not been separately described	Application downtime shall be measured from the time the solution becomes unavailable for business processing to the end user for performing all activities and tasks. Each application shall be measured separately for penalty.	>= 99%	0
			>= 97% & <99%	2
			>= 95% & <97%	3
			<95%.	4
3	Percentage of transactions meeting the prescribed <b>response time</b> (within 1.5 seconds) for all applications	Response time shall be calculated as time elapsed between sending request from client to server and receiving the response. Response time to be measured at interval of 30 minutes and averaged quarterly.  Assume connection speed of 2 Mbps for testing purpose	>=98% of business transactions	0
			>=94% to <95% of business transactions.	3
			>=92% to <94% of business transactions	4
4	Percentage of transactions meeting the prescribed <b>loading time</b> (within 4 seconds) for all pages all applications in scope (for average page load)	Average Loading time for applications (including web applications) shall be calculated as average of time taken by all pages of an application to be loaded	>=95% readings of average loading time per application.	0
			>=94% to <95% readings of average loading time per application	3



Sr. No.	Measurement criteria	Description	Target (Uptime/Parameters)	Severity
		over internet or through network.  Assume connection speed of 2 Mbps for testing purpose	>=92% to <94% readings of average loading time per application	4
5	All uptimes for end to end data Center/server room and end to end CIOC equipment (if not mentioned elsewhere) along with signage	Continuous 24 X 7 operations	>= 99.5%	0
			>= 99% & <99.5%	2
			>= 98% & <99%	4
			>= 96% & <98%	6
<b>Helpdesk Performance Levels</b>				
1	Average Call Response Time / Average Speed of Answer (Average time taken by callers waiting in queue to be attended by the Operator)	Incoming call from various users/callers to be answered within 10 seconds. To be measured/checked by relevant tools	>=97%	0
			>= 96.5% & <97%	2
			>=95% & <96.5%	4
2	Average Call handling time	Incoming calls shall have average call handling time of less than 180 seconds. Average call handling time will be considered for calculation.	>=97%	0
			>= 96.5% & <97%	2
			>=95% & <96.5%	4
3	Abandoned call rate	Abandoned call rate calculated over a period of one quarter should not be more than 1 %	>=99% (calls attended)	0
			>= 97.5% & <99% (calls attended)	3
			>=96% & <97.5% (calls attended)	4
4	Helpdesk – Resolution of logged in ticket	Resolution of service ticket calculated over a period of one quarter	>=99%	0
			>= 97.5% & <99%	3
			>=96% & <97.5%	4
5	Helpdesk Availability (24 hours a day, 7 days a week)	Helpdesk shall be available and all incidents/events raised with the helpdesk shall be logged into the system and service ticket	= 100% of calls to be logged and service ticket number shall be generated	0
			95% to 99% of calls logged and tickets generated	2
			90% to 95% of calls logged and tickets generated	5
<b>Problem Management</b>				
1	Problem Management	MSI shall analyze all the incidents and provide a root cause report every month if there exist any incidents during the said duration. MSI shall take the needed corrective action to prevent further issues due to the	<= 5 days delay	2
			<= 10 days to >5 days delay	3
			> 10 days delay	4

Sr. No.	Measurement criteria	Description	Target (Uptime/Parameters)	Severity
		same cause. 100% timely submission covering all incidents logged in that month		

**A. Network Related Performance Levels**

S. No.	Measurement	Definition	Target	Severity level
1.	Overall Network Availability, at Server Room and POP 1, in backbone, distribution and access levels and all levels below the access levels	Beside other criterion as applicable, shall include all links individually and shall be added for all applicable individual links that are unavailable for a month.  It is defined as {1 - (Number of Link Hours Unavailable) / (Total Number of Links*Total Number of Hours in a Month)}.	≥ 99.5%	0
			≥ 99% to <99.5%	4
			≥ 98.5% to < 99%	5
			<98.5 %	7
2.	Firewall	Availability of all firewalls at Various places. Periodic audits would be done by the agency to check the availability.	100% availability Measured periodically.	0
			Any incident of non-compliance.	5
3.	Mean Time To Repair (MTTR) for Fiber	Mean Time to Repair (MTTR) shall be monitored on the time taken between logging of complain against the fiber repair and its closure.	≤ 4 hrs. per reported fiber failure	0
			> 4 hrs. - 8 hrs.	1
			> 8 hrs.	2

**B. Surveillance Systems Related Performance Levels**

S. No.	Measurement	Definition	Target	Severity level
1	Availability of CCTV Surveillance Cameras and all the associated equipment	Equipment Downtime shall be measured from the time any one or more equipment	Minimum 99.5% up time measured for all the equipment on monthly basis.	0

	and other Cameras and their associated equipment	becomes unavailable for business processing to the end user to the time it becomes fully available.	≥ 97.0% to <99.5 % up time measured on a monthly basis.	4
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**C. Service Level for Other Smart City ICT Components**

S. No.	Measurement	Definition	Target	Severity level
1.	Availability of Applications including: Multi-service digital kiosks Environmental Sensor Field Switches Cameras  Any other Field devices and Applications	Application Downtime shall be measured from the time the solution becomes unavailable for Business processing to the end user for all activities and tasks. Each application will be measured separately for penalty.	Minimum 98% up time measured on a monthly basis.	0
			≥ 96.0% to <98.0% up time measured on a monthly basis.	3
			< 96.0% time measured on a monthly basis.	5

**4.8. Reporting procedures**

- 4.8.1. MSI representative shall prepare and distribute Service level performance reports in a mutually agreed format by the 5th working day of subsequent month. The reports shall include “actual versus target” Service Level Performance, a variance analysis and discussion of appropriate issues or remarkable events. Performance reports shall be distributed to Employer management personnel as directed by Employer.
- 4.8.2. MSI will be required to get the Service Level performance report audited by a third-party Auditor appointed by the Employer. The auditing frequency will be discussed/ agreed upon between employer and the MSI. MSI will grant full access/rights to employer for all the tools deployed to measure various SLA’s.

**4.9. Service Level Change Control**

- 4.9.1. General:
  - 4.9.1.1. It is acknowledged that this Service Levels may change as Employer’s business needs evolve over the course of the contract period. As such, this document also defines the following management procedures:
    - 4.9.1.1.1. A process for negotiating changes to the Service Levels;
    - 4.9.1.1.2. An issue management process for documenting and resolving particularly difficult issues;
    - 4.9.1.1.3. Employer and MSI management escalation process to be used if an issue is not being resolved in a timely manner by the lowest possible level of management.
  - 4.9.2. Any changes to the levels of service provided during the term of this Agreement shall be requested, documented and negotiated in good faith by both Parties. Either Party can request a change
  - 4.9.3. Service Level Change Process:
    - 4.9.3.1. The Parties may amend Service Level by mutual agreement in accordance. Changes can be proposed by either Party. Unresolved issues shall also be addressed. MSI’s representative shall maintain and distribute current copies of the Service Level document as directed by Employer. Additional copies of the current Service Levels shall be available always to authorized Parties.

4.9.4. Version Control / Release Management:

4.9.4.1. All negotiated changes shall require changing the version control number. As appropriate, minor changes may be accumulated for periodic release or for release when a critical threshold of change has occurred.

## 4.10. Overview

The purpose of this Service Level Management Agreement (herein referred to as "SLA") sets the expectations between the Employer & MSI. SLA is therefore the cornerstone of how the MSI sets and maintains commitments on managing the Employer Data Centres. The purpose of this SLA is to clearly define the levels of service provided by the MSI to Employer post implementation of the Data Centre, for the duration of the contract.

## 4.11. SLA Coverage

SLA covers entire ICT infrastructure in scope of MSI along with electrical equipment

## 4.12. Service Levels & Targets

SLA provides for minimum level of services required as per contractual obligations based on performance indicators and measurements thereof. MSI shall ensure provisioning of all required services while monitoring the performance and complying with the performance levels. Employer shall check performance of the MSI on monthly basis for the contractual period. This includes: -

- a. Considering key issues of the past period's performance including deviations, statistics, minor/ major incidents, service trends, etc.
- b. Discussing escalated problems, new issues and outstanding matters for resolution.
- c. Review of statistics related to rectification of outstanding faults and agreed changes.
- d. Obtain suggestions for changes to improve the service levels.

Employer may initiate an interim review to check the performance and the obligations of the MSI. The SLA may be reviewed and revised in accordance to the procedures.

## 4.13. Estimated Project Schedule and Target Timelines

Project schedule for complete project life cycle and the Service level compliance shall be measured.

## 4.14. Performance Measure and Targets

Based on the Project schedule, measurement of Service Levels has been segregated in the following categories and the SLAs shall be measured separately for DC and DR.

- a. Performance Related Service Levels
- b. Help Desk Support Services for the in-scope Facilities
- c. Compliance & Reporting Procedures
- d. Periodic Facility Audits

The following measurements/ targets shall be used to track/ report performance periodically.

### 4.14.1. Service Helpdesk Performance

To ensure that the facilities of the end to end ICT Infrastructure are well managed, the MSI shall provide a dedicated Service Help Desk operational round the clock on all days of the year including national and public holidays (24x7x365 basis). The logging of the calls by MSI shall be done through the following diverse methods: -

- a. Toll free or paid Telephone lines dedicated for Employer
- b. SMS based text messaging to a dedicated SMS number
- c. Web based dedicated Email ID
- d. and other means to be decided later

This section to be read along with the description stated under Helpdesk section in this document elsewhere

#### 4.14.2. Operational Reports and Reporting Procedure

Measurement	Definition	Measurement Interval	Target	Penalty
Submission of MIS Reports	The MSI shall submit the defined MIS reports as per the scope of work	Quarterly but MIS to be submitted monthly	Submission of monthly/ Quarterly Report by 7 <sup>th</sup> day of the month after the reporting month.  <b><i>E.g. Report from Jan to be submitted by 7<sup>th</sup> Feb.</i></b>	No Penalty
			Delay beyond the date of submission	0.1% of the applicable quarter's O&M charges for every day's delay on an incremental basis.
Reporting of incidents	Any failure/ incident/ minor / major security issue on any part of the end to end ICT infrastructure or its facilities shall be communicated to Employer with details of facility affected, downtime, etc. as applicable.	Whenever there is an occurrence	100% incidents to be reported to Employer within 60 minutes with the details of services affected, cause, action and remedy.	No Penalty
			Reporting of incident beyond 60 minutes	0.1% of the applicable Quarter's O&M charges for every hour's delay on an incremental basis.
		Quarterly	MSI shall document and report each incident to Employer with the RCA on or before 7 <sup>th</sup> day of every month for the previous month.	No Penalty
		Delay beyond the date of submission.	0.1% of the applicable Quarter's O&M charges for	

Measurement	Definition	Measurement Interval	Target	Penalty
				every day's delay on an incremental basis.
Change Management	Measurement of quality and timeliness of changes to the end to end ICT infrastructure facilities	Quarterly	100% of changes should follow the defined change control procedures and shall be approved by Employer.	0.1% of the applicable quarter's O&M charges for every noncompliance.
			All changes should be implemented on time and as per schedule & without any disruption to business.	0.1% of the applicable quarter's O&M charges for every noncompliance.
Scheduled Maintenance	Measures timely maintenance of the equipment installed. MSI shall provide a detailed equipment maintenance plan/schedule on commencement of the project.	Quarterly	100 % of scheduled maintenance to be carried out as per maintenance plan submitted by the MSI, intimated to Employer at least 7 working days in advance.	0.1% of the applicable quarters O&M charges for every noncompliance.
Maintenance of Inventory	The MSI shall maintain an inventory of all items that will be required on an ongoing basis though everything will be sourced by MSI.	Quarterly	100% as per the inventory log maintained by MSI. If necessary, Employer may consider enhancing the inventory based on its advisor's inputs or audit recommendations	0.1% of the applicable Quarter's O&M charges for every non-compliance

### 4.14.3. Facility Audit

Employer may consider appointing auditors and other qualified professionals who would conduct, both scheduled and unscheduled (random & surprise) audits for the Employer. These professionals would conduct periodic audits as per the schedule on a half yearly basis and at a random date and on multiple occasions, on a surprise basis, to confirm the MSI compliance to the requirement spelt in the scope of work. Any non-compliance to the specifications would qualify for a penalty on the MSI.

For every instance of non-compliance, including repetitions, penalty shall be applicable. The penalty shall be levied on an additive basis and the accumulated total would be deducted from the payment due to the MSI in the Quarter in which the audit/ surprise checks were conducted.

Minimum penalty shall be 1% per non compliance found per quarter and will be deducted from quarterly payment

#### 4.14.4. Quality of Facility Management Services

Requirement	Definition	Target	Penalty
Resource availability for Facility Management Services	No. of shift days for which resource present at the designated location divided by Total no. of shift days	99% averaged over all resources designated for facility management services and calculated on a monthly basis	No Penalty
		>=97 % to < 99% averaged over all resources designated for facility management services and calculated on a Quarterly basis	0.5% of total quarterly O&M charges
		>=95 % to < 97% averaged over all resources designated for facility management services and calculated on a Quarterly basis	1% of total quarterly O&M charges
		< 95 % averaged over all resources designated for facility management services and calculated on a Quarterly basis.	2.5% of total quarterly O&M charges

### 4.15. Problem Management

#### 4.15.1. General

Problem Management process provides for an appropriate process towards orderly consideration and resolution of business and operational issues in the event of a desired consensus not reached between Employer and MSI.

Implementing such a process at the commencement of services shall significantly improve the probability of successful issue resolution. It is expected that this pre-defined process will only be used on an exception basis, if issues are not resolved at operational levels.

#### 4.15.2. Problem Management Procedures

- a. In addition to described earlier in the document, MSI is expected to resolve problems on an immediate basis based on self detection, instrument indication or on the basis of Employer complaints.
- b. It is not expected that action is taken only when Employer lodges a complaint.

- c. Whenever a problem is detected, it is the MSI's responsibility to fix the problem based on the defined Service Level Management process and procedures.
- d. In case of a business or technology related problem for which a consensus is not arrived at, either EMPLOYER or MSI may raise an issue by documenting the problem, covering a reasonably objective summary of both points of view, identifying the specific point/s of disagreement with possible solutions.
- e. Employer and MSI will determine which committee or executive level should logically be involved in resolution.
- f. A meeting or conference call will be conducted to resolve the issue in a timely manner, depending upon the type of problem. The documented issues will be distributed to the participants at least one day prior to the discussion if the issue is not an emergency requiring immediate attention.
- g. Employer and MSI shall develop an interim solution, if required, and subsequently the permanent solution for the problem at hand. MSI shall then communicate the resolution to all concerned stakeholders.
- h. In case any problem/ issues still remain unresolved, the arbitration procedures described in the Contract shall be applicable.

## **4.16. Contractual Service Levels and its Control Change**

### **4.16.1. General**

MSI shall note that the Contractual Service Levels would undergo changes based on Employer's business needs. Such changes may even be required in the negotiation stages and before the actual signing of the contract as well as during the contractual period. MSI shall therefore note and comply with these change requests, if any, at the appropriate stage/ periods. The following procedures are stipulated in managing the changes:

1. A process for negotiating changes to the SLA.
2. An issue management process for documenting and resolving difficult issues.
3. Employer and MSI management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.

Any changes to the levels of service provided during the term of this Agreement will be requested, documented and negotiated in good faith by both parties. Either party can request a change. Changes will be documented as an addendum to this SLA and, subsequently, the Contract.

Any changes to the levels of service provided during the term of this Agreement will be requested, documented and negotiated in good faith by both parties. Either party can request a change. Changes will be documented as an addendum to this SLA and, subsequently, the Contract.

If there is any conflict or lack of understanding between this document and the Contract, the Tender and its addendum, the terms stated in the Contract would supersede.

### **4.16.2. SLA Change Process**

The parties may amend this SLA through mutual agreement in accordance with terms of this contract. Changes can be proposed by either party. MSI can initiate an SLA review with the Employer. The forum for negotiating SLA changes will be monthly reviews; however a separate review for SLA content can be planned based on mutually agreed timelines. Unresolved issues will be addressed using the issue management process described in this document. MSI shall maintain and distribute current copies of the SLA document as stipulated by Employer. Additional copies of the current SLA will be made available at all times to authorized parties.

### **4.16.3. Version Control**

All negotiated SLA changes will require re-versioning. As appropriate, minor changes may be accumulated for periodic release (e.g. every quarter) or for release when a critical threshold of change has occurred.



#### 4.16.4. Penalties

Penalties would be applicable on the cost as stated elsewhere along with the following:

- a. Two quarterly deductions in a year in a case of alarm that the services are not up to the mark.
- b. Two consecutive quarterly deductions equal to or more than 25 % of the applicable fee on account of any reason will be deemed to be an event of default. Hence, Employer shall apply clauses of termination as per GCC.

#### 4.17. Contact Map & Management Escalation Procedures

The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an issue is not being successfully resolved at the lower management level. Implementing this procedure would mean that Employer and MSI management are communicating at appropriate levels.

##### 4.17.1. Escalation Procedure

Escalation shall be required on an exception basis and only if the issue resolution cannot be successfully achieved within a reasonable time frame.

- a. Either EMPLOYER or MSI can initiate the procedure; the one who initiates it would be the „Initiating Party“.
- b. The “Initiating Party” shall notify the other party on the management escalation and furnish the necessary details to the Receiving Party.
- c. Management escalation will be defined as documented in the contact map.
- d. Escalation will begin at Level 1 and then to be taken to the next level till resolution to the problem is achieved.
- e. The contact map shall be as follows:-

Escalation Level	Position to whom escalated	Employer representative with contact details	MSI representative with contact details
Level 1			
Level 2			
Level 3			

##### 4.17.2. Acceptance of SLA Terms and its compliance

In Witness whereof, the parties hereto have caused this Service Level Management vide Tender No. EMPLOYER/\_\_\_\_\_ to be accepted and executed by their respective authorized representatives on \_\_\_ (day) of \_\_\_ (month), 20\*\*.

For and on behalf of:

MSI

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office Seal: \_\_\_\_\_

For and on behalf of:

EMPLOYER

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office Seal: \_\_\_\_\_

## 5. Appendix A: Form of Bank Guarantee for Performance Security

(To be stamped in accordance with Stamp Act if any, of the country for issuing bank)

Ref.: Bank Guarantee:

Date:

Dear Sir,

In consideration of M/s ----- (hereinafter referred as the 'Employer', which expression shall, unless repugnant to the context of meaning thereof include its successors, administrators and assigns) having awarded to M/s [name of MSI] a [type of company], established under laws of [country] and having its registered office at [address] (hereinafter referred to as the 'MSI' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and permitted assigns), an Assignment for preparation of [name of assignment] Contract by issue of Employer's Contract Letter of Award No. [reference] dated [date] and the same having been unequivocally accepted by the MSI, resulting in a Contract valued at Rs. [amount in figures and words] for (Scope of Work) (hereinafter called the 'Contract') and the MSI having agreed to furnish a Bank Guarantee amounting to Rs. [amount in figures and words] to the Employer for performance of the said Agreement.

We [Name of Bank] incorporated under [law and country] having its Head Office at [address](hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators executors and assigns) do hereby guarantee and undertake to pay the Employer immediately on demand and or, all monies payable by the MSI to the extent of Rs. [amount in figure and words] as aforesaid at any time up to [date] without any demur, reservation, contest, recourse or protest and/ or without any reference to the MSI. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the MSI or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable until the Employer discharges this guarantee.

The Employer shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the MSI nor shall the responsibility of the bank be affected by any variations in the terms and conditions of the contract or other documents. The Employer shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Employer and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Employer and the MSI any other course or remedy or security available to the Employer. The Bank shall not be relieved of its obligations under these presents by any exercise by the Employer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the MSI and notwithstanding any security or other guarantee that the Employer may have in relation to the MSI's liabilities. This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Bank of all its obligations hereunder.

This Guarantee shall not be affected by any change in the constitution or winding up of the MSI /the Bank or any

absorption, merger or amalgamation of the MSI /the bank with any other Person.

Notwithstanding anything contained herein above our liability under this guarantee is limited to Rs. [amount in figure and words] and it shall remain in force up to and including [date] and shall extend from time to time for such period(s) (not exceeding one year), as may be desired by M/s [name of MSI] on whose behalf this guarantee has been given. Date this [date in words] day [month] of [year in 'yyyy' format] at [place].

WITNESS

1. [signature, name and address]

2. [signature, name and address]

[Official Address] Designation

[With Bank Stamp]

Attorney as Per Power of Attorney No.      Dated  
Strike out, whichever is not applicable.

The stamp papers of appropriate value shall be purchased in the name of bank which issues the 'Bank Guarantee'. The bank guarantee shall be issued either by a bank (Nationalized/Scheduled) located in India or a foreign bank through a correspondent bank (scheduled) located in India or directly by a foreign bank which has been determined in advance to be acceptable to the Employer.

## 6. Appendix B: Form of Bank Guarantee against Advance

.....,

.....EMPLOYER,

Gandhinagar, Gujarat

WHEREAS:

[name and address of Contractor] (hereinafter called "the Contractor") has executed an agreement (hereinafter called the "Agreement") with the [name and address of the EMPLOYER], (hereinafter called "the EMPLOYER") for the ".....", subject to and in accordance with the provisions of the Agreement.

- (A) in accordance with the Agreement the EMPLOYER shall make to the Contractor an interest bearing advance payment (hereinafter called "Advance Payment") equal to 10% (ten per cent) of the contract price for mobilization expenses and acquisition of equipment; and that the Advance Payment shall be made in three installments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equal to the 110% amount of each installment to remain effective till the complete and full repayment of the installment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement; and the amount of (first/second/third) installment of the Advance Payment is Rs. \*\*\*\* cr. (Rupees \*\*\*\*\* crore) (the "Guarantee Amount").
- (B) We, .....through our branch at ..... (the "Bank") have agreed to furnish this bank guarantee (hereinafter called the "Guarantee") for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid installment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the EMPLOYER, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the guarantee amount as the EMPLOYER shall claim, without the EMPLOYER being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein

1. A letter from the EMPLOYER, under the hand of an officer not below the rank of [.....of EMPLOYER], that the Contractor has committed default in the due and faithful performance of all or any of its obligations for the repayment of the installment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the EMPLOYER shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any difference between the EMPLOYER and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

2. In order to give effect to this Guarantee, the EMPLOYER shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
3. It shall not be necessary, and the Bank hereby waives any necessity, for the EMPLOYER to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
4. The EMPLOYER shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the EMPLOYER against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the EMPLOYER, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the EMPLOYER of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the EMPLOYER or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
5. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the EMPLOYER in respect of or relating to the Advance Payment.
6. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the EMPLOYER on the Bank under this Guarantee all rights of the EMPLOYER under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
7. The guarantee shall cease to be in force and effect 90 (ninety) days after the end of the one year from the date of payment of the installment of the Advance Payment, as set forth in the Agreement.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the EMPLOYER in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the EMPLOYER that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the end \*\*\*\* month in the year \*\*\*\*\* or until it is released earlier by the EMPLOYER pursuant to the provisions of the Agreement.

Signed and sealed this ..... day of ..... 20..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

RfQ cum RfP for Appointment of Master System Integrator (MSI) for Design, Supply, Install, Test, Integrate, Commissioning, Operation & Maintenance of ICT Components in Cluster A1 of Activation Area at Dholera Special Investment Region, Gujarat

(Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.