



**DMIC INTEGRATED INDUSTRIAL TOWNSHIP GREATER NOIDA LIMITED
NATIONAL COMPETITIVE BIDDING (NCB)**

APPOINTMENT OF MASTER SYSTEM INTEGRATOR (MSI)

FOR

**SUPPLY, IMPLEMENTATION, INTEGRATION, OPERATIONS AND MAINTENANCE OF SMART
CITY ICT COMPONENTS AT INTEGRATED INDUSTRIAL TOWNSHIP (IIT), GREATER NOIDA**

DMIC INTEGRATED INDUSTRIAL TOWNSHIP GREATER NOIDA LIMITED (DMIC IITGNL)

REQUEST FOR QUALIFICATION (RFQ)

CUM

REQUEST FOR PROPOSAL (RFP)

Volume II – Standard Form of Contract

(Ref No: DMIC IITGNL/2022-23/388)

March 2023

**DMIC Integrated Industrial Township Greater Noida Limited
(DMIC IITGNL)**

CIN: U74900UP2014PLC063430

11th Floor, Tower-1, Plot No.-1, Knowledge Park-IV,
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Standard Form of Contract

Table of Contents

I. CONTRACT AGREEMENT	1
II. GENERAL CONDITIONS OF CONTRACT	5
A. GENERAL PROVISIONS	5
1. <i>Definitions</i>	5
1A. <i>Interpretation</i>	10
2. <i>Relationship between the Parties</i>	11
3. <i>Governing Law</i>	11
4. <i>Language</i>	11
5. <i>Headings</i>	11
6. <i>Communications</i>	11
7. <i>Location</i>	11
8. <i>Authorized Representatives</i>	11
9. <i>Corrupt and Fraudulent Practices</i>	11
B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT	12
10. <i>Effectiveness of Contract</i>	12
11. <i>Commencement of Contract</i>	12
12. <i>Expiration of Contract</i>	12
13. <i>Entire Agreement</i>	12
14. <i>Change or Modifications or Variations</i>	12
15. <i>Change in Law</i>	15
16. <i>Joint Venture</i>	16
17. <i>Suspension</i>	16
18. <i>Termination</i>	16
19. <i>Indemnity</i>	24
20. <i>Settlement of Disputes</i>	26
C. RIGHTS AND OBLIGATIONS OF THE MSI	28
21. <i>General</i>	28
22. <i>Conflict of Interest</i>	29
23. <i>Confidentiality</i>	30
24. <i>Liability of the MSI</i>	31
25. <i>Insurance to be Taken out by the MSI</i>	31
26. <i>Accounting, and Auditing</i>	32
27. <i>Time for Commencement and Operational Acceptance</i>	33
D. PERSONNEL	33
28. <i>Description of Key Experts</i>	33
29. <i>Replacement of Key Experts</i>	33
30. <i>Removal of Personnel</i>	34
E. EXIT MANAGEMENT AFTER OPERATIONAL ACCEPTANCE	35
31. <i>Under Contract Completion</i>	35
32. <i>Under Termination upon MSI's Default / Client's Convenience (as per GCC Clauses 18 (a) and 18 (c)</i> 36	
F. RIGHTS AND OBLIGATIONS OF THE CLIENT	38
33. <i>Assistance and Services</i>	38
34. <i>Access to Project Office</i>	39

35. Counterpart Personnel.....	39
G. PAYMENTS TO THE MSI.....	39
36. Total Value of the Contract	39
37. Taxes and Duties	40
38. Currency of Payment	40
39. Securities	40
40. Mode of Billing and Payment	41
41. Interest on Delayed Payments	42
H. INTELLECTUAL PROPERTY.....	42
42. Copyright.....	42
43. Software License Agreements	43
44. Confidential Information	45
I. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM.....	46
45. Representatives	46
46. Project Plan.....	48
47. Subcontracting	48
48. Design and Engineering.....	49
49. Procurement, Delivery, and Transport	51
50. Product Upgrades	52
51. Implementation, Installation, and Other Services	53
52. Inspections and Tests	53
53. Installation of the System.....	54
54. Commissioning and Operational Acceptance	55
J. GUARANTEES AND LIABILITIES.....	57
55. Operational Acceptance Time Guarantee	57
56. Extension of Time for Achieving Operational Acceptance.....	58
57. Defect Liability.....	59
58. Functional Guarantees.....	61
59. Intellectual Property Rights Warranty.....	61
60. Intellectual Property Rights Indemnity.....	62
61. Limitation of Liability.....	64
K. RISK DISTRIBUTION	64
62. Transfer of Ownership.....	64
63. Care of the System	65
64. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification	65
65. Force Majeure.....	67
L. FAIRNESS AND GOOD FAITH	69
66. Good Faith	69
M. MISCELLANEOUS	69
67. Amicable Settlement.....	69
68. Performance Security.....	69
69. Assignment	69
70. Representation and Warranties	69
III. SPECIAL CONDITIONS OF CONTRACT	74
IV. SERVICE LEVELS.....	91

I. Contract Agreement

THIS CONTRACT AGREEMENT is made.

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

BETWEEN

1. **DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)**, – a company incorporated under Companies Act, 2013 having its Registered Office at 11th Floor, Tower 1, Plot No.-1, Knowledge Park-IV, Greater Noida, Gautam Budh Nagar, Uttar Pradesh 201308, India, (hereinafter called “the Client”), which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the First Part.

And

2. **[Insert: name of MSI]**, a Company/Firm incorporated under the _____] and having its registered office 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) of the Second Part.

Whereas Delhi- Mumbai Industrial Corridor (DMIC), Govt. of India Undertaking, is India’s most ambitious infrastructure programme aiming to develop new industrial cities as “Smart Cities” and converging next generation technologies across infrastructure sectors. An Integrated Industrial Township is being developed at Greater Noida known as DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL), a SPV between the Greater Noida Industrial Development Authority (GNIDA) and the National Industrial Corridor Development and Implementation Trust (NICDIT).

Whereas, DMIC IITGNL has been designated as Industrial Development Authority for the “Notified Area” as per the Uttar Pradesh State Government’s Notification No. 4478/LXXVII-4-18-12N-07 (SHA) dt 31.12.2018.

WHEREAS the Client decided to engage the MSI to Supply, Install, achieve Operational Acceptance of, and support the following System: **Appointment of Master System Integrator (MSI) for Supply, Implementation, Integration, Operations and Maintenance of Smart City ICT Components at Integrated Industrial Township (IIT), Greater Noida.** (“The System/The Project”),

Whereas, the Client has invited the bids (Request for Qualification cum Request for proposal or RFQ cum RFP) from bidders and the bids responsive to the eligibility and qualification requirements and complying to all conditions of the RFQ CUM RFP documents were considered for evaluation and qualifying bids were considered for price bid opening.

Whereas, after evaluation of the bids received, the Client had accepted the bid of the Selected Bidder (the MSI) _____ and issued Letter of Award no. _____ dated _____ (hereinafter called the LOA) to the Selected Bidder (the MSI) for Supply, Implementation, Integration, Operations and Maintenance of Smart City ICT Components at Integrated Industrial Township (IIT), Greater Noida.

Whereas the Selected Bidder (the MSI) has fulfilled the condition precedent mentioned in the RFQ cum RFP and LOA for signing this Contract.

Now therefore in consideration of the foregoing and the respective covenants and agreement set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

<p>Article 1. Contract Documents</p>	<p>1.1 Contract Documents (Reference GCC Clause 1 (m))</p> <p>The following documents shall constitute the Contract between the Client and the MSI, and each shall be read and construed as an integral part of the Contract:</p> <ul style="list-style-type: none"> (a) This Contract Agreement and the Appendices attached to the Contract Agreement. (b) Special Conditions of Contract. (c) General Conditions of Contract. (d) Copy of Letter of Award. (e) Terms of Reference (including Implementation Schedule); (f) Instruction to Bidders (g) The Bidder's bid and original Financial Proposal. (h) Copy of acceptance of Letter of Award by the MSI. (i) Copy of Bank Guarantee for Performance Security and Insurances. (j) Any correspondences. (k) <i>[Add here: any other documents].</i> <p>1.2 Order of Precedence</p> <p>This Contract, including its Schedules and Annexures, represents the entire agreement between the Parties., In the event of any ambiguity or conflict between the Contract Documents listed above as to the interpretation or meaning of this Contract it should be necessary for the Parties to refer to documents forming part of the bidding process leading to this Agreement, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 4 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.</p> <p>1.3 Definitions (Reference GCC Clause 1)</p> <p>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.</p>
<p>Article 2. Contract Price and Terms of Payment</p>	<p>2.1 Contract Price (Reference GCC Clause 36)</p> <p>The Client 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: <i>[insert: amount in figures]</i>, as specified in the Grand Summary Price Schedule.</p> <p>The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price</p>

		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	3.1	<p>Effective Date (Reference GCC Clause 10)</p> <p>Each party shall use its best efforts to fulfill the below conditions for which it is responsible before the Effective Date:</p> <p>(a) This Contract Agreement has been duly executed for and on behalf of the Client and the MSI;</p> <p>(b) The MSI has submitted to the Client the performance security in accordance with GCC Clause 39 (c);</p> <p>(c) The MSI has submitted to the Client the copy of the insurances in accordance with GCC Clause_25__</p> <p>(d) <u>Obtaining all necessary approvals, if any, required for the performance of the Services under this Contract at the time of signing of the contract</u></p> <p>(e) <i>[specify here: any other conditions, for example, opening/confirmation of letter of credit].</i></p>
Article 4. Appendices	4.1	The Appendices listed below shall be deemed to form an integral part of this Contract Agreement.
	4.2	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.

APPENDICES

Appendix 1: List of Sub-Contractors

Appendix 2: Categories of Software

Appendix 3: Revised Price Schedules (if any)

Appendix 4: Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments, if any.

Appendix 5: Non-Disclosure Agreement

IN WITNESS WHEREOF the Client 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 Client:

Signed:

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

Appointment of Master System Integrator (MSI) For Supply, Implementation, Integration, Operations And Maintenance Of Smart City ICT Components At Integrated Industrial Township (IIT), Greater Noida under the DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)

For and on behalf of the MSI:

Signed:

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

Witness:

[Signature, name and address]

[Signature, name and address]

II. General Conditions of Contract

A. GENERAL PROVISIONS

<p>1. Definitions</p>	<p>Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:</p> <p>(a) “Activity” means an activity or action specified in the Volume III - Terms of Reference Section, which is to be performed by the MSI as a part of the Scope of Work.</p> <p>(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, bye-laws, guidelines, 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.</p> <p>(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.</p> <p>(d) “Authority” means the Gol, GoUP 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 Client 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.</p> <p>(e) <i>Clause deleted.</i></p> <p>(f) “Clause” means a clause of the GCC, as may be supplemented by the SCC.</p> <p>(g) “Client” shall have the meaning ascribed to it in the preamble of the Contract.</p> <p>(h) “Client Event of Default” has the meaning ascribed to it in GCC Clause 18 b.</p> <p>(i) “Client Indemnified Party” has the meaning ascribed to it in Clause 19.1.</p> <p>(j) “Communication” has the meaning ascribed to it in Clause 6.1.</p> <p>(k) “Conflict of Interest” shall have the meaning ascribed to it in GCC Clause 22 read with Volume I – ITB Clause 2 of Section 2 of the RFQ cum RFP.</p>
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	<p>(l) “Contract” means the Contract Agreement entered into between the Client and the MSI, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents along with appendices shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.</p> <p>(m) “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).</p> <p>(n) “Contract Agreement” means the agreement entered into between the Client 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 Client and the MSI. The date of the Contract Agreement shall be recorded in the signed form.</p> <p>(o) <i>Clause deleted.</i></p> <p>(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.</p> <p>(q) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Article 2, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract. This contract price can be calculated based on the Financial Proposal submitted by the MSI.</p> <p>(r) “Confidential Information” means any information disclosed to or by any Party to this Contract and includes any information in relation to the Parties, a third party including any such information that may come to the knowledge of the Parties hereto/MSI team by virtue of this Contract that: is by its nature confidential or by the circumstances in which it is disclosed confidential and/or is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality; but does not include information which is or becomes public knowledge other than by a breach of this Contract.</p> <p>(s) “Day” means a calendar day, unless indicated otherwise.</p> <p>(t) “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 57 (Defect Liability). Comprehensive Maintenance / AMC phase shall also include the Defect Liability Period.</p>
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	<p>(u) “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.</p> <p>(v) “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 Client for all the Modules, as specified in the Work Schedule.</p> <p>(w) “Effective Date” means the date on which this Contract comes into force and effect pursuant to GCC Clause 10.</p> <p>(x) <i>Clause deleted</i></p> <p>(y) “Force Majeure” shall have the meaning ascribed to it in GCC Clause 65.</p> <p>(z) “GCC” means these General Conditions of Contract.</p> <p>(aa) Go-Live means when the System or a Sub-system is made operational post successful completion of System Acceptance Test.</p> <p>(bb) “GoI” means the Government of India.</p> <p>(cc) “GoUP” means the Government of Uttar Pradesh.</p> <p>(dd) “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.</p> <p>(ee) “Indemnified Party” has the meaning ascribed to it in GCC Clause 19.</p> <p>(ff) “Indemnifying Party” has the meaning ascribed to it in GCC Clause 19.</p> <p>(gg) “Intellectual Property Rights” means, in respect of the 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</p>
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	<p>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.</p> <p>(hh) “Insurance cover” means the insurance which are to be kept by MSI in accordance to the Clause 25.</p> <p>(ii) “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.</p> <p>(jj) “LOA” means Letter of Award.</p> <p>(kk) “Local Currency” means the official currency of India (i.e. Indian Rupees).</p> <p>(ll) “Module” 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.</p> <p>(mm) “MD” means the Managing Director of the Client.</p> <p>(nn) “MSI” shall have the meaning ascribed to it in the preamble of the Contract.</p> <p>(oo) “MSI Event of Default” has the meaning ascribed to it in GCC Clause 18 a.</p> <p>(pp) “MSI Indemnified Party” has the meaning ascribed to it in Clause 19.2.</p> <p>(qq) “Operational Acceptance Certificate” means a certificate issued by the Client to the MSI upon the Client’s approval for completion of individual phases and on the completion of implementation phase of the Project, which may be endorsed by the Client in accordance with GCC Clause 54.5.</p> <p>(rr) “Party” means the Client or the MSI, as the case may be, and “Parties” means both of them.</p> <p>(ss) “Payment Schedule” means the schedule for payment of the Price to the MSI, as set out in the SCC.</p> <p>(tt) “Performance Security” means a duly executed, irrevocable and unconditional bank guarantee to be procured and maintained by the MSI in accordance with GCC Clause 39 read with the SCC, to secure the due and proper performance of the Contract.</p> <p>(uu) “Person” means any individual, company, corporation, firm, partnership, trust, sole proprietor, limited liability partnership, co-operative society, Government Company or any other legal entity.</p>
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	<p>(vv) “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.</p> <p>(ww) “The Post-Warranty Service Period” means the number of years defined in the SCC (if any), 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). Comprehensive Maintenance / AMC Phase shall also include Post-Warranty Service Period.</p> <p>(xx) “Project Manager” of the Client shall be either the Client’s Project Manager or the Client’s authorized representative.</p> <p>(yy) “Proposal” means the submission made by the MSI pursuant to the RFQ cum RFP.</p> <p>(zz) “RFQ cum RFP” means Request for Qualification cum Request for Proposal dated along with schedules, annexures, appendices and any subsequent amendment issued by the Client for appointment of the MSI.</p> <p>(aaa) “SCC” means the special conditions of contract with specific details and information to supplement (and not override) the GCC.</p> <p>(bbb) “Section” means a section of the Contract.</p> <p>(ccc) “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.</p> <p>(ddd) “System Acceptance Testing” means testing of ICT components or modules supplied as part of this Project in accordance with Volume III – Testing.</p> <p>(eee) Scope of Work means the Volume III of the RFQ cum RFP which explains the objectives, business requirements, functional requirements, technical requirements, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the MSI.</p> <p>(fff) “Services” means the work to be performed by the MSI pursuant to the Contract, as described in greater detail in the RFQ cum RFP document.</p> <p>(ggg) “Site” means Integrated Industrial Township (IIT), Greater Noida</p> <p>(hhh) “SLA” refers to Service Level Agreements as defined under Section IV of Volume II of this RFQ cum RFP.</p> <p>(iii) “Software” means all computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, and technology supporting the foregoing, and all documentation, including flowcharts and other logic and</p>
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	<p>design diagrams, technical, functional and other specifications, and user and training materials related to any of the foregoing.</p> <p>(jjj) “Subcontractor” means any third party appointed by the MSI under clause 47 which through its employees or agents directly delivers the Services.</p> <p>(kkk) “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, Goods and Service Tax (GST), , value added tax, central sales tax, Stamp Duty, customs duty excise duty, fees, cess, octroy, entry tax, and any interest, surcharge, penalty or fine in connection therewith.</p> <p>(lll) “Third Party” means any person or entity other than the Client and the MSI.</p> <p>(mmm) “Technical Proposal” means the technical proposal forming part of the Proposal submitted by the MSI in response to the RFQ cum RFP.</p> <p>(nnn) “Variation” has the meaning ascribed to it in GCC Clause 14.2.</p> <p>(ooo) “Variation Order” has the meaning to it in GCC Clause 14.5.</p>
<p>1A. Interpretation</p>	<p>In this Contract unless a contrary intention is evident:</p> <p>(a) the clause headings are for convenient reference only and do not form part of this Contract;</p> <p>(b) unless otherwise specified, a reference to a clause number is a reference to all of its sub-clauses;</p> <p>(c) The word “includes” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;</p> <p>(d) unless otherwise specified, a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Contract including any amendments or modifications to the same from time to time;</p> <p>(e) a word in the singular includes the plural and a word in the plural includes the singular;</p> <p>(f) a word importing a gender includes any other gender;</p> <p>(g) a reference to a person includes a partnership and a body corporate;</p> <p>(h) a reference to legislation includes legislation repealing, replacing or amending that legislation;</p> <p>(i) where a word or phrase is given a particular meaning it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings;</p>

	(j) in the event of an inconsistency between the terms of this Contract and the Bid document and the Proposal, the terms of this Contract hereof shall prevail.
2. Relationship between the Parties	2.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client 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.
3. Governing Law	3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India.
4. Language	4.1 This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
5. Headings	5.1 The headings are for convenience of reference only and shall not limit, alter or affect the meaning of this Contract.
6. Communications	<p>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 the SCC. 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 in the SCC. 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 SCC.</p> <p>6.2 A Party may change its address for Communication hereunder by giving the other Party notice of such change to the address specified in the SCC.</p>
7. Location	7.1 The System shall be deployed at such locations as are specified in Volume III – Terms of Reference hereto and, where the location of a particular task is not so specified, at such locations, as the Client may approve.
8. Authorized Representatives	8.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the MSI may be taken or executed by the officials specified in the SCC.
9. Corrupt and Fraudulent Practices	9.1 The MSI shall comply with the Client’s policy in regard to corrupt and fraudulent practices as set forth in Attachment 1 to the GCC.

a. Commissions and Fees	9.2 The Client requires the MSI to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract.
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B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

10. Effectiveness of Contract	10.1 This Contract shall come into force and effect one month post the date of issuance of Letter Of Award (LOA) to the MSI or on the date the Contract is signed by both the Parties or such other date as may be stated in the SCC, whichever is earlier (the "Effective Date").
11. Commencement of Contract	11.1 The MSI shall submit in writing an acceptance of LOA and start the Project with Kick-off meeting no later than the date specified in the SCC.
12. Expiration of Contract	12.1 Unless terminated earlier pursuant to Clause 18, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC, unless extended in accordance with this Contract.
13. Entire Agreement	13.1 This Contract constitutes the entire understanding between the Parties regarding the scope of the System and supersedes all prior written or oral understandings, offers, agreements, communication or representations affecting the same subject matter. It is clarified that the obligations of the MSI under the RFQ cum RFP shall continue to subsist and shall be deemed to form part of the Contract.
14. Change or Modifications or Variations	<p>14.1 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. All variations under this Contract shall be capped at a maximum of 10%.</p> <p>14.2 Both the Client 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).</p> <p>14.3 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.</p> <p>14.4 Moreover, the Client 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</p>

	<p>System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.</p> <p>14.5 Client Proposed Variation:</p> <ul style="list-style-type: none">(i) The Client 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 Client 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;(ii) Within fifteen (15) days of receipt of a Variation Order, the MSI shall submit a proposal setting out in sufficient detail the implications/impact 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;(iii) Based on its review of the proposal submitted by the MSI, the Client 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 Fifteen¹ (15) days from the date of receipt of the MSI's proposal under Clause 14.5(ii) or any extended date as may be communicated by the Client;(iv) If the Client accepts the MSI's proposal under Clause 14.5(ii) 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 Client's acceptance of the MSI's proposal, the MSI shall proceed with the Variation within stipulated time as mentioned in the proposal or as agreed by the Parties.(v) To the extent the Client seeks amendments and/or justification in the proposal submitted by the MSI, the MSI shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 14.5 (iv), the MSI shall proceed with the Variation within stipulated time as mentioned in the proposal or as agreed by the Parties.(vi) On implementation of a Variation Order, the MSI shall be entitled to the agreed increase/decrease in the Total Value of Contract and/or adjustment to the Supply Schedule, Services Schedule or Payment Schedule for carrying out the Variation;
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	<p>(vii) Notwithstanding anything to the contrary in this Clause 14.5, the MSI shall be bound to implement any Variation that is necessitated by a Change in Law (<i>discussed in Clause 15 below</i>) 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 15 below.</p> <p>14.6 MSI Proposed Variation:</p> <p>(i) 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 Client, 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;</p> <p>(ii) Based on its review of the Variation proposed by the MSI, the Client 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 Fifteen (15) days of the submission of the proposal for a Variation. Upon the Client's acceptance of the proposed Variation, the MSI shall proceed with the Variation within stipulated time as mentioned in the proposal or as agreed by the Parties.</p> <p>(iii) To the extent the Client seeks amendments in the proposed Variation, the MSI shall incorporate or address, in writing, the Client's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 14.6(ii), the MSI shall proceed with the Variation within stipulated time as mentioned in the proposal or as agreed by the Parties.</p> <p>(iv) If the MSI doesn't proceed with the Variation Order within the stipulated time after acceptance of the proposal for variation then same will be treated as breach of contract and applicable SLA, as decided during proposal stage, will be levied accordingly.</p> <p>14.7 Notwithstanding anything contained in this Clause 14, 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.</p> <p>14.8 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 Client may engage others to</p>
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	<p>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 Client has repudiated the Contract no matter the extent or timing of the omission(s).</p> <p>14.9 Notwithstanding anything contained in this Clause 14, the Client 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 Client's requirements or default in performance of the contract; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law</p> <p>14.10 If due to any reason the MSI and Client 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 Client 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 Client.</p> <p>14.11 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.</p>
<p>15. Change in Law</p>	<p>15.1 For the purposes of this Contract, "Change in Law" means the occurrence of any of the following events after the date of execution of the Contract: (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.</p> <p>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 GoUP and which is a matter of public knowledge.</p> <p>15.2 If, after the date of this Contract, there is any Change in Law which:</p>

	<p>(i) Increases/decreases the cost incurred by the MSI in deploying the Project; and/or</p> <p>(ii) affects the Project Schedule.</p> <p>then the MSI may notify the Client 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 Client 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.</p> <p>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 20.</p>
<p>16. Joint Venture</p>	<p>16.1 Joint Venture/Consortium is not allowed.</p>
<p>17. Suspension</p>	<p>17.1 The Client 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. This right is in addition and not in derogation to other rights available to the Client for such failure or breach of obligation under this contract.</p>
<p>18. Termination</p>	<p>18.1 This Contract may be terminated by either Party as per provisions set out below:</p>
<p>a. By the Client for MSI's default</p>	<p>18.1.1 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 Client as set out in GCC Clause 18.1.8, a Change in Law or any event of Force Majeure ("MSI Event of Default"):</p> <p>(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 17 within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently granted in writing;</p>

	<ul style="list-style-type: none"> (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 or in the process of amalgamated or reconstituted in the manner that would cause, material adverse effect to the Client; (iii) if the MSI's liability to pay delay liquidated damages reaches the cap on delay liquidated damages specified in GCC Clause 55.2 (iv) If the MSI: <ul style="list-style-type: none"> (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, Services, or labor to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 46 at rates of progress that give reasonable assurance to the Client 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 that particular quarter. (v) if the MSI has engaged in corrupt, fraudulent, collusive, coercive, undesirable or restrictive practice in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts
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	<p>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;</p> <ul style="list-style-type: none"> (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 Client; (viii) if any of the MSI's representations and warranties are found to be false and/or misleading; or (ix) if the MSI is in breach of any Applicable Laws. (x) If MSI fails to rectify any defect, non-rectification of which will have material adverse effect on the Project, within the time specified in the Contract. (xi) If the MSI places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Client. If MSI has failed to adhere to any direction, instruction, modification or clarification as issued by the Client during the term of this Contract and which the Client deems proper and necessary for the execution of the scope of work under this Contract. <p>18.1.2 Without prejudice to other provisions of this Contract, upon the occurrence of a MSI Event of Default, the Client 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.</p> <p>Provided that, in case of occurrence of a MSI Event of Default set out in Clauses 18.1.1(ii), or 18.1.1 (iv), the Client shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.</p> <p>18.1.3 Subject to Clause 18.1.2, and except in case of the event set out at Clause 18.1.1 (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 Client, then the Client shall have the right to issue a termination notice, upon which this Contract shall terminate forthwith. Upon termination of the contract, the Client shall not be held liable for any kind of loss incurred to the MSI. Liability of the Client shall be limited to payment of the invoices as per Clause 18.1.6 and Clause 18.1.7.</p> <p>18.1.4 Upon receipt of the notice of termination under GCC Clause 18.1.1, the MSI shall, either immediately or upon such date as is specified in the notice of termination:</p> <ul style="list-style-type: none"> (a) cease all further work, except for such work as the
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	<p>Client 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;</p> <ul style="list-style-type: none"> (b) terminate all subcontracts, except those to be assigned to the Client pursuant to GCC Clause 18.1.4(d) below; (c) deliver to the Client the parts of the System executed by the MSI up to the date of termination; (d) to the extent legally possible, assign to the Client 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 Client, in any subcontracts concluded between the MSI and its Sub-contractors; (e) deliver to the Client all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as at the date of termination in connection with the System. (f) deliver to the Client all Intellectual Property Rights, if any, specifically made during the execution of the contract for the Client's project <p>18.1.5 The Client 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 Client thinks appropriate, the Client 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.</p> <p>18.1.6</p> <ul style="list-style-type: none"> (a) If the termination takes place prior to the Operational Acceptance subject to GCC Clause 18.1.7(a), the MSI shall be entitled to be paid the Contract Price attributable to the portion of the System satisfactorily 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 18.1.4(a). Any sums including but not limited to Liquidated damages due to the Client 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. (b) 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
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	<p>the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 18.1.4(a). Any sums including but not limited to Liquidated damages due to the Client 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 21.7, mentioned under Special Conditions of Contract, shall stand terminated without any additional compensation to the MSI.</p> <p>18.1.7</p> <p>(a) If the termination takes place before the Operational acceptance, the cost of completing the System by the Client as per the Contract shall be determined. If the sum that the MSI is entitled to be paid, pursuant to GCC Clause 18.1.6 (a), plus the reasonable costs incurred by the Client in the completing the Scope of Work, exceeds the Total cost, the MSI shall be liable to reimburse such excess money to the Client. If such excess is greater than the sums due to the MSI under GCC Clause 18.1.6, the MSI shall pay the balance to the Client, and if such excess is less than the sums due to the MSI under GCC Clause 18.1.6(a), the Client shall pay the balance to the MSI. The Client and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.</p> <p>(b) If the termination takes place after Operational acceptance, the cost of completing the remaining Scope of Work by the Client 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 18.1.6(b) plus the reasonable costs incurred by the Client 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 Client. If such excess is greater than the sums due to the MSI for the maintenance period under GCC Clause 18.1.6(b) the MSI shall pay the balance to the Client, and if such excess is less than the sums due to the MSI for the maintenance period under GCC Clause 18.1.6 (b) the Client shall pay the balance to the MSI. The Client and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.</p>
<p>b. By the MSI for Client's default</p>	<p>18.1.8 A "Client 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 18.1.1, a Change in Law or any event of Force Majeure:</p> <p>(i) if the Client fails to pay any undisputed money due to</p>

	<p>the MSI pursuant to this Contract within Sixty (60) calendar days after receiving written notice from the MSI that such payment is overdue;</p> <p>(ii) if the Client 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 Client of the MSI's notice specifying such breach;</p> <p>(iii) if the Client 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 Client is a corporation, a resolution is passed, or order is made for its winding up;</p> <p>(iv) if the Client suspends the performance of the Services for more than sixty (60) days, for reasons other than force majeure event which is not attributable to the MSI.</p> <p>18.1.9 Without prejudice to other provisions of this Contract, upon the occurrence of a Client Event of Default, the MSI may deliver a notice to the Client specifying the nature of the breach and giving a cure period of thirty (30) days to the Client to cure the Client Event of Default.</p> <p>Provided that, in case of occurrence of a Client Event of Default set out in Clauses 18.1.8 (iii), the MSI shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.</p> <p>18.1.10 If the Contract is terminated under GCC Clause 18.1.8, then the MSI shall immediately:</p> <p>(a) 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;</p> <p>(b) terminate all subcontracts, except those to be assigned to the Client pursuant to Clause 18.1.10(d) (ii);</p> <p>(c) remove all MSI's Equipment from the site and repatriate the MSI's and its Subcontractor's personnel from the site;</p> <p>(d) In addition, the MSI, subject to the payment specified in GCC Clause 18.1.11, shall:</p> <p>(i) deliver to the Client the parts of the System executed by the MSI up to the date of termination;</p> <p>(ii) to the extent legally possible, assign to the</p>
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	<p>Client 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 Client, in any subcontracts concluded between the MSI and its Subcontractors;</p> <p>(iii) deliver to the Client all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System.</p> <p>(iv) deliver to the Client all IPR, if any, specifically made during the execution of the contract for the Client's project</p> <p>18.1.11 If the Contract is terminated under GCC Clause 18.1.8, the Client shall pay to the MSI all payments specified in GCC Clause 18.1.17.</p> <p>18.1.12 Termination by the MSI pursuant to this GCC Clause 18 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 18 b.</p> <p>18.1.13 In this GCC Clause 18, the expression "portion of the System executed" shall include all work executed, Services provided, and all Information Technologies, 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.</p> <p>18.1.14 In this GCC Clause 18, in calculating any monies due from the Client to the MSI, account shall be taken of any sum previously paid by the Client to the MSI under the Contract, including any advance payment paid pursuant to the SCC.</p>
<p>c. At Client's convenience</p>	<p>18.1.15 The Client may at any time terminate the Contract for any reason by giving the MSI a notice of termination that refers to this GCC Clause 18 c.</p> <p>18.1.16 Upon receipt of the notice of termination under GCC Clause 18.1.15, the MSI shall either as soon as reasonably practical or upon the date specified in the notice of termination:</p> <p>(a) cease all further work, except for such work as the Client 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;</p> <p>(b) terminate all subcontracts, except those to be assigned to the Client pursuant to GCC Clause 18.1.16 (d) (ii) below;</p> <p>(c) remove all MSI's Equipment from the site, repatriate the MSI's and its Subcontractors' personnel from the site,</p>

	<p>remove from the site any wreckage, rubbish, and debris of any kind;</p> <p>(d) in addition, the MSI, subject to the payment specified in GCC Clause 18.1.17, shall</p> <p>(i) deliver to the Client the parts of the System executed by the MSI up to the date of termination;</p> <p>(ii) to the extent legally possible, assign to the Client 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 Client, in any subcontracts concluded between the MSI and its Subcontractors;</p> <p>(iii) deliver to the Client 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;</p> <p>(iv) If termination takes place after operational acceptance is achieved, the MSI shall fully comply with the Exit Management Plan as specified in Section E of GCC.</p> <p>(v) deliver to the Client all IPR, if any, specifically made during the execution of the contract for the Client's project</p> <p>18.1.17 In the event of termination of the Contract under GCC Clause 18.1.15, the Client shall pay to the MSI the following amounts:</p> <p>(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;</p> <p>(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;</p> <p>(c) costs incurred by the MSI in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 18.1.16 (a); and</p>
<p>Termination for Force Majeure</p>	<p>18.1.18 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</p>

	<p>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.</p> <p>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.</p>
<p>Cessation of Rights and Obligations</p>	<p>18.1.19 Upon termination of this Contract pursuant to Clause 18, or upon expiration of this Contract pursuant to Clause 12, 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 23, (iii) the MSI's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 26, (iv) the indemnity obligations of the Parties as set out in Clause 19; (v) the obligations in relation to intellectual property rights under Clause 42; and (vi) any right which a Party may have under the Applicable Law.</p>
<p>Cessation of Services</p>	<p>18.1.20 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 Client all documents, data, programmes, applications, software, equipment etc. developed or acquired by the Client 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.</p>
<p>19. Indemnity</p>	<p>19.1 MSI's indemnity:</p> <p>The MSI must indemnify and hold harmless the Client and the Client's staff, their Affiliates and directors of their Affiliates (each a "Client Indemnified Party") from and against any and all claims, liabilities, expenses, fine, penalties, taxes and losses suffered or incurred by the Client Indemnified Party, including claims by a third party, arising out of:</p> <ul style="list-style-type: none"> (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;

	<ul style="list-style-type: none"> (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, Client 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. <p>19.2 Client's indemnity:</p> <p>The Client 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:</p> <ul style="list-style-type: none"> (i) breach of the Client's representations and warranties under the Contract; or (ii) any non-compliance or violation of Applicable Laws or any Client's applicable permits or consents by the Client. <p>19.3 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 19.3. 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</p>
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	<p>Party. All settlements of claims subject to indemnification under this Clause will be entered into only with the consent of the Indemnified Party,</p> <p>19.4 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 19.</p> <p>19.5 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.</p> <p>19.6 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.</p> <p>19.7 The obligation to indemnify stipulated in this Clause 19 is:</p> <ul style="list-style-type: none"> (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. <p>19.8 For the purpose of this Clause 19: (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.</p>
<p>20. Settlement of Disputes</p>	<p>Any dispute which is not resolved amicably as provided in Clause 67, such disputes shall be settled by arbitration in accordance with the following provisions:</p> <ul style="list-style-type: none"> a) Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach or breach of contract thereof shall be referred to a sole Arbitrator to be

	<p>appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month (30 days) from the notification by one party to the other of arbitration notice, then the Arbitrator shall be appointed by the Court as per the Arbitration and Conciliation Act, 1996 and amendment thereto</p> <p>b) The seat of the arbitration shall be India and the arbitration proceedings shall be held in Gautam Budh Nagar, Uttar Pradesh;</p> <p>c) The English language shall be the official language for all purposes;</p> <p>d) The arbitration shall be governed by the (Indian) Arbitration and Conciliation Act, 1996, as amended from time to time Rules or re-enactments thereof;</p> <p>e) Responsibility of payment for all costs of arbitration shall be as per the arbitration award However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself.; and</p> <p>f) 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.</p> <p>g) Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.</p>
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C. RIGHTS AND OBLIGATIONS OF THE MSI

21. General	
Standard of Performance	<p>21.1 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 technologies, 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.</p> <p>21.2 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 Client 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.</p> <p>21.3 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 46.2) 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 18 a.</p> <p>21.4 The MSI shall adhere to the SLA requirements as specified in RFQ cum RFP – Volume II – Section IV.</p> <p>21.5 The MSI shall comply with Exit Management Plan as specified in GCC Section E.</p> <p>21.6 The MSI shall not subcontract (unless otherwise specified in the SCC) any part of the Services required of MSI under this Contract.</p> <p>21.7 Other obligations of the MSI as specified in SCC.</p>
a. Law Applicable	<p>21.8 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 Client 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</p>

	<p>Clause 33. The MSI shall not indemnify the Client to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Client.</p> <p>21.9 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.</p> <p>21.10 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 Client under GCC Clause 33.2 and that are necessary for the performance of the Contract.</p>
22. Conflict of Interest	22.1 The MSI shall hold the Client'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.	22.1.1 The Contract Price pursuant to GCC Clause 36 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.
MSI and Affiliates Not to Engage in Certain Activities	22.1.2 The MSI agrees that, during the term of this Contract and after its termination/completion, the MSI and its Affiliates, shall be disqualified from providing consultancy related to the Services, for the implementation of the Smart City ICT Components Project to the Client, unless otherwise indicated in the SCC.
Prohibition of Conflicting Activities	22.1.3 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.
Strict Duty to Disclose Conflicting Activities	22.1.4 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 Client, 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.

<p>23. Confidentiality</p>	<p>23.1 Except with the prior written consent of the Client, 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 Client to the Personnel; any information provided by or relating to the Client, 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:</p> <p>(a) <i>Clause deleted;</i></p> <p>(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.</p> <p>Notwithstanding the aforesaid, the MSI and the Personnel may disclose such information to the extent that such information:</p> <p>(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;</p> <p>(ii) was obtained from a third party with no known duty to maintain its confidentiality;</p> <p>(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 Client; and (b) using reasonable efforts to ensure that such disclosure is accorded confidential treatment;</p> <p>(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;</p> <p>(v) is independently developed by the recipient or is already in the possession of the recipient.</p> <p>23.2 The provisions of Clause 23 should be read in association with Clause 44.</p>
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	<p>23.3 MSI shall adhere to all conditions associated with confidentiality as mentioned in Appendix B: Non-Disclosure Agreement (NDA).</p>
<p>24. Liability of the MSI</p>	<p>24.1 Subject to the exclusions set out in the SCC, the overall liability of the MSI and the Client 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 Client with respect to intellectual property rights infringement.</p>
<p>25. Insurance to be Taken out by the MSI</p>	<p>25.1 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 Client, who should not unreasonably withhold such approval.</p> <p>(a) Cargo Insurance During Transport</p> <p>as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site. Validity of Cargo insurance shall be till implementation phase.</p> <p>(b) Installation “All Risks” Insurance</p> <p>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. Validity of Installation “All Risks” insurance shall be till implementation phase.</p> <p>(c) Third-Party Liability Insurance</p> <p>On terms and amount as specified in the SCC, covering bodily injury or death suffered by third parties (including the Client’s personnel) and loss of or damage to property (including the Client’s property and any Subsystems that have been accepted by the Client) occurring in connection with the supply and installation of the Information System. Third Party Liability Insurance shall be applicable till contract completion.</p> <p>(d) Automobile Liability Insurance</p> <p>In accordance with the statutory requirements prevailing in the Client’s Country, covering use of all vehicles used by the MSI (whether owned by them) in connection with the execution of the Contract.</p> <p>(e) Other Insurance (if any), as specified in the SCC.</p>

	<p>25.2 The Client shall be named as Principal/Beneficiary/co-insured under all insurance policies taken out by the MSI pursuant to GCC Clause 25.1, 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.</p> <p>25.3 The MSI shall deliver to the Client certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.</p> <p>25.4 If the MSI fails to take out and/or maintain in effect the insurance referred to in GCC Clause 25.1, the Client may take out and maintain in effect any such insurance and shall from time to time deduct from any amount due to the MSI under the Contract any premium that the Client shall have paid to the insurer or shall otherwise recover such amount as a debt due from the MSI.</p> <p>25.5 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 25, and all monies payable by any insurers shall be paid to the MSI. The Client 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 Client'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 Client. With respect to insurance claims in which the MSI's interest is involved, the Client shall not give any release or make any compromise with the insurer without the prior written consent of the MSI.</p> <p>25.6 No insurance shall be cancelled, modified or allowed to expire or lapse during the terms of this Contract.</p> <p>25.7 The MSI should submit an undertaking that the above insurance policies which are not applicable at this stage of the project will be procured by the MSI when the need arises and/or when the client intimates the MSI for the same. The onus of proving the non-applicability of the insurance policy will always lie on the MSI.</p>
<p>26. Accounting, and Auditing</p>	<p>26.1 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.</p> <p>26.2 The MSI shall permit, the Client and/or persons appointed by the Client 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 Client up to 2 years of expiration or termination of the contract, if requested by the Client. Any act intended to materially impede the exercise of the Client's inspection and audit rights provided for under this Clause</p>

	26.2 shall constitute a material breach of the Contract, which would give the Client the right to terminate the Contract.
27. Time for Commencement and Operational Acceptance	<p>27.1 The MSI shall commence work on the System within the period specified in the SCC, and without prejudice to GCC Clause 55.2, 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.</p> <p>27.2 The MSI shall achieve Operational Acceptance of the Phases and the Project (or System(s) and Subsystem(s) where a separate time for System Acceptance of such Subsystem(s) is specified in the Contract) within the time specified in the SCC 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 56 (Extension of Time for Achieving Operational Acceptance).</p>

D. PERSONNEL

28. Description of Key Experts	<p>28.1 The title agreed job description and minimum qualification of each Key Expert to carry out the Work are described in ITB (Volume I).</p> <p>28.2 All Key Experts as proposed by the MSI should be full time employees of the MSI.</p> <p>28.3 As per the finalized staff deployment plan, MSI shall be obligated to ensure availability of Key Experts at the Project location (DMIC IITGNL Office and Integrated Industrial Township, Greater Noida – Project site) during the entire Contract duration. Mechanisms to transparently record and monitor Key Expert availability at project location shall be under the scope of MSI. The MSI shall provide monthly report to the Client providing compliance for availability of Key Expert at Project location. Client reserves the right to take action against the MSI, at its own discretion, in case of non-availability of Key Experts at Project location</p>
29. Replacement of Key Experts	<p>29.1 Except as the Client may otherwise agree in writing and no changes shall be made in the Key Experts without the prior consent of the Client.</p> <p>29.2 A request for substitution of a Key Expert during the term of the Contract may be considered based on the MSI's written request.</p> <p>29.3 The Client 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.</p> <p>29.4 In case any proposed resource resigns, then the MSI has to inform Client within one week of such resignation and the MSI shall</p>

	<p>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 Client.</p> <p>29.5 If Client 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.</p> <p>29.6 The MSI needs to ensure at least 4 weeks of overlap period in such replacements. Client 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.</p> <p>29.7 During implementation period 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 Client's prior written consent, the MSI shall:</p> <p>29.7.1 Provide Client 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</p> <p>29.7.2 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.</p>
<p>30. Removal of Personnel</p>	<p>30.1 If the Client finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or if the Client determines that MSI's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices (as specified in Attachment 1 to the GCC) while performing the Work, the MSI shall, at the Client's written request, provide a replacement for such Personnel.</p> <p>30.2 In the event that any of Personnel is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the MSI to provide a replacement.</p> <p>30.3 The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by the Client.</p>

E. EXIT MANAGEMENT AFTER OPERATIONAL ACCEPTANCE

<p>31. Under Contract Completion</p>	<ul style="list-style-type: none"> (a) Provide a comprehensive exit management plan. (b) Before 6 months prior to the contract ending, the MSI shall fully train Client's staff or any other agency designated by Client who is designated to take over the maintenance of the System. (c) The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ Client 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 Client at least 3 months before contract completion. (e) Client shall release the performance security and final payment 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. (f) The Parties may, if mutually agreed, extend the contract in accordance with the terms and conditions. (g) Client shall ask for exit management plan anytime during the term of the Contract. MSI shall furnish the same within 15 days of such request. (h) All source codes, backup data, Client specific information shall be handed over to Client as part of exit management. (i) All ICT systems shall be properly handed over to Client in operational state as part of exit management. (j) The MSI shall be responsible for providing the tools for import / export of VMs & content and the MSI shall be responsible for preparation of the Exit Management Plan and carrying out the exit management / transition. Also, MSI shall retain all Client data for a period of three (3) months without any additional cost to the Client. (k) MSI shall be responsible for migration of the VMs, data, content and any other assets to the new environment or on alternate cloud service provider's offerings (if migration is to take place) and ensuring successful deployment and running of the Client's solution on the new infrastructure by suitably retrieving all data, scripts, software, virtual machine images, and so forth to enable mirroring or copying to industry standard media (l) The format of the data transmitted from the cloud service provider to the new environment created by the Client should leverage standard data formats (e.g., OVF) whenever possible to ease and enhance portability. The format will be finalized by the Client; (m) The MSI will transfer the organizational structure developed
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	<p>during the Contract Duration to support the delivery of the Exit Management Services. This will include:</p> <ul style="list-style-type: none"> • Document, update, and provide functional organization charts, operating level agreements with Third-Party contractors, phone trees, contact lists, and standard operating procedures. • Transfer physical and logical security processes and tools, including cataloguing and tendering all badges and keys, documenting ownership and access levels for all passwords, and instructing Client or its authorized representative in the use and operation of security controls. <p>(n) Retain the data at the end of the Contract.</p> <p>(o) Once the exit process is completed, remove the data, content and other assets from the cloud environment and destroy the VM, Content and data of Client.</p> <p>(p) It may be possible at any time to move the Cloud Virtual Machines to the Client or any other Infrastructure as service provider. The mechanism and technical requirements for achieving this shall be well documented.</p> <p>(q) The ownership of the data generated upon usage of the system, at any point of time during the Contract or expiration of the Contract, shall rest absolutely with Client.</p>
<p>32. Under Termination upon MSI's Default / Client's Convenience (as per GCC Clauses 18 (a) and 18 (c))</p>	<p>(a) Provide a comprehensive exit management plan.</p> <p>(b) After termination notice by the Client, the MSI shall as soon as possible and within 90 days (of Termination Period) fully train Client's staff or any other agency designated by Client who is designated to take over the maintenance of the System.</p> <p>(c) 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.</p> <p>(d) The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ Client to carry out the requisite functions.</p> <p>(e) All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to Client within 1 month after termination notice.</p> <p>(f) Client shall release the requisite payments to the MSI pursuant to the GCC/SCC Clause 18 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.</p> <p>(g) ICT systems shall be properly handed over to Client in operational state as part of exit management.</p>

	<p>(h) All source codes, backup data, Client specific information shall be handed over to Client as part of exit management.</p> <p>(r) The MSI shall be responsible for providing the tools for import / export of VMs & content and the MSI shall be responsible for preparation of the Exit Management Plan and carrying out the exit management / transition. Also, MSI shall retain all Client data for a period of three (3) months without any additional cost to the Client.</p> <p>(s) MSI shall be responsible for migration of the VMs, data, content and any other assets to the new environment or on alternate cloud service provider's offerings (if migration is to take place) and ensuring successful deployment and running of the Client's solution on the new infrastructure by suitably retrieving all data, scripts, software, virtual machine images, and so forth to enable mirroring or copying to industry standard media</p> <p>(t) The format of the data transmitted from the cloud service provider to the new environment created by the Client should leverage standard data formats (e.g., OVF) whenever possible to ease and enhance portability. The format will be finalized by the Client;</p> <p>(u) The MSI will transfer the organizational structure developed during the Contract Duration to support the delivery of the Exit Management Services. This will include:</p> <ul style="list-style-type: none"> • Document, update, and provide functional organization charts, operating level agreements with Third-Party contractors, phone trees, contact lists, and standard operating procedures. • Transfer physical and logical security processes and tools, including cataloguing and tendering all badges and keys, documenting ownership and access levels for all passwords, and instructing Client or its authorized representative in the use and operation of security controls. <p>(v) Retain the data at the end of the Contract.</p> <p>(w) Once the exit process is completed, remove the data, content and other assets from the cloud environment and destroy the VM, Content and data of Client.</p> <p>(x) It may be possible at any time to move the Cloud Virtual Machines to the Client or any other Infrastructure as service provider. The mechanism and technical requirements for achieving this shall be well documented.</p> <p>(i) The ownership of the data generated upon usage of the system, at any point of time during the Contract or expiration of the Contract, shall rest absolutely with Client.</p>
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F. RIGHTS AND OBLIGATIONS OF THE CLIENT

<p>33. Assistance and Services</p>	<p>33.1 Unless otherwise specified in the SCC, the Client shall:</p> <ul style="list-style-type: none"> (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 Client 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 46.2) within the time schedule specified in the Implementation Schedule in the Terms of Reference Section. <p>33.2 If requested by the MSI, the Client shall use its best endeavours 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.</p> <p>33.3 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, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Client shall use its best endeavours to assist the MSI in obtaining such services in a timely and expeditious manner.</p> <p>33.4 The Client shall be responsible for timely provision of all resources, access, and information necessary for the Installation and System 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 Client may result in an appropriate extension of the Time for Operational Acceptance.</p> <p>33.5 The Client assumes primary responsibility for the System Acceptance Test(s) for the System, in accordance with GCC Clause 54.2, 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 and System Acceptance otherwise specified in the Contract.</p> <p>33.6 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.</p> <p>33.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 33 shall be the responsibility of</p>
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	<p>the Client, save those to be incurred by the MSI with respect to the performance of the System Acceptance Test(s), in accordance with GCC Clause 54.2.</p> <p>33.8 The Client may depute Project Management Consultant (PMC) or competent personnel to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and System Acceptance, at or before the time specified in the Terms of Reference Section's Implementation Schedule and the Agreed and Finalized Project Plan.</p> <p>33.9 Provide to the MSI any such other assistance as may be specified in the SCC.</p>
34. Access to Project Office	<p>34.1 MSI to establish own office and maintain it throughout the contract period in DMIC IITGNL Office / IIT (Project site) which shall be used to deliver this project. Client may visit MSI office periodically to check the existence. In addition, the MSI shall maintain a temporary site office at IIT during the entire course of implementation of the Contract at no additional cost. All infrastructure required for setting up or maintaining this site office shall be borne by the MSI. The MSI shall also ensure to accommodate a dedicated space for two (2) ICT consultants at the temporary site office.</p>
35. Counterpart Personnel	<p>35.1 Unless otherwise specified in the Contract or agreed upon by the Client and the MSI, the Client shall provide sufficient, properly qualified operating and technical personnel, as required by the MSI to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and System Acceptance, at or before the time specified in the Terms of Reference Section's Implementation Schedule and the Agreed and Finalized Project Plan.</p> <p>35.2 The Client 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, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.</p>

G. PAYMENTS TO THE MSI

36. Total Value of the Contract	<p>36.1 The Contract Price shall be as specified in the Contract Agreement.</p> <p>36.2 The Contract Price shall be a firm lump sum not subject to any alteration, except:</p> <ul style="list-style-type: none"> (a) in the event of a Change in the System pursuant to GCC Clause 14 or to other clauses in the Contract. (b) in accordance with the price adjustment formula (if any) specified in the SCC.
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	<p>36.3 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.</p>
<p>37. Taxes and Duties</p>	<p>37.1 The MSI is responsible for meeting any and all Tax liabilities arising out of the Contract in India or elsewhere, unless it is stated otherwise in the SCC.</p> <p>37.2 All payments made by the Client to the MSI shall be subject to deductions and withholding of applicable Taxes in accordance with Applicable Laws.</p> <p>37.3 If any tax exemptions, reductions, allowances, or privileges may be available to the MSI in the Client’s Country, the Client shall use its best efforts to enable the MSI to benefit from any such tax savings to the maximum allowable extent.</p> <p>37.4 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 Client’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. In case, any price variation happens on account of any increase/decrease of existing taxes or imposition of new taxes, then the Revised Claim shall be submitted by MSI with detailed workings duly certified by a CA Firm.</p> <p>37.5 On signing of Contract, MSI shall also pay for the stamp duty as per Uttar Pradesh Stamp Act and Rules.</p>
<p>38. Currency of Payment</p>	<p>38.1 Any payment under this Contract shall be made in Indian Rupees.</p>
<p>39. Securities</p>	<p>(a) Issuance of Securities</p> <p>The MSI shall provide the securities specified below in favor of the Client at the times and in the amount, manner, and form specified below.</p> <p>(b) <i>deleted</i></p> <p>(c) Performance Security:</p> <p>(i) The MSI shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the</p>

	<p>due performance of the Contract in the amount and currency specified in the SCC;</p> <ul style="list-style-type: none"> (ii) 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 Client; (iii) The security shall automatically become null and void once all the obligations of the MSI under the Contract have been fulfilled satisfactorily, 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 twenty-eight (28) days after its expiration; (iv) Upon Operational Acceptance of the entire Project, the security shall be reduced to the amount specified in the SCC, (if applicable), on the date of such Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the MSI.
<p>40. Mode of Billing and Payment</p>	<p>40.1 The MSI's request for payment shall be made to the Client in writing after due approval of the milestone by the Client, 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 49.5 and upon fulfilment of other obligations stipulated in the Contract.</p> <p>The Contract Price shall be paid as specified in the SCC.</p> <p>40.2 No payment made by the Client herein shall be deemed to constitute acceptance by the Client of the System or any Subsystem(s).</p> <p>40.3 Payments shall be made promptly by the Client, ideally within forty five (45) days after submission of a valid invoice by the MSI.</p> <p>40.4 Notwithstanding anything to the contrary in the Contract, the Client may withhold from any payment due to the MSI any amounts that the Client deems reasonably necessary or appropriate because of any one or more of the following reasons:</p> <ul style="list-style-type: none"> (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 Client 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;

	<p>(vi) A dispute exists as to the accuracy or completeness of any invoice; or</p> <p>(vii) Any amounts due to the Client from the MSI under the Contract.</p> <p>40.5 All payments under this Contract shall be made by wire transfer to the accounts of the MSI specified in the SCC</p>
41. Interest on Delayed Payments	41.1 Not Applicable

H. INTELLECTUAL PROPERTY

42. Copyright	<p>42.1 The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.</p> <p>42.2 The Client agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 43, except that additional copies of Standard Materials may be made by the Client 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.</p> <p>42.3 The Client 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:</p> <p>(a) To any agency that shall be responsible to operate the project in the future in the event of dilution of the Client or the responsibility being transferred from Client to other agency;</p> <p>(b) To any location or to any third party service provider if the Client decides to outsource the ICT maintenance to a third party;</p> <p>(c) Integrating with additional similar or non-similar hardware for additional functional needs as deemed suitable by the Client;</p> <p>(d) In the event of termination of contract during the operational period.</p> <p>The MSI shall protect the Client 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.</p> <p>42.4 As applicable, the Client's and MSI's rights and obligations with respect to Customized Software or elements of the Customized Software, including any license agreements, and with respect to</p>
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	<p>Customized Materials or elements of the Custom Materials, are specified in the SCC. Subject to the SCC, the Intellectual Property Rights in all Customized Software and Customized Materials specified in Appendices 17 (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 Client. The MSI shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Client may consider necessary or desirable to perfect the right, title, and interest of the Client in and to those rights. In respect of such Customized Software and Customized 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 Client and where permitted by applicable law, ensure that the holder of such a moral right waives it.</p> <p>42.5 If required, the Parties may enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are specified in the SCC and in accordance with the SCC.</p> <p>42.6 The Client or its nominated agency as decided by the Client shall have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed solely during execution of the Contract, including but not limited to all process, product specification, reports and other documents which have been newly created and developed by MSI solely during performance of the Services. MSI undertake to disclose all such Intellectual Property Rights arising in performance of the Service of the Client</p> <p>42.7 MSI shall not copy, reproduce, translate, adapt, vary, modify, disassemble, decompile or reverse engineer or otherwise deal with or cause to reduce or cause to reduce the value of the materials except as expressly authorised by the Client in writing.</p> <p>42.8 MSI must ensure that while using any software, hardware, processes, documents or material in course of performing the service, it doesn't infringe the Intellectual Property rights of any person/Company. MSI shall keep the the Client indemnified against all costs, expenses and liabilities howsoever, arising out of any illegal or unauthorised use or in connection with any claim or proceedings relating to any Intellectual Property Rights by MSI or MSI's Team during the course of performance of the Services. MSI's liability is excluded regarding any claim based on on any of the following (a) anything Client provides which is incorporated into the solution (b) the client's modification of the solution (c) the combination, operation, or use of the solution with other materials, if third party claim has been caused by the combination, operation, or use of the solution</p>
<p>43. Software License Agreements</p>	<p>43.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Client, the MSI hereby grants to the Client license to access and use the Software, including all inventions,</p>

	<p>designs, and marks embodied in the Software, in name of the Client unless otherwise directed in writing by the Client.</p> <p>All software licenses and applications specific to this Project shall be provided with perpetual, royalty free licenses. In case of any implementation done by MSI using the SaaS Model, at the end of the Contract, all licenses as per requirements of the RFQ cum RFP shall be handed over to the Client based on Client discretion, without any additional cost to the Client.</p> <p>Such license to access and use the Software shall:</p> <p>(a) be:</p> <ul style="list-style-type: none">(i) nonexclusive;(ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates before Operational Acceptance pursuant to GCC Clauses 18 b and 18 c;(iii) valid throughout the territory of the Client's Country; and <p>(b) permit the Software to be:</p> <ul style="list-style-type: none">(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: <i>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;</i>(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 Client, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth
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	<p>in this Contract;</p> <p>(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;</p> <p>(vii) In addition to the persons specified in GCC Clause 43.1 (b) (vi), the Software may be disclosed to, and reproduced for use by, Client 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.</p> <p>43.2 The MSI's right to audit the Standard Software will be subject to the following terms:</p> <p>(a) Maximum of 1 audit per calendar year is allowed by the Client and the duration of such audit shall not exceed 3 consecutive working days;</p> <p>(b) The MSI shall get a prior written approval from DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL) at least 1 week in advance on the nature, number of people and duration of the audit.</p> <p>The Client 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.</p>
<p>44. Confidential Information</p>	<p>44.1 The "Receiving Party" (either the Client 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.</p> <p>44.2 For the purposes of GCC Clause 44.1, 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 Client or the Client's use of the System.</p> <p>44.3 Notwithstanding GCC Clauses 44.1 and 44.2:</p> <p>(a) The MSI may furnish to its Subcontractor Confidential Information of the Client to the extent reasonably required for the Subcontractor to perform its work under the Contract; and,</p> <p>(b) The Client may furnish Confidential Information of the MSI:</p> <p>(i) to its support service MSIs and their subcontractors to</p>

	<p>the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries,</p> <p>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 44 as if that person were party to the Contract in place of the Receiving Party.</p> <p>44.4 The Client 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 Client's prior written consent, use any Confidential Information received from the Client for any purpose other than those that are required for the performance of the Contract.</p> <p>44.5 The obligation of a party under GCC Clause 44.1 through 44.4 above, however, shall not apply to that information which:</p> <ul style="list-style-type: none"> (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. <p>44.6 The above provisions of this GCC Clause 44 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.</p> <p>44.7 The provisions of this GCC Clause 44 shall survive the termination, for whatever reason, of the Contract for three (3) years or such longer period as may be specified in the SCC.</p>
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I. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

<p>45. Representatives</p>	<p>45.1 Project Manager</p> <p>If the Project Manager is not named in the Contract, then within fourteen (14) days from the Effective Date, the Client shall appoint and notify the MSI in writing of the name of the Project Manager. The Client 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. Subject to the extensions and/or limitations specified in the SCC (if any), the Project Manager shall have the authority to represent the Client on all day-to-day matters relating to the System or arising from the Contract, and shall normally be</p>
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	<p>the person giving or receiving notices on behalf of the Client.</p> <p>45.2 MSI's Representative</p> <p>45.2.1 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 Client 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 Client objects to the appointment, then the MSI shall appoint a replacement within fourteen (14) days of such objection in accordance with this GCC Clause 45.2.1;</p> <p>45.2.2 Subject to the extensions and/or limitations specified in the SCC (if any), 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;</p> <p>45.2.3 The MSI shall not revoke the appointment of the MSI's Representative without the Client's prior written consent, which shall not be unreasonably withheld. If the Client 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 45.2.1;</p> <p>45.2.4 The MSI's Representative and staff are obliged to work closely with the Client's Project Manager and staff, act within their own authority, and abide by directives issued by the Client 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;</p> <p>45.2.5 The MSI's Representative may, subject to the approval of the Client (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;</p> <p>45.2.6 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 45.2.5 shall be deemed to be an act or exercise by the MSI's Representative.</p> <p>45.3 Objections and Removals</p> <p>45.3.1 The Client 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 Client, may have behaved</p>
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	<p>inappropriately, be incompetent, or be negligent. The Client shall provide evidence of the same, whereupon the MSI shall remove such person from work on the System;</p> <p>45.3.2 If any representative or person employed by the MSI is removed in accordance with GCC Clause 45.3.1, the MSI shall, where required, promptly appoint a replacement.</p>
<p>46. Project Plan</p>	<p>46.1 In close cooperation with the Client 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. The contents of the Project Plan shall be as specified in the SCC and/or Technical Requirements.</p> <p>46.2 The MSI shall formally present to the Client the Project Plan in accordance with the procedure specified in the SCC.</p> <p>46.3 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 14 and 56.</p> <p>46.4 The MSI shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.</p> <p>46.5 The Progress and other reports specified in the SCC shall be prepared by the MSI and submitted to the Client in the format and frequency specified in the Technical Requirements.</p>
<p>47. Subcontracting</p>	<p>47.1 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 Client. 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 Client for its approval in sufficient time so as not to impede the progress of work on the System. The Client shall not withhold such approval unreasonably. Such approval by the Client of a Subcontractor(s) shall not relieve the MSI from any of its obligations, duties, or responsibilities under the Contract.</p> <p>47.2 The MSI may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 47.1. If the MSI wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Client's prior approval under GCC Clause 47.3.</p> <p>47.3 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 Client in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii)</p>

	<p>by the end of this period either the Client has granted its approval in writing or fails to respond. The MSI shall not engage any Subcontractor to which the Client has objected in writing prior to the end of the notice period. However, Client may not object appointment of subcontractors unreasonably. Nothing in this Clause, however, shall limit the rights and obligations of either the Client or MSI as they are specified in GCC Clauses 47.1 and 47.2, in the SCC, or in Appendix 1 of the Contract Agreement.</p> <p>47.4 Where the Client deems it necessary, it shall have right to require replacement of any subcontractor with another suitable subcontractor.</p> <p>47.5 The MSI shall be principal employer for all claims arising from the liabilities statutory or otherwise, concerning the subcontractor. The MSI undertakes to indemnify the Purchaser or its nominated agency from any such claims.</p>
<p>48. Design and Engineering</p>	<p>48.1 Technical Specifications and Drawings</p> <p>48.1.1 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;</p> <p>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 Client.</p> <p>48.1.2 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 Client, by giving a notice of such disclaimer to the Project Manager.</p> <p>48.2 Codes and Standards</p> <p>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 in the SCC. During Contract execution, any changes in such codes and standards shall be applied after approval by the Client and shall be treated in accordance with GCC Clause 14.6.</p> <p>48.3 Approval/Review of Technical Documents by the Project Manager.</p>

	<p>48.3.1 The MSI shall prepare and furnish to the Project Manager the documents as specified in the SCC for the Project Manager’s approval or review;</p> <p>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.</p> <p>GCC Clause 48.3.2 through 48.3.6 shall apply to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for its review only.</p> <p>48.3.2 Within thirty (30) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with GCC Clause 48.3.1, 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 or the time as may be mutually agreed in writing, then the document shall be deemed to have been approved by the Project Manager;</p> <p>48.3.3 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;</p> <p>48.3.4 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 48.3.2. 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 approved by the Project Manager within 30days, subject to GCC Clause 48.3.5. The procedure set out in GCC Clause 48.3.2 through 48.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents;</p> <p>48.3.5 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 Client;</p>
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	<p>48.3.6 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 48.3. 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 14 shall apply to such request.</p>
<p>49. Procurement, Delivery, and Transport</p>	<p>49.1 Subject to related Client's responsibilities pursuant to GCC Clauses 33 to 35 and Clause 37, the MSI shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.</p> <p>49.2 Delivery of the Information Technologies, Materials, and other Goods shall be made by the MSI in accordance with the Volume III – Terms of Reference.</p> <p>49.3 Early or partial deliveries require the explicit written consent of the Client, which consent shall not be unreasonably withheld.</p> <p>49.4 Transportation</p> <p>49.4.1 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 Client’s instructions to the MSI.</p> <p>49.4.2 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.</p> <p>49.5 Unless otherwise specified in the SCC, the MSI will provide the Client with shipping and other documents, as specified below:</p> <p>49.5.1 For Goods supplied from outside the Client’s Country:</p> <p>Upon shipment, the MSI shall notify the Client 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 Client by mail or courier, as appropriate, with a copy to the cargo insurance company:</p> <ul style="list-style-type: none"> (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

	<p>(e) Estimated time and point of arrival in the Client's Country and at the site.</p> <p>49.5.2 For Goods supplied locally (i.e., from within the Client's country):</p> <p>Upon shipment, the MSI shall notify the Client 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 Client by mail or courier, as appropriate:</p> <p>(a) Two copies of the MSI's invoice showing the Goods' description, quantity, unit price, and total amount;</p> <p>(b) Delivery note, railway receipt, or truck receipt;</p> <p>(c) Certificate of insurance;</p> <p>(d) Certificate(s) of origin; and</p> <p>(e) Estimated time of arrival at the site.</p> <p>49.6 Customs Clearance:</p> <p>The MSI will bear responsibility for, and cost of, customs clearance into the Client's country in accordance the particular Incoterm(s) used for Goods supplied from outside the Client's country in the Price Schedules.</p>
<p>50. Product Upgrades</p>	<p>50.1 At any point during performance of the Contract, should technological advances be introduced by the MSI for Information Technologies originally offered by the MSI in its bid and still to be delivered, the MSI shall be obligated to offer to the Client 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 14.</p> <p>50.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the MSI will also pass on to the Client any cost reductions and additional and/or improved support and facilities that it offers to other clients of the MSI in the Client's Country, pursuant to GCC Clause 14.</p> <p>50.3 During performance of the Contract, the MSI shall offer to the Client 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 clients of the MSI in the Client'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.</p> <p>50.4 The MSI shall provide the Client: with all new versions, releases, and updates for all Software used in the system during the Maintenance Period at no additional cost to the Client.</p> <p>50.5 The Client shall introduce all new versions, releases or updates of the Software within nine (09) months of receipt of a production-</p>

	<p>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 Client receives a production-ready copy of a subsequent version, release, or update. The Client 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.</p>
<p>51. Implementation, Installation, and Other Services</p>	<p>51.1 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.</p> <p>51.2 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 Clients in the Client's Country for similar services.</p>
<p>52. Inspections and Tests</p>	<p>52.1 The Client or its representative shall have the right to inspect and/or test any components of the System, as specified in the Volume III – 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 or during the Implementation period.</p> <p>52.2 The Client or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Client shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses, unless specified otherwise in Volume III – Terms of Reference.</p> <p>52.3 Should the inspected or tested components fail to conform to the Contract, the Client may either reject the component(s) or reject the OEM (as per Client discretion) and the MSI shall either replace the rejected component(s) or OEM or make alterations as necessary so that it meets the Contract requirements free of cost to the Client.</p> <p>52.4 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</p>

	<p>respect of the Time for Achieving Operational Acceptance and the other obligations so affected.</p> <p>52.5 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 20 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.</p> <p>52.6 Client may employ qualified inspectors to inspect and certify the Information Technologies, Materials, and other Goods prior to shipment. A Prototype/Factory Approval Test might be requested by the Client 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.</p>
<p>53. Installation of the System</p>	<p>53.1 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 System Acceptance Testing in accordance with the Volume III – Terms of Reference, the SCC and the Agreed and Finalized Project Plan, the MSI shall so notify the Client in writing.</p> <p>53.2 The Project Manager shall, within fourteen (14) days after receipt of the MSI's notice under GCC Clause 53.1, 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 pursuant to the SCC for GCC Clause 54.2.1), has achieved Installation by the date of the MSI's notice under GCC Clause 53.1, 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 System Acceptance Testing, notify the Client in writing, in accordance with GCC Clause 53.1. The procedure set out in this GCC Clause 53.2 shall be repeated, as necessary, until an Installation Certificate is issued.</p> <p>53.3 If the Client 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 Client put the System into production operation, as the case may be.</p>

<p>54. Commissioning and Operational Acceptance</p>	<p>54.1 Commissioning</p> <p>54.1.1 Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 54.2.1) shall be commenced by the MSI:</p> <ul style="list-style-type: none"> (a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 53.2; 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 53.3. <p>54.1.2 The Client 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;</p> <p>Production use of the System or Subsystem(s) shall not commence prior to the start of formal System Acceptance Testing.</p> <p>54.2 System Acceptance Tests (SAT)</p> <p>54.2.1 The System Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Client (in accordance with GCC Clause 33.5), but shall be conducted with the full cooperation of the MSI during Commissioning of the System (or major components or Subsystem[s] if specified in the SCC and supported by the Terms of Reference), 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. <u>System 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 III – Terms of Reference (Testing Requirements)</u>;</p> <p>At the Client’s discretion, System Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after System Acceptance.</p> <p>54.3 System Acceptance</p> <p>54.3.1 Subject to GCC Clause 54.4 (Partial Acceptance) below, System Acceptance shall occur in respect of the System, when:</p> <ul style="list-style-type: none"> (a) the System Acceptance Tests, as specified in the Terms of Reference, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or
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	<p>(b) the Client 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 Client and document such use.</p> <p>54.3.2 At any time after any of the events set out in GCC Clause 54.3.1 have occurred, the MSI may give a notice to the Project Manager requesting the issue of a System Acceptance Certificate.</p> <p>54.3.3 After consultation with the Client, and within fourteen (14) days after receipt of the MSI's notice, the Project Manager shall:</p> <p>(a) issue a System Acceptance Certificate; or</p> <p>(b) notify the MSI in writing of any defect or deficiencies or other reason for the failure of the System Acceptance Tests; or</p> <p>54.3.4 The MSI shall use all reasonable endeavours to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the System 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 Client, and the Client, with the full cooperation of the MSI, shall use all reasonable endeavours to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the System Acceptance Tests, the MSI shall notify the Client of its request for System Acceptance Certification, in accordance with GCC Clause 54.3.3. The Client shall then issue to the MSI the System Acceptance Certification in accordance with GCC Clause 54.3.3(a), or shall notify the MSI of further defects, deficiencies, or other reasons for the failure of the System Acceptance Test. The procedure set out in this GCC Clause 54.3.4 shall be repeated, as necessary, until a System Acceptance Certificate is issued;</p> <p>54.3.5 If the System or Subsystem fails to pass the System Acceptance Test(s) in accordance with GCC Clause 54.2, then either:</p> <p>(a) the Client may consider terminating the Contract, pursuant to GCC Clause 18 a. Client also reserves the right to ask MSI to change the make and model or replace the subsystem on account of continued failure during Testing</p> <p>54.4 Partial Acceptance</p> <p>54.4.1 If so, specified in the SCC for GCC Clause 54.2.1, 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 System Acceptance Test, shall apply to each such major component or Subsystem individually, and System Acceptance Certificate(s) shall be issued accordingly for each such major component or</p>
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	<p>Subsystem of the System, subject to the limitations contained in GCC Clause 54.4.2;</p> <p>54.4.2 The issuance of System Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 54.4.1 shall not relieve the MSI of its obligation to obtain an System Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 40.1 and 54.2.1) once all major components and Subsystems have been supplied, installed, tested, and commissioned;</p> <p>54.4.3 In the case of minor components for the System that by their nature do not require Commissioning or an System Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an System 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 Client or MSI.</p> <p>54.5 Operational Acceptance of the Phase and Project</p> <p>54.5.1 Post successful completion of individual SATs as prescribed and included for individual phases in Volume III, the Phase shall be considered for Operational Acceptance.</p> <p>54.5.2 Post successful completion of all individual SATs, Operational Acceptance of all Phases and the Burn-in Period for the Project, the Project shall be considered for Operational Acceptance.</p> <p>54.5.3 Operational Acceptance Certificate shall be the final certificate which will be issued by the Client before commencement of the Comprehensive Maintenance Phase.</p> <p>54.5.4 All necessary bugs and deficiencies in the System shall be resolved before Operational Acceptance of the Project.</p>
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J. GUARANTEES AND LIABILITIES

<p>55. Operational Acceptance Time Guarantee</p>	<p>55.1 The MSI guarantees that it shall complete the supply, Installation, Integration, Commissioning, and achieve System Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 54.2.1) along with Operational Acceptance of the Phases and the Project within the time periods specified in the Implementation Schedule in the Terms of Reference Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 27.2, or within such extended time to which the MSI shall be entitled under GCC Clause 56 (Extension of Time for Achieving Operational Acceptance).</p> <p>55.2 If the MSI fails to supply, install, commission, and achieve System Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 54.2.1), Operational Acceptance of the Phases</p>
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	<p>and the Project 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 56 (Extension of Time for Achieving Operational Acceptance), the MSI shall pay to the Client liquidated damages at the rate specified in the SCC as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational and System Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the SCC (“the Maximum”). Once the Maximum is reached, the Client may consider termination of the Contract, pursuant to GCC Clause 18 a.</p> <p>55.3 Unless otherwise specified in the SCC, liquidated damages payable under GCC Clause 55.2 shall apply only to the failure and delay to achieve System Acceptance of the System (and Subsystems) / Operational Acceptance of Phases and Project as specified in the Implementation Schedule in the Terms of Reference and/or Agreed and Finalized Project Plan. This Clause 55.3 shall not limit, however, any other rights or remedies the Client may have under the Contract for other delays.</p> <p>55.4 If liquidated damages are claimed by the Client for the System (or Subsystem), the MSI shall have no further liability whatsoever to the Client 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.</p>
<p>56. Extension of Time for Achieving Operational Acceptance</p>	<p>56.1 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:</p> <ul style="list-style-type: none"> (a) Any Change in the System as provided in GCC Clause 14 (Change in the Information System); (b) Any occurrence of Force Majeure as provided in GCC Clause 65 (Force Majeure); (c) Default of the Client; or (d) Any other matter specifically mentioned in the Contract. <p>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.</p> <p>56.2 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</p>

	<p>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 Client and the MSI shall agree upon the period of such extension.</p> <p>56.3 The MSI shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.</p>
<p>57. Defect Liability</p>	<p>57.1 The MSI warrants that the System, including all Information Technologies, 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.</p> <p>57.2 The MSI also warrants that the Information Technologies, 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.</p> <p>57.3 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) those specific items identified in the SCC (if any) have been in the market for at least the minimum periods specified in the SCC.</p> <p>57.4 The Defect Liability (Warranty) Period shall commence from the date of Operational Acceptance of the Project (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time specified in the SCC.</p> <p>57.5 If during the Defect Liability (Warranty) Period any defect as described in GCC Clause 57.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the MSI, the MSI shall promptly, in consultation and agreement with the Client 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 Technologies or other Goods that have been replaced by the MSI shall remain the property of the MSI, except any Information Technologies or Goods for which Client has IP rights or contains confidential information.</p> <p>57.6 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:</p> <p>(a) improper operation or maintenance of the System by the Client;</p>

	<p>(b) normal wear and tear;</p> <p>(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</p> <p>(d) modifications made to the System by the Client, or a third party, not approved by the MSI.</p> <p>57.7 The MSI's obligations under this GCC Clause 57 shall not apply to:</p> <p>(a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or</p> <p>(b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Client or any matters for which the MSI has disclaimed responsibility, in accordance with GCC Clause 48.1.2.</p> <p>57.8 The Client 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 Client shall afford all reasonable opportunity for the MSI to inspect any such defect. The Client 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.</p> <p>57.9 The MSI may, with the consent of the Client, remove from the site any Information Technologies 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 Client 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.</p> <p>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 Client and the MSI.</p> <p>57.10 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 specified in the SCC, the Client 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 Client in connection with such work shall be paid to the Client by the MSI or may be deducted by the Client from any monies due the MSI or claimed under the Performance Security.</p> <p>57.11 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</p>
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	<p>during which the System or Subsystem could not be used by the Client because of such defect and/or making good of such defect.</p> <p>57.12 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.</p> <p>57.13 At the request of the Client and without prejudice to any other rights and remedies that the Client may have against the MSI under the Contract, the MSI will offer all possible assistance to the Client 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 Client of the benefit of any warranties given by such producers or licensors to the MSI.</p> <p>57.14 The Client may instruct the MSI to examine the cause of the defect.</p>
<p>58. Functional Guarantees</p>	<p>58.1 The MSI guarantees that, once the all the System Acceptance Certificates and Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Client'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 54 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.</p> <p>58.2 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 Client upon completion of the necessary changes, modifications, and/or additions and shall request the Client to repeat the System or Operational Acceptance Tests until the System achieves Operational Acceptance.</p> <p>58.3 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Client may consider termination of the Contract, pursuant to GCC Clause 18 a, and/or forfeiture of the MSI's Performance Security in accordance with GCC Clause 39 (c) in compensation for the extra costs and delays likely to result from this failure.</p>
<p>59. Intellectual Property Rights Warranty</p>	<p>59.1 The MSI hereby represents and warrants that:</p> <ul style="list-style-type: none"> (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 Client in accordance with the Contract.

	<p>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 Client 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.</p>
<p>60. Intellectual Property Rights Indemnity</p>	<p>60.1 The MSI shall indemnify and hold harmless the Client 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 Client or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:</p> <ul style="list-style-type: none"> (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 Client's breach of GCC Clause 60.2. <p>However, if any software, material, information etc. provided by the MSI or any subcontractor is or likely to be held to be infringing, the MSI shall on its own cost procure the rights to continue using it or replace it with non-infringing equivalent or modify it to make it non-infringing.</p> <p>60.2 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.</p> <p>60.3 Such indemnities shall also not apply if any claim of infringement:</p> <ul style="list-style-type: none"> (a) is asserted by a parent, subsidiary, or affiliate of the Client's organization; (b) is a direct result of a design mandated by the Client's Terms of Reference and the possibility of such infringement was duly noted in the MSI's Bid; or results

	<p>from the alteration of the System, including the Materials, by the Client</p> <p>60.4 If any proceedings are brought or any claim is made against the Client arising out of the matters referred to in GCC Clause 60.1, the Client shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in the Client's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. All settlement of claims subject to indemnification under this clause shall not entered without the consent of the Client.</p> <p>If the MSI fails to notify the Client within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Client shall be free to conduct the same on its own behalf. Unless the MSI has so failed to notify the Client within the twenty-eight (28) days, the Client shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Client 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.</p> <p>60.5 The Client 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 Client or any persons (other than the MSI) contracted by the Client, except to the extent that such losses, liabilities, and costs arise as a result of the MSI's breach of GCC Clause 60.8.</p> <p>60.6 Such indemnity shall not cover:</p> <ul style="list-style-type: none">(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 Client or any other person contracted by the Client, 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. <p>60.7 Such indemnities shall also not apply:</p> <ul style="list-style-type: none">(a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the MSI's organization;
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	<p>(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 Client or any persons contracted by the Client.</p> <p>60.8 If any proceedings are brought or any claim is made against the MSI arising out of the matters referred to in GCC Clause 60.5, the MSI shall promptly give the Client notice of such proceedings or claims, and the Client 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 Client 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 Client 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 Client's request, afford all available assistance to the Client in conducting such proceedings or claim and shall be reimbursed by the Client for all reasonable expenses incurred in so doing.</p>
<p>61. Limitation of Liability</p>	<p>61.1 Provided the following does not exclude or limit any liabilities of MSI in ways not permitted by applicable law:</p> <p>(a) the MSI shall not be liable to the Client, 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 Client; and</p> <p>(b) the aggregate liability of the MSI to the Client, 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 Client with respect to intellectual property rights infringement.</p>

K. RISK DISTRIBUTION

<p>62. Transfer of Ownership</p>	<p>62.1 With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Client at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract Agreement.</p> <p>62.2 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 42 (Copyright) and any elaboration in the Terms of Reference.</p> <p>62.3 Ownership of the MSI's Equipment used by the MSI and its Subcontractors in connection with the Contract shall remain with</p>
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<p>63. Care of the System</p>	<p>the MSI or its Subcontractors.</p> <p>63.1 The Client shall become responsible for the care and custody of the System or Subsystems upon Contract completion. The MSI shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause till Contract completion, excepting such loss or damage arising from acts or omissions of the Client.</p> <p>63.2 If any loss or damage occurs to the System or any part of the System by reason of:</p> <ul style="list-style-type: none"> (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 contractor 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 65; (b) any use not in accordance with the Contract, by the Client; (c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Client, or any such matter for which the MSI has disclaimed responsibility in accordance with GCC Clause 48.1.2. <p>The Client 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 for reason not attributable to MSI. If the Client 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 Client in accordance with GCC Clause 14. If the Client does not request the MSI in writing to make good any loss or damage to the System thereby occasioned, the Client shall either request a change in accordance with GCC Clause 14, 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 Client shall be at the liberty to terminate the Contract pursuant to GCC Clause 18 a.</p> <p>63.3 Till the end of the Contract, the storage, safety, theft-protection 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.</p>
<p>64. Loss of or Damage to Property; Accident or Injury</p>	<p>64.1 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 Client's Country.</p> <p>64.2 Subject to GCC Clause 64.3, the MSI shall indemnify and hold</p>

<p>to Workers; Indemnification</p>	<p>harmless the Client 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 Client 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 Client, its contractors, employees, officers, or agents.</p> <p>64.3 If any proceedings are brought or any claim is made against the Client that might subject the MSI to liability under GCC Clause 64.2, the Client shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in the Client'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 Client within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Client shall be free to conduct the same on its own behalf. Unless the MSI has so failed to notify the Client within the twenty-eight (28) day period, the Client shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The Client 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.</p> <p>64.4 The Client 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 Client, 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 25 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the MSI.</p> <p>64.5 If any proceedings are brought or any claim is made against the MSI that might subject the Client to liability under GCC Clause 64.4, the MSI shall promptly give the Client notice of such proceedings or claims, and the Client 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 Client 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 Client 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 defence of any such</p>
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	<p>proceedings or claim. The MSI shall, at the Client's request, afford all available assistance to the Client in conducting such proceedings or claim and shall be reimbursed by the Client for all reasonable expenses incurred in so doing.</p> <p>64.6 The party entitled to the benefit of an indemnity under this GCC Clause 64 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.</p>
<p>65. Force Majeure</p>	<p>65.1 "Force Majeure" shall mean any event beyond the reasonable control of the Client 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:</p> <ul style="list-style-type: none"> (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) Strike, sabotage, lockout, embargo, import restriction, port congestion, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague; (d) 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; <p>65.2 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.</p> <p>65.3 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 56 (Extension of Time for Achieving Operational Acceptance).</p> <p>65.4 The parties shall, to the extent possible, endeavour to agree to an alternate mode of performance in order to ensure the continuity of services and implementation of the obligation of the Party under the Contract and minimise any adverse consequence of the Force Majeure The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the</p>

	<p>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 65.6.</p> <p>65.5 No delay or non-performance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:</p> <p>(a) constitute a default or breach of the Contract;</p> <p>(b) (subject to GCC Clauses 63.2, 65.3, and 65.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance.</p> <p>if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.</p> <p>65.6 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.</p> <p>65.7 In the event of termination pursuant to GCC Clause 65.6, the rights and obligations of the Client and the MSI shall be as specified in GCC Clauses 18 a and b.</p> <p>65.8 Notwithstanding GCC Clause 65.5, Force Majeure shall not apply to any obligation of the Client to make payments to the MSI under this Contract for the work satisfactorily completed as per the terms of the Contract.</p> <p>65.9 The Affected Party shall not claim any relief for or in respect of a Force Majeure event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure event is likely to have on the performance of its obligations under this Contract.</p> <p>65.10 Any notice pursuant to this Clause 65.9 shall include full particulars of: (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 65 with evidence in support thereof; (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Contract; (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and (iv) any other information relevant to the Affected Party's claim</p> <p>65.11 The Force Majeure event shall not include any events caused due</p>
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	to acts/omission of MSI resulting in breach/contravention of any terms of the contract. It shall not include any default on part of MSI due to its negligence or failure.
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L. FAIRNESS AND GOOD FAITH

66. Good Faith	66.1 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.
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M. MISCELLANEOUS

67. Amicable Settlement	<p>67.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.</p> <p>67.2 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 thirty (30) days following the response of that Party, GCC Clause 20 shall apply.</p>
68. Performance Security	68.1 The MSI shall furnish to the Client the Performance Security in the format set out in Appendix A, from a scheduled commercial bank in India, to secure the performance of its obligations under the Contract. The Performance Security shall be for an amount specified in the SCC.
69. Assignment	<p>69.1 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 Client.</p> <p>69.2 The Client 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 Client 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.</p>
70. Representation and Warranties	<p>70.1 <u>Client's Representations and Warranties</u></p> <p>The Client makes the following representations and warranties to the MSI:</p> <p>(i) It has been incorporated as a company under the laws of</p>

	<p>India and is validly existing under those laws;</p> <p>(ii) It has power to enter into this Contract and comply with its obligations under it;</p> <p>(iii) 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;</p> <p>(iv) It has in full force and effect the authorizations necessary for it to enter into this Contract and the transactions under it; and</p> <p>(v) Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract.</p> <p>70.2 <u>MSI's Representations and Warranties</u></p> <p>The MSI makes the following representations and warranties to the Client:</p> <p>(i) It has been incorporated/registered as a company/firm under the laws of India and is validly existing under those laws;</p> <p>(ii) It has power to enter into this Contract and comply with its obligations under it;</p> <p>(iii) 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;</p> <p>(iv) It has in full force and effect the authorisations necessary for it to enter into this Contract and the transactions under it;</p> <p>(v) Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;</p> <p>(vi) 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;</p> <p>(vii) There is no pending or threatened proceeding, action, suits, investigation before any court or before any other judicial, quasi judicial or other authority 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;</p> <p>(viii) It has not been subject to any fines, penalties, injunctive</p>
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	<p>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;</p> <p>(ix) It has the necessary skill and experience to perform the Services in accordance with this Contract;</p> <p>(x) It owns or has the right to use and license to the Client all Intellectual Property Rights in relation to the Services and the Deliverables to be provided under this Contract;</p> <p>(xi) 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;</p> <p>(xii) 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 contractor 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</p> <p>(xiii) 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 Client 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.</p> <p>(xiv) it is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;</p> <p>(xv) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the MSI, to any person by way of fees, commission or otherwise for this project or entering into of this Contract.</p> <p>(xvi) no representation or warranty by the MSI contained herein or in any other document furnished by it to the Client contains any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.</p>
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II. General Conditions of Contract - Attachment 1

Attachment 1: Corrupt and Fraudulent Practices

- 1.1 The MSIs and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the selection process. Notwithstanding anything to the contrary contained in the RFQ cum RFP, the Client shall reject a Proposal/terminate the Contract, as applicable, without being liable in any manner whatsoever to the MSI, if it determines that the MSI has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the selection process. In such an event, the Client shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Performance Security, as mutually agreed genuine pre-estimated compensation and damages payable to the Client for, *inter alia*, time, cost and effort of the Client, in regard to the RFQ cum RFP, including consideration and evaluation of such MSI's Proposal.
- 1.2 Without prejudice to the rights of the Client under the RFQ cum RFP and the rights and remedies which the Client may have under the LOA or the Contract, if an MSI is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the selection process, or after the issue of the LOA or the execution of the Contract, such Applicant or MSI shall not be eligible to participate in any tender or RFQ cum RFP issued by the Client during a period of 3 (three) years from the date such MSI is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 1.3 For the purposes of this clause, the following terms shall have the meaning hereinafter respectively assigned to them:
- (i) "corrupt practice" means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the selection process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the selection process) or the LOA or has dealt with matters concerning the Contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the selection process; or (b) save as provided herein, engaging in any manner whatsoever, whether during the selection process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Services or the LOA or the Contract, who at any time has been or is a legal, financial or technical MSI/ adviser of the Client in relation to any matter concerning the Contract;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the selection process;
 - (iii) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person's participation or action in the selection process;

- (iv) “collusive practices” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party¹;
- (v) “undesirable practice” means (a) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the selection process; or (b) having a Conflict of Interest; and
- (vi) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among MSIs with the objective of restricting or manipulating a full and fair competition in the selection process.

¹ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

III. Special Conditions of Contract

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1 (ww)	<p>The post warranty service period is: 36 months, starts with Defect Liability Period (Warranty phase) of One (1) year, and shall include Comprehensive Maintenance (AMC). Comprehensive Maintenance phase shall include both – DLP/Warranty Phase and Post Warranty Service Period and shall be for Thirty-Six (36) Months.</p>
GCC 3.1	<p>The Contract shall be construed in accordance with the law in the state of Uttar Pradesh / India.</p>
GCC 4.1	<p>The language is: English.</p>
GCC 6.1 and 6.2	<p>The addresses are:</p> <p>Client: DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail (where permitted): _____</p> <p>MSI: _____</p> <p>_____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail (where permitted): _____</p>
GCC 8.1	<p>The Authorized Representatives are:</p> <p>For the Client:</p> <p>[Insert name]</p> <p>[Insert designation], DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)</p> <p>_____</p> <p>For the MSI: [name, title] _____</p>

<p>GCC 11.1</p>	<p>Commencement of Contract: The number of days shall be 30 (Thirty) Days from issuance of LOA or Contract signing, whichever is earlier.</p>
<p>GCC 12.1</p>	<p>Expiration of Contract: The term of the Contract shall be Forty-three (43) months, 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 12 of the GCC, then the MSI shall also extend the validity of the Performance Security for an equivalent period.</p>
<p>GCC 21.6</p>	<p>Sub-Contracting allowed for following services: As per the list specified in Bid Data Sheet (BDS) for Instruction To Bidders (ITB), Clause 5.4 (Volume I).</p>
<p>GCC 21.7</p>	<p>Other Obligations of the MSI:</p> <ul style="list-style-type: none"> • The MSI or any of its subcontractor or affiliate 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 18 a, 18 b or 18 c. • The MSI shall not monetize any other hardware, software or solution under this Contract. • The MSI shall get the technical product data sheets approved by Client and its representative before supply of any material on-site. Client reserves the right to not evaluate the technical product data sheets during bid evaluation stage and confirm the same during the design phase. • As specified in Volume III – Terms of Reference.
<p>GCC 22.1.2</p>	<p>The Client reserves the right to determine on a case-by-case basis whether the MSI should be disqualified pursuant to GCC Clause 22.1.2.</p>
<p>GCC 24.1</p>	<p>Exclusions of Liability of MSI: No exclusions.</p>
<p>GCC 25.1(c)</p>	<p>The MSI shall obtain Third-Party Liability Insurance in the amount of INR 10 crores. The Insurance shall cover the entire Contract Period.</p>
<p>GCC 25.1(e)</p>	<p>i. The MSI shall meet the Client'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;</p>

	<p>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.;</p> <p>iii. MSI shall take insurance of sufficient value to protect equipment supplied by MSI against theft and vandalism. This insurance shall commence upon supply of equipment at site till Contract completion (including AMC phase).</p> <p>iv. Insurance for AMC Phase: Insurance against loss of damage to (a) the systems that have been accepted by the Client (b) 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; and</p> <p>v. Any other insurance as required for the Project.</p> <p>MSI shall ensure that applicable insurance is not modified and does not lapse during the duration of the Contract.</p>
GCC 27.1	The MSI shall commence work on the System within: Effective Date.
GCC 27.2	Operational Acceptance will occur on or before: D + 7 months, where D is the Effective Date.
GCC 33.9	The Client shall have the following other responsibilities: <ul style="list-style-type: none"> • Obligations as stated in Volume III (Terms of Reference).
GCC 36.2(b)	Adjustments to the Contract Price shall be as follows: none .
GCC 39(c)(i)	The Performance Security shall be denominated in the currency of the contract for an amount equal to 10 percent of the Contract Price inclusive of applicable GST .
GCC 39(c)(iv)	No reduction in Performance Security.
GCC 40.1	Subject to the provisions of GCC Clause 40, the Client 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: <ol style="list-style-type: none"> I. Supply and Installation Cost: System Supply & Installation Cost (for providing the smart city ICT components and achieving Operational Acceptance), which includes all the costs up to the Operational Acceptance;

	<p>II. Recurrent Cost: Total of all Annual Recurrent Costs during Comprehensive Maintenance/AMC Phase (DLP/Warranty Period and Post-Warranty Service Period).</p> <p>Total Contract Price = Supply and Installation Cost + Recurrent Cost</p> <p>Within each such category, the Contract Implementation Schedule may trigger partial payments for the portion of the total Contract Price for the category corresponding to the goods or services actually Delivered, Installed, or Operationally Accepted, at unit prices and in the currencies specified in the Price Schedules of the Contract Agreement.</p> <p>I. Supply and Installation Cost (SIC)</p> <table border="1"> <thead> <tr> <th rowspan="2">Milestone / Activity / Deliverables</th> <th>Payment</th> </tr> <tr> <th>(% of Contract Price: C)</th> </tr> </thead> <tbody> <tr> <td>Mobilization advance against submission of 110% Advance Bank Guarantee (BG) of the amount of mobilization advance*</td> <td>10% of C</td> </tr> <tr> <td> Go-Live and Operational Acceptance of Phase 0 (E-Mail solution and Messenger, Setting up of Cloud hosting infrastructure along with security architecture, e-LMS Migration and hosting on cloud infrastructure, Implementation of Environmental Sensor, Go-Live of GIS Platform, Setting of CCC (Physical Infrastructure), Implementation of water billing system) </td> <td>5% of C</td> </tr> <tr> <td> Go-Live and Operational Acceptance of Phase 1 (Setting up of EMS for SLA monitoring, Setting up for DMIC IITGNL Office IT infrastructure, Completion of Mini PoP, 50% of Fibre Connectivity, 50% of CCTV surveillance with VMDs, Implementation of Smart City Platform along with Integration of Surveillance, GIS and Water Utility Billing System) </td> <td>15% of C</td> </tr> <tr> <td> Go-Live and Operational Acceptance of Phase 2 (100% of Fibre Optic Infrastructure, 100% of City Surveillance with VMDs, 100% completion of remaining IIT Software Modules (ISM), 100% of CCC, 100% integration of System provided by third party systems (power, AWCS, streetlight) at CCC, 100% completion of any other components) </td> <td>15% of C</td> </tr> <tr> <td>Training to DMIC IITGNL staff associated with ISM and CCC***</td> <td>3% of C</td> </tr> </tbody> </table>	Milestone / Activity / Deliverables	Payment	(% of Contract Price: C)	Mobilization advance against submission of 110% Advance Bank Guarantee (BG) of the amount of mobilization advance*	10% of C	Go-Live and Operational Acceptance of Phase 0 (E-Mail solution and Messenger, Setting up of Cloud hosting infrastructure along with security architecture, e-LMS Migration and hosting on cloud infrastructure, Implementation of Environmental Sensor, Go-Live of GIS Platform, Setting of CCC (Physical Infrastructure), Implementation of water billing system)	5% of C	Go-Live and Operational Acceptance of Phase 1 (Setting up of EMS for SLA monitoring, Setting up for DMIC IITGNL Office IT infrastructure, Completion of Mini PoP, 50% of Fibre Connectivity, 50% of CCTV surveillance with VMDs, Implementation of Smart City Platform along with Integration of Surveillance, GIS and Water Utility Billing System)	15% of C	Go-Live and Operational Acceptance of Phase 2 (100% of Fibre Optic Infrastructure, 100% of City Surveillance with VMDs, 100% completion of remaining IIT Software Modules (ISM), 100% of CCC, 100% integration of System provided by third party systems (power, AWCS, streetlight) at CCC, 100% completion of any other components)	15% of C	Training to DMIC IITGNL staff associated with ISM and CCC***	3% of C
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<p>Total Payment for Supply and Installation</p>	<p>60% of Contract Price</p>						
<p>GCC 40.5</p>	<p>*110% Advance BG against mobilization advance shall be valid for 180 days post implementation phase i.e. 13 months. Advance BG shall be returned to MSI post successful completion of Operational Acceptance of the Project and at starting of the Maintenance Phase. *** Payment will be disbursed on satisfaction and successful signoff of DMIC IITGNL stakeholders on completion of training.</p> <p>II. Recurrent Cost (RC)</p> <p>Recurrent costs during the Maintenance Period – Remaining 40% payment paid quarterly in equal installments after deduction of any penalty arising out of service levels.</p> <p><i>All payment to be made upon respective approval by DMIC IITGNL and its representatives.</i></p> <p>Please Note:</p> <p><i>Payment for any deliverable can never exceed the cumulative pro rata BOQ line item cost as per MSI's Financial proposal</i></p> <p>Payments shall be done in below account of the MSI: [insert account details viz.,</p> <ul style="list-style-type: none"> (i) account name; (ii) account number; (iii) bank name and branch; and (iv) IFSC Code] 						

<p>GCC 42.4</p>	<p>The Client's and MSI's rights and obligations with respect to Customized Software or elements of the Customized Software are as follows:</p> <ul style="list-style-type: none"> <i>i.</i> The MSI shall hand over the source code for software, database, and executables to the Client which shall correspond 100% to the operational module and shall be verified and certified by an independent agency as identified by the Client. This is limited to all customized software and its subsystems provided by the MSI; <i>ii.</i> The Client may duplicate and use the software on different equipment, such as for back-ups, additional computers, replacements, upgraded units, etc.
<p>GCC 42.5</p>	<p>Certified Escrow account not Applicable for this Contract. MSI shall handover source code to the Client for all Client specific customization.</p>
<p>GCC 44.7</p>	<p>The provisions of this GCC Clause 44.7 shall survive the termination, for whatever reason, of the Contract for the period specified in the GCC.</p>
<p>GCC 45.1</p>	<p>No additional powers or limitations.</p>
<p>GCC 45.2.2</p>	<p>No additional powers or limitations.</p>
<p>GCC 46.1</p>	<p>Chapters in the Project Plan shall address the following subjects:</p> <ul style="list-style-type: none"> (a) Project Organization and Management Plan; (b) Delivery and Installation Plan; (c) Training Plan; (d) Pre-commissioning and Operational Acceptance Testing Plan; (e) Maintenance support Service Plan; (f) Task, Time, and Resource Schedules; (g) Technical Support Plan. <p>Any other submission relevant to the project as required by the Client or its Project Manager post contract award.</p>
<p>GCC 46.2</p>	<p>Within thirty (30) days from the Effective Date of the Contract, the MSI shall present a Project Plan to the Client. The Client shall, within thirty (30) days of receipt of the Project Plan, notify the MSI of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 46.2 called "non-conformities" below). The MSI shall, within seven (7) days of receipt of such notification, correct the Project Plan and resubmits to the Client. The Client shall, within seven (7) days of resubmission of the Project Plan, notify the MSI of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the</p>

	<p>Client shall provide confirmation in writing to the MSI. This approved Project Plan (“the Agreed and Finalized Project Plan”) shall be contractually binding on the Client and the MSI. In case of any deviation (which affects the project timelines and deliverables) from the finalized project plan during the course of the project, the MSI is required to update the same within 5 days of such deviation and notify the Client and get the approval as per the timelines mentioned above.</p>
<p>GCC 46.5</p>	<p>The MSI shall submit to the Client the following reports during the Contract period:</p> <ul style="list-style-type: none"> (a) Monthly progress reports, summarizing: <ul style="list-style-type: none"> (i) results accomplished during the prior period; (ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan; (iii) corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule; (iv) other issues and outstanding problems; proposed actions to be taken; (v) resources that the MSI expects to be provided by the Client and/or actions to be taken by the Client in the next reporting period; (vi) other issues or potential problems the MSI foresees that could impact on project progress and/or effectiveness. (b) Inspection and quality assurance reports; (c) System failure or fault reports; (d) Monthly log of service calls and problem resolutions. <p>Any other report as required by the Client which is related to the present procurement.</p>
<p>GCC 48.3.1</p>	<p>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. The following is an indicative but not an exhaustive list of documentation and the Project Manager can request for additional submissions during the course of the project:</p> <ul style="list-style-type: none"> 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;

	<ul style="list-style-type: none"> ix. Burn-in Tests and Plan; x. System Acceptance Tests and Plan; xi. Maintenance Support Service Plan; xii. Task, Time, and Resource Schedules; xiii. Technical Support Plan; xiv. Preventive Maintenance Plan; xv. Exit Management Plan. xvi. Any other plan as may be deemed necessary for the project. 									
GCC 49.5	There are no Special Conditions of Contract applicable to GCC Clause 49.5									
GCC 54.2.1	System and 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 III – Terms of Reference (Scope of Work – Testing).									
GCC 55.2	Liquidated damages shall be assessed at 1.0 percent per week of Contract Value 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.									
GCC 55.3	<ul style="list-style-type: none"> • Liquidated damages shall also be applicable to all the Milestones as defined in the Volume III – Terms of Reference. <p>Liquidated damages shall be assessed at 1.0 percent per week of the total milestone payment which MSI has failed to achieve. Maximum liquidated damages shall be 10 percent of the total milestone payment.</p> <p>Liquidated damages shall come into effect from the Effective Date</p> <p>The payment of Liquidated Damages shall not relieve the MSI from any of its obligation to complete the System or from any other of its obligations and liabilities.</p>									
GCC 56	There are no Special Conditions of Contract applicable to GCC Clause 56.									
GCC 57.3 (iii)	<p>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.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">S. No</th> <th style="width: 30%;">Equipment Name</th> <th style="width: 60%;">Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">2</td> <td></td> <td></td> </tr> </tbody> </table>	S. No	Equipment Name	Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere	1			2		
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1										
2										

	<p>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 III – Terms of Reference of the RFQ cum RFP document. Software customization to meet the technical and functional requirements specified in Volume III – Terms of Reference is allowed.</p>
GCC 57.4	<p>The Defect Liability Period shall begin from the date of Operational Acceptance of the System (Project) and extend for 12 months.</p>
GCC 57.10	<p>During the Maintenance Period, the MSI must commence the work necessary to remedy defects or damage within 2 hours of notification. The Service levels to which the MSI shall adhere to are specified in the RFQ cum RFP.</p>
GCC 68.1	<p>Performance Security:</p> <ul style="list-style-type: none"> (i) The Performance Security shall be for 10% of the Total Value of Contract (inclusive of applicable GST); (ii) The Performance Security shall be issued by a Scheduled Commercial bank in India and acceptable to the Client. The Performance Security shall be valid until a date 180 days beyond the issuance of the Contract Completion Certificate. Any stamp duty required for this shall be borne by the MSI; (iii) The Client shall not make a claim under the Performance Security, except for amounts to which the Client is entitled under the Contract in the event of: <ul style="list-style-type: none"> (a) failure by the MSI to extend the validity of the Performance Security on extension of the validity of the Contract, in which event the Client may claim the full amount of the Performance Security; (b) failure by the MSI to pay the Client an amount due, as either agreed or determined pursuant to the dispute resolution process specified in the Contract, within forty two (42) days after determination of the dispute; (c) failure by the MSI to pay any damages due to the Client under the Contract; (d) failure by the MSI to pay any amounts that are due to the Client on termination of the Contract; (e) the MSI engaging in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practice. (f) In case of material breach of the terms of the contract (iv) If the Performance Security is or becomes invalid for any reason during the term of the Contract, the MSI shall immediately notify the Client and provide the Client with a replacement Performance Security in the form set out in Appendix A within five (5) days of the earlier Performance Security becoming invalid; (v) If the validity period of the Performance Security is less than the

	<p>period specified in sub-clause (ii) above, then no later than thirty (30) days before the expiry of the Performance Security, the MSI shall obtain an extension of the validity of such Performance Security and provide the Client with a copy of the renewed security. If the MSI fails to extend the Performance Security, the Client shall be entitled to draw on and claim the un-drawn amount thereunder, provided that the amount so received shall be treated as a cash security and to the extent that there are no outstanding claims, shall be released upon submission of a new Performance Security acceptable to the Client;</p> <p>(vi) The provision, maintenance or renewal of the Performance Security by the MSI in accordance with the terms of the Contract, shall be a condition precedent to any payment by the Client to the MSI.</p> <p>(vii) Client reserves the right to ask the MSI to furnish additional Performance Bank Guarantee proportional to the increase in value of contract, if any.</p> <p>On successful completion of the contractual obligations under the Contract by the MSI, the Client shall return the Performance Security within twenty one (21) days of the end of the validity period of the Performance Security after adjusting/ recovering any dues recoverable/ payable from/ by the MSI on any account under the contract.</p>
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Appendices

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 DMIC Integrated Industrial Township Greater Noida Limited (hereinafter referred as the 'Client', 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 Client'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 Client 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 Client 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 Client on the Bank shall be conclusive and binding notwithstanding any difference between the Client 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 (I) until the Client discharges this guarantee or (II) until the expiry date, whichever is earlier.

The Client 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 Client 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 Client 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 Client and the MSI any other course or remedy or security available to the client. The Bank shall not be relieved of its obligations under these presents by any exercise by the Client 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 Client or any other indulgence shown by the Client 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 Client 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 client may have in relation to the MSI's liabilities.

Appointment of Master System Integrator (MSI) For Supply, Implementation, Integration, Operations And Maintenance Of Smart City ICT Components At Integrated Industrial Township (IIT), Greater Noida under the DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)

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] ("Expiry Date").

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 date will be fixed as indicated in S.C.C.

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 Client.

Appendix B: Non-Disclosure Agreement

(To be provided on Non-Judicial Stamp Paper of Rs. 100/-)

WHEREAS, we the undersigned MSI, _____, having our principal place of business/ registered office at _____, are desirous of bidding for RFQ cum RFP _____ [RFQ cum RFP Name]" (hereinafter called the said 'RFQ cum RFP') to DMIC IITGNL, having its Registered Office at 11th Floor, Tower 1, Plot No.-1, Knowledge Park-IV, Greater Noida, Gautam Budh Nagar, Uttar Pradesh 201308, India, hereinafter referred to as 'Client' and, WHEREAS, the MSI is aware and confirms that the Client's business/ operations, information, Application/software, hardware, business data, architecture schematics, designs, storage media and other information / documents made available by the Client in the RFQ cum RFP documents during the bidding process and thereafter, or otherwise (confidential information for short) is privileged and strictly confidential and/or proprietary to the Client, NOW THEREFORE, in consideration of disclosure of confidential information, and in order to ensure the Client's grant to the MSI of specific access to Client's confidential information, property, information systems, network, databases and other data, the MSI agrees to all of the following conditions. It is hereby agreed as under:

1. The confidential information to be disclosed by the Client under this Agreement ("Confidential Information") shall include without limitation, any and all information in written, representational, electronic, verbal or other form relating directly or indirectly to processes, methodologies, algorithms, risk matrices, thresholds, parameters, reports, deliverables, work products, specifications, architecture, project information, related computer programs, systems, trend analysis, risk plans, strategies and information communicated or obtained through meetings, documents, correspondence or inspection of tangible items, facilities or inspection at any site to which access is permitted by the Client. We also hereby agree that this disclosure will be binding on us through-out the contract period and will survive the contract period in case we are selected as the MSI.
2. Confidential Information does not include information which:
 - a) the MSI knew or had in its possession, prior to disclosure, without limitation on its confidentiality;
 - b) information in the public domain as a matter of law;
 - c) is obtained by the MSI from a third party without any obligation of confidentiality;
 - d) the MSI is required to disclose by order of a competent court or regulatory authority;
 - e) is released from confidentiality with the written consent of the Client.

The MSI shall have the burden of proving herein above are applicable to the information in the possession of the MSI.

3. The MSI agrees to hold in trust any Confidential Information received by the MSI, as part of the RFQ cum RFP process or otherwise, and the MSI shall maintain strict confidentiality in respect of such Confidential Information, and in no event a degree of confidentiality less than the MSI uses to protect its own confidential and proprietary information. The MSI also agrees:
 - a) to maintain and use the Confidential Information only for the purposes of bidding for this RFQ cum RFP and thereafter only as expressly permitted herein;
 - b) to only make copies as specifically authorized by the prior written consent of the Client and with the same confidential or proprietary notices as may be printed or displayed on the original;

- c) to restrict access and disclosure of Confidential Information to their employees, agents, and representatives strictly on a "need to know" basis, to maintain confidentiality of the Confidential Information disclosed to them in accordance with this clause;
 - d) to treat Confidential Information as confidential unless and until Client expressly notifies the MSI of release of its obligations in relation to the said Confidential Information.
4. Notwithstanding the foregoing, the MSI acknowledges that the nature of activities to be performed as part of the RFQ cum RFP process or thereafter may require the MSI's personnel to be present on premises of the Client or may require the MSI's personnel to have access to software, hardware, computer networks, databases, documents and storage media of the Client while on or off premises of the Client. It is understood that it would be impractical for the Client to monitor all information made available to the MSI's personnel under such circumstances and to provide notice to the MSI of the confidentiality of all such information. Therefore, the MSI shall disclose or allow access to the Confidential Information only to those personnel of the MSI who need to know it for the proper performance of their duties in relation to this project, and then only to the extent reasonably necessary. The MSI will take appropriate steps to ensure that all personnel to whom access to the Confidential Information is given are aware of the MSI's confidentiality obligation. Further, the MSI shall procure that all personnel of the MSI are bound by confidentiality obligation in relation to all proprietary and Confidential Information received by them which is no less onerous than the confidentiality obligation under this agreement.
5. The MSI shall establish and maintain appropriate security measures to provide for the safe custody of the Confidential Information and to prevent unauthorized access to it.
6. Confidential Information shall at all times remain the sole and exclusive property of the Client. Upon completion of the RFQ cum RFP process and/or termination of the contract or at any time during its currency, at the request of the Client, the MSI shall promptly deliver to the Client the Confidential Information and copies thereof in its possession or under its direct or indirect control, and shall destroy all memoranda, notes and other writings prepared by the MSI or its Affiliates or directors, officers, employees or advisors based on the Confidential Information within a period of sixty days from the date of receipt of notice, or destroyed, if incapable of return. The destruction shall be witnessed and so recorded, in writing, by an authorized representative of the Client. Without prejudice to the above the MSI shall promptly certify to the Client, due and complete destruction and return. Nothing contained herein shall in any manner impair rights of the Client in respect of the Confidential Information.
7. In the event that the MSI hereto becomes legally compelled to disclose any Confidential Information, the MSI shall give sufficient notice and render best effort assistance to the Client to enable the Client to prevent or minimize to the extent possible, such disclosure. MSI shall not disclose to a third party any Confidential Information or the contents of this RFQ cum RFP without the prior written consent of the Client. The obligations of this Clause shall be satisfied by handling Confidential Information with the same degree of care, which the MSI applies to its own similar Confidential Information but in no event less than reasonable care.
8. The MSI agrees to indemnify the Client against any and all losses, damages, claims, or expenses incurred or suffered by the Client as a result of the MSI's breach of this Agreement.
9. The MSI understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause the Client irreparable damage, the amount of which may be difficult to ascertain and, therefore, agrees that the Client shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Client shall deem appropriate. Such right of the Client shall be in addition to Remedies otherwise available to the Client at law or in equity.

10. Notwithstanding any other provisions of this Agreement, the obligations of confidentiality of the information shall survive the termination or expiration of this Agreement.

For and on behalf of:

(Bidder)

Authorized Signatory Office Seal:

Name:

Place:

Designation:

Date:

Service Level Agreement (SLA)

IV. Service Levels

1.1 Purpose

1. The purpose of Service Levels is to define the levels of service provided by the Master Service Integrator (“**MSI**”) to DMIC Integrated Industrial Township Greater Noida Limited (“**Client**”) for the duration of the contract. The benefits of this are:
 - a. Help the Client 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.
2. The Service Levels are between the Client and MSI.

1.2 Service Level Agreements & Targets

1. This section is agreed to by Client and MSI as the key performance indicator for the project.
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 Contact.
3. If the situation arise, SLAs may be reviewed and revised by the Client in agreement with MSI during the Maintenance Phase.

1.3 General Principles of Service Level Agreements

1.3.1 Liquidated Damages

As per GCC and SCC.

1.3.2 Service Level Agreements

Service Level Agreement (SLA) shall become the part of the Contract between the Client 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.

The maximum penalty applicable on respective quarterly payment for not adhering to the SLA’s is capped at 40% of the quarterly applicable payment proposed by the MSI. However, DMIC IITGNL has an option to consider termination of the contract if the penalty exceeds 20% of the quarterly payment of Recurrent Cost (OPEX) to the MSI as per the GCC Clause 18.1(f)

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:

- “Total Time” – Total number of hours in the month being considered for evaluation of SLA performance.
- “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.
- “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 seek at least 15 days prior written approval from the Client 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.

- “Uptime” – Time period for which the specified services are available in the period being considered for evaluation of SLA.
- $Uptime (\%) = (1 - \frac{[Total Downtime]}{[Total Time - Scheduled Maintenance Time]}) * 100$.
- “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.
- “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.
- “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.
- “Target” – is the availability of hardware/sensors/field devices and their data at the CCC for a particular system. It is calculated as $= \frac{[(Total uptime of all hardware/sensors/field devices in a quarter)]}{(Total time in quarter)} * 100$.

Penalty shall be applied for each criteria individually as per downtime of each applicable component and then added together for the total penalty for a particular quarter.

1.4 Service Levels Monitoring

The Service Level parameters shall be monitored on a quarterly basis. Penalties associated with performance for SLAs shall be made after deducting from applicable payments of the quarter or through the Performance Bank Guarantee.

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 Client 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, the Client reserves the right to invoke up to double the penalty of the respective quarterly phase.

The MSI will endeavor to exceed these levels of service wherever possible.

MSI undertakes to notify the Client of any difficulties, or detrimental/adverse findings as soon as possible once they are identified.

MSI will provide a supplemental report on any further information received, as soon as the information becomes available.

MSI will take instruction only from authorized personnel of the Client.

In case issues are not rectified to the complete satisfaction of Client, within a reasonable period of time defined in the RFQ cum RFP, the Client shall have the right to take appropriate remedial actions including liquidated damages, applicable penalties, 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 Client. In case it is established that the MSI was responsible for such breach, respective penalty shall be applied to the MSI.

1.5 Measurements & Targets

1.5.1 Implementation Phase related SLAs

During Implementation phase any delay in deliverables and milestones shall attract liquidated damages as per GCC Clause 55.

1.5.2 Operations & Maintenance Phase SLAs

These SLAs shall be used to evaluate the performance of the services post the Implementation Phase and commencement of the Comprehensive Maintenance Phase. These SLAs and associated performance shall be monitored on quarterly basis. Penalty levied for non-performance as per SLA shall be deducted through subsequent payments due from the Client or through the Performance Bank Guarantee.

The Scheduled Maintenance Time shall be agreed upon with the Client as per the definition given as part of this section of the Contract.

The subsequent sections 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. In case of not meeting the SLA's, the corresponding penalties as defined in the sections below shall apply:

1.5.2.1 Telecom Connectivity related Performance Levels

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1	Availability of Telecom Connectivity	High	99.50%	0.25%	50,000	For every decrease of 0.25% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed

1.5.2.2 Network Related Performance Levels

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Overall Network Availability in backbone, distribution and access levels	High	99.50%	0.25%	10,000	For every decrease of 0.25% in availability of each device & its associated component in a quarter, a penalty of 10,000 shall be imposed
2	Mean Time To Repair (MTTR) for Fibre	High	≤ 4 hours	30 mins	5,000	For every increase of 30 mins in repairing of Fibre & its associated component in a quarter, a penalty of 5,000 shall be

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
						imposed

1.5.2.3 Application Performance Levels

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Availability of following critical applications and their related portals/interface: Smart City Platform, EMS, Video Management System Software, , GIS Enterprise, Portal, Utility Management and Billing, Citizen Grievances Redressal, e-Mail Solution and Instant Messenger for DMIC IITGNL, , IIT specific customizations and upgrades	High	99.50%	0.25%	50,000	For every decrease of 0.25% in availability of each application (Calculated individually) in a quarter, a penalty of 50,000 shall be imposed
2.	Availability of following less critical applications including their portals/interface: Customer Relationship Management (CRM , Mobile Application, KPI and Dashboards, Variable Message Display software, IIT specific customizations and upgrades	Moderate	99.50%	0.25%	25,000	For every decrease of 0.25% in availability of each application (Calculated individually) in a quarter, a penalty of 25,000 shall be imposed
3.	Percentage of transactions meeting the	Response time shall be	95.00%	1.00%	10,000	For each instance of decrease by 1% in achieving

Appointment of Master System Integrator (MSI) For Supply, Implementation, Integration, Operations And Maintenance Of Smart City ICT Components At Integrated Industrial Township (IIT), Greater Noida under the DMIC Integrated Industrial Township Greater Noida Limited (DMIC IITGNL)

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
	prescribed response time for Business transactions for following applications and their related portals/interface: Customer Relationship Management (CRM), Mobile Application, KPI and Dashboards, Smart City Platform, EMS, Video Management System Software, , , GIS Enterprise Water Utility Management and Billing, Citizen Grievances Redressal, e-Mail Solution and Instant Messenger for DMIC IITGNL, Variable Message Display software, IIT specific customizations and upgrades	calculated as time elapsed between sending request from client to server and receiving the response. Assume connection speed of 2 Mbps for testing Response time to be measured at interval of 30 minutes and averaged quarterly				required response time, a penalty of 10,000 shall be imposed.
4.	Percentage of transactions meeting the prescribed Loading time for all pages for following applications and their related portals/interface including web applications: Customer Relationship Management (CRM), Mobile Application, KPI and Dashboards, Smart	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 over Internet or	95.00%	1.00%	5,000	For each instance of decrease by 1% in achieving required loading time, a penalty of 5,000 shall be imposed.

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
	City Platform, EMS, Video Management System Software, , GIS Enterprise Portal, Water Utility Management and Billing, Citizen Grievances Redressal, e-Mail Solution and Instant Messenger for DMIC IITGNL, Variable Message Display software, IIT specific customizations and upgrades	through network				

1.5.2.4 CCC Related Performance Levels

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Video wall / Controller / Display Content Management System & Video Display on-site	High	99.90%	0.10%	10,000	For every decrease of 0.10% in availability of each device & its associated component in a quarter, a penalty of 10,000 shall be imposed
2	Any other item at CCC (on-site and CCC both)	Low	99.00%	1.00%	2,000	For every decrease of 1% in availability of each device & its associated component in a quarter, a penalty of 2,000 shall be imposed

1.5.2.5 CCTV System Related Performance Levels

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1	CCTV – Fixed / CCTV – PTZ	Moderate	99.00%	0.50%	10,000	For every decrease of 0.50% in availability of each device & its associated component in a quarter, a penalty of 10,000 shall be imposed.

1.5.2.6 Environmental Monitoring System- Availability

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Environmental Sensors	Moderate	99.00%	1.00%	10,000	For every decrease of 1% in availability of each device & its associated component in a quarter, a penalty of 10,000 shall be imposed

1.5.2.7 Variable Message Display Screen (VMD) – Availability

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Variable Message Display Screen (VMD)	High	99.00%	0.50%	5,000	For every decrease of 0.50% in availability of each device & its associated component in a quarter, a penalty of 5,000 shall be imposed

1.5.2.8 IT Infrastructure- Availability

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1	Server / Storage / UPS	High	99.90%	0.10%	50,000	For every decrease of 0.10% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed
2.	Data Security Modules – Firewall / Anti-Virus / Solution	High	100.00%	0.10%	1,00,000	For every decrease of 0.10% in availability of each device & its associated component in a quarter, a penalty of 1,00,000 shall be imposed
3	Workstations/ Multifunctional Printer / /LED Display/ Monitor	Moderate	99.00%	0.50%	5,000	For every decrease of 0.50% in availability of each device & its associated component in a quarter, a penalty of 5,000 shall be imposed

1.5.2.9 Problem Management SLA

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1	Problem Management MSI shall analyse all the incidents and provide a root cause report quarterly if there are more than 10 incidents of the same type. MSI shall take the	High	Within 5 days	1 day	5,000	For every increase in number of day after 5 days to submit the root cause report, the penalty of 5,000/ day shall be imposed.

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
	needed corrective action to prevent further issues due to the same cause					

1.5.2.10 Security

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Security Reporting	High	Quarterly security report to be submitted with 100% KPIs defined for security (agreed with Client at start of project)	1 day	2,000	For every delay of one day a penalty of 2,000/day shall be imposed
2	Vulnerability assessment and closure	High	Vulnerability assessment for all systems/ subsystems shall be performed at least once every quarter and all detected vulnerabilities to be closed within 7 days. Client may appoint third party agency to cross-check.	1 day	2,000	For every delay of one day after 7 days a penalty of 2,000/day shall be imposed
3	Penetration testing	High	Penetration testing shall be conducted once every quarter. All vulnerabilities shall be closed within 7 days.	1 day	2,000	For every delay of one day after 7 days, a penalty of 2,000/day shall be imposed
4	Application Security	High	Cyber Crime/Hacking /Data	1 day	5,00,000	Penalty of 5,00,000/occurr

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
			Theft/Fraud attributable to MSI. To be evaluated per occurrence.			ence shall be imposed

1.5.2.11 Cloud Hosting – Operations Phase

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
1.	Availability/Uptime of cloud services and Resources for cloud Infrastructure Availability (as per the definition in the SLA) will be measured for each of the underlying components (e.g., VM, Storage, OS, VLB, Security Components, orchestration layer, virtualization layer) provisioned in the cloud. Measured with the help of SLA reports.	High	99.95%	0.50%	50,000	For every decrease of 0.50% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed
2	Data Security, Data Privacy Incident or Data Breach, Data Mining and Management Reporting - Percentage of timely incident report Measured as a percentage by the number of defined incidents reported within a predefined time (1 hour) limit	High	95.00% within 1 Hour	5.00%	50,000	For every decrease of 5% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
	after discovery, over the total number of defined incidents to the cloud service which are reported within a predefined period (i.e. Quarter). Incident Response - MSI shall assess and acknowledge the defined incidents within 1 hour after discovery.					
3	Data Security, Data Privacy Incident or Data Breach, Data Mining and Management Reporting – Percentage of timely incident resolutions Measured as a percentage of defined incidents against the cloud service that are resolved within a predefined time limit (quarter) over the total number of defined incidents to the cloud service within a predefined period (quarter). Measured from Incident Reports	High	95.00% within 1 Hour	5.00%	50,000	For every decrease of 5% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed
4	Percentage of timely vulnerability corrections The number of vulnerability corrections performed by the cloud service provider - Measured as a percentage by	High	99.95%	0.50%	50,000	For every decrease of 0.50% in availability of each device & its associated component in a quarter, a penalty of 50,000 shall be imposed

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
	<p>the number of vulnerability corrections performed within a predefined time limit, over the total number of vulnerability corrections to the cloud service which are reported within a predefined period (i.e. month, week, year, etc.).</p> <ul style="list-style-type: none"> High Severity Vulnerabilities – 30 days - Maintain 99.95% service level Medium Severity Vulnerabilities – 90 days - Maintain 99.95% service level 					
5	<p>Security and Privacy breach including Data Theft / Loss/ Corruption/Mining</p> <p>Any incident where in system compromised, privacy breached, data is corrupted, data is mined or any case wherein data theft occurs (including internal incidents)</p>	High	No Breach	-	-	For each breach/data theft/data corruption/data mining issue/privacy breach, penalty will be levied as per following criteria. Any security incident detected INR 10 Lakhs. This penalty is applicable per incident. These penalties will not be part of overall SLA penalties cap per quarter. In case of serious breach of security wherein

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
						the data is stolen, mined, privacy breached or corrupted, Client reserves the right to terminate the contract.
6	Meeting Recovery Time Objective (RTO) Measured during the regular planned or unplanned (outage) changeover from DC to secondary DC / DRC or vice versa.	High	As per project requirement given in Volume III – Terms of Reference. If it exceeds as per below following penalties to be levied	10 mins	1,00,000	For every increase of 10 mins in RTO, a penalty of 1,00,000 shall be imposed
7	Meeting Recovery Point Objective (RPO) Measured during the regular planned or unplanned (outage) changeover from DC to secondary DC / DRC or vice versa.	High	As per project requirement given in Volume III – Terms of Reference. If it exceeds as per below following penalties to be levied	10 mins	1,00,000	For every increase of 10 mins in RPO, a penalty of 1,00,000 shall be imposed

1.5.2.12 Helpdesk (EMS) – Performance

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
4	Helpdesk – Logging of service ticket number	High	99.00%	0.50%	20,000	For every decrease of 0.50% in logging of service ticket number calculated over a period of one quarter, a

S. No	Component	Severity Level	Requirement	Falls By / Increases By	Penalty (INR)	Calculation (Currency in INR)
						penalty of 20,000 shall be imposed
5	Helpdesk – Resolution of ticket logged	High	99.00%	0.50%	20,000	For every decrease of 0.50% in resolution of service ticket calculated over a period of one quarter, a penalty of 20,000 shall be imposed.

1.6 Severity Level

Each SLA component is categorized into severity levels which are high, moderate & low. Depending on the severity of the component, the downtime will be multiplied by multiplication factor (f) as indicated in the table below:

Downtime multiplication factor (f)	Severity Level with respect to resolution time		
	High	Moderate	Low
1	Up to 2 hours	Up to 4 hours	Up to 8 hours
2	>2 & ≤3 hours	> 4 & < 5 hours	> 8 & < 12 hours
4	>3 & <5 hours	> 5 & < 10 hours	> 12 & < 15 hours
10	> 5 hours	> 10 hours	> 15 hours

$$Total\ Downtime\ (of\ each\ component) = \sum_{i=1}^n (Downtime\ of\ individual\ device)_i \times (f)_i$$

1.7 Reporting Procedures

MSI representative shall prepare and distribute Service level performance reports in a mutually agreed format by the **5th working day of subsequent month and one consolidated report by the 5th working day of every subsequent quarter**. The reports shall include “**actual versus target**” Service Level Performance, a variance analysis and discussion of appropriate issues or significant events. Performance reports shall be distributed to Client management personnel as directed by Client.

Also, MSI may be required to get the Service Level performance report audited by a third-party Auditor appointed by the Client.

1.8 Service Level Change Control

1.8.1 General

It is acknowledged that this **Service levels may change as Client’s business needs evolve over the course of the contract period**. As such, this document also defines the following management

procedures:

1. A process for negotiating changes to the Service Levels.
2. An issue management process for documenting and resolving particularly difficult issues.
3. Client 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 shall be requested, documented and negotiated in good faith by both parties. Either party can request a change.

Service Level Change Process: 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 Client. Additional copies of the current Service Levels shall be available at all times to authorized parties.

Version Control / Release Management: 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.

1.8.2 Governing Law and Dispute Resolution

Governing Law: The rights and obligations of the Parties hereunder shall be governed by, and construed in accordance with, the laws of the Republic of India.

Dispute Resolution: As per GCC and SCC

1.8.3 Notices

Form of Notice

Any notice, consent, request, demand, approval or other communication to be given or made under or in connection with the Contract (each, a "**Notice**" for the purposes of this clause) shall be in English, in writing and signed by or on behalf of the person giving it.

Address for Service

Notices shall be addressed as follows:

Notices to the MSI

Name	:	_____
Address	:	_____
Fax number	:	_____
To the attention of	:	Mr/Ms/Mrs _____

Notices to the Client:

Name	:	_____
Address	:	_____
Fax number	:	_____
To the attention of	:	Mr/Ms/Mrs _____

Change of details

A Party may change its address for service provided that it gives the other Parties not less than [•] (<insert number in words>) days' prior notice in accordance with the aforesaid. Until the end of such notice period, service on either address shall remain effective.

1.8.4 Assignment

This Agreement, or any right or interest herein, shall not be assignable or transferable by any Party except with the prior written consent of the other Parties.

1.8.5 Amendments

This Agreement may not be amended, modified or supplemented except by a written instrument executed by each of the Parties.

1.8.6 No Partnership

Nothing herein shall constitute or be construed to be or to create a partnership or joint venture or association of person between MSI and Client. The Client shall not be liable for the payment of debts, taxes, obligations or other liabilities of MSI which have been incurred by MSI in the performance of its duties. It is hereby agreed and declared that each of the Parties have undertaken obligations and has rights specified herein on their own account and on principal to principal basis and not on behalf of or on account of or as agent of any of them or of anyone else. No Party shall act as an agent of the other Party or have any authority to act for or to bind the other Party.

1.8.7 Counterparts

The Contract may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original but all of which together shall constitute one and the same instrument and any Party may execute the Contract by signing any one or more of such originals or counterparts. The delivery of signed counterparts by facsimile transmission or electronic mail in "portable document format" (".pdf") shall be as effective as signing and delivering the counterpart in person.