



REQUEST FOR PROPOSAL
FOR
SELECTION OF MASTER SYSTEM INTEGRATOR FOR
IMPLEMENTATION OF INTEGRATED COMMAND &
CONTROL CENTER AND SMART COMPONENTS IN
LUDHIANA CITY

Volume 3 – Master Service Agreement
Date: 06th December 2018

Invited by:

Ludhiana Smart City Limited
2nd Floor, Office of CEO,
Zone A- Ludhiana Municipal Corporation Office,
Mata Rani Chowk, Ludhiana, Punjab

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PREAMBLE

This RFP document comprises of the following three parts:

Part A: General Conditions of the Contract

Part B: Special Conditions of the Contract

Part C: Service Levels

Part A: General Conditions of the Contract

This part comprises of the general conditions which will govern the Contract to be executed between the MSI and the Ludhiana Smart City Limited.

Part B: Special Conditions of the Contract

This part comprises of the special conditions which will govern the Contract to be executed between the MSI and the Ludhiana Smart City Limited.

Part C: Service Levels

This part comprises of the general procedures with respect to the service level agreements, reporting, issue management, service level change control etc.

A. PART A – GENERAL CONDITIONS OF CONTRACT

1. Definition of Terms

In this RFP, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meanings hereinafter respectively assigned to them:

- 1.1. **“Acceptance of System”** means the System, including the hardware, software, solution or any Deliverable accepted or deemed to have been accepted by the Authority, subsequent to its installation, rollout and deployment of trained manpower, when all the activities as defined in Scope of Work have been successfully executed and completed to the satisfaction of Authority and the Authority has given its acceptance by signing the Acceptance Certificate. For further details, refer to Section 5 & 7 of the RFP Volume II;
- 1.2. **“Acceptance Certificate”**- means that document/certificate issued by the Authority signifying acceptance of a hardware, software, solution, or any other Deliverable pursuant to the successful completion of the Acceptance Test of the System;
- 1.3. **“Acceptance Test” or “User Acceptance Test”** - means the test, standard procedure, trial runs to be conducted by the MSI as per this RFP or as per Contract in relation to the Works.
- 1.4. **“Affiliate(s)”** means, with respect to any Person, any other Person, directly or indirectly controlled by, controlling or under common control with such Person. For purposes of this Agreement, the term "control" means the power to direct the management and policies of a Person, whether through the ownership of voting securities, by agreement or otherwise. An Affiliate shall remain an Affiliate only as long as such control exists.
- 1.5. **“Agreement”** means this Master Service Agreement including the Annexures hereto and any amendments thereto made in accordance with the provisions contained in this Agreement and includes the documents specified in Clause 3.7 hereinafter;
- 1.6. **“Applicable Law(s)”** means all laws in force and effect as of the date hereof and/or laws which may be promulgated or brought into force and effect after the date of execution of the Agreement and includes any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, injunctions, by-laws, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision applicable to the relevant Party and all judgments, decrees, injunctions, and orders of any court, tribunal or any quasi-judicial authority, as may be in force and effect during the subsistence of the Project;
- 1.7. **“Applicable Permits” / “Approvals”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Agency or third party, required to be obtained and/or maintained by the MSI or its Sub Contractor(s) in order to implement the Project and for undertaking, performing or discharging the obligations contemplated under the Agreement, including but not limited to clearances required for importing equipment, exemption of tax/duties/levies/work permits/clearances for MSI/MSI's Team;

- 1.8. **“Approved Plan”** shall mean the approval given by the Authority to the plan submitted by the MSI for executing the Works under the Contract.
- 1.9. **“Authority”/ “LSCL”** means the Ludhiana Smart City Limited. The Project shall be executed in Ludhiana and shall be owned by Ludhiana Smart City Limited.
- 1.10. **“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand and issued by a bank in favor of the Authority and furnished by the MSI or its Sub Contractor(s) to Authority for guaranteeing the due performance of its obligations under the Agreement;
- 1.11. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Bidder in response to this RFP No. [_____] dated 06th December 2018;
- 1.12. **“Bidder”** shall mean Person, organization or consortium submitting the proposal in response to this RFP;
- 1.13. **“Business Day”** means the working day in the city of Ludhiana.
- 1.14. **“Change Control Note”** shall have the meaning as set forth under Clause and in the format specified under Annexure I of this RFP.
- 1.15. **“Commercial Off-The-Shelf (COTS)”** refers to software products that are ready-made and available for sale, lease, or license to the general public;
- 1.16. **“Conditions Precedent”** shall have the meaning set forth in Clause [3] of this RFP;
- 1.17. **“Confidential Information”** means all information including any information (whether in written, oral, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers, products, developments, operations, processes, data, trade secrets, design rights, know-how, plans, budgets and information and data which is proprietary to LSCL and which is disclosed to or otherwise learned by MSI in the course of or in connection with the Contract but does not include information (i) which is available lawfully in the public domain; (ii) publicly known through no fault of the MSI; (iii) already known to the MSI from someone other than the Authority who is not bound by confidentiality restrictions; or (iv) independently developed by the MSI without access to or use of the Confidential Information disclosed.
- 1.18. **“Consortium”** means a group of Persons/entities who have jointly formed a consortium for submitting a joint bid/proposal in accordance with this RFP for the Project. The Consortium shall be represented/headed by a Prime Bidder and shall be the entity/Person named in the Contract for any part of the Work and/or who has been sublet with the consent in writing of the Authority and shall include it’s successors, representatives (approved by LSCL), heirs, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the Contract
- 1.19. **“Consortium Member(s)”** means each entity/member who have come together to form the consortium for the purposes of submitting a joint bid in response to this RFP;
- 1.20. **“Contract”** means the contract entered into by the Parties for executing and implementing the Works/Project as envisaged in the present RFP and includes (a)

the complete RFP documents being Volumes I, II and III of the RFP and Corrigendum and addendum, (b) MSI's offer, (c) letter of acceptance or letter of award or letter of intent issued by the Authority, (d) the acceptance of letter of award from MSI, (e) notice to proceed with the Work, and (f) any other document listed in the Contract data;

- 1.21. **“Contract Value”** means the amount quoted by the MSI in its commercial Bid and which has been duly accepted by LSCL for the full and proper performance of its obligations under the Contract;
- 1.22. **“Data Center”/“DC”/“Data Center Site”/“DC Site”/ “Server Room”** means the data center sites including their respective data center space, wherein the delivery, installation, integration, management and maintenance services as specified under the Scope of Work are to be carried out for the purpose of this Contract. The DC Site will be located at premise along with Control and Command Centre.
- 1.23. **“Deliverable(s)”** shall mean all of the equipment, sub-systems, hardware, software, products accessories, software, source code, documentation, reports and/or other material/items which MSI is required to supply, install and maintain under the scope of the contract.
- 1.24. **“Developed Materials”** shall have the meaning ascribed to it in Clause 27.3;
- 1.25. **“Document”** means any embodiment of any text or image however recorded and includes any data, text, images, sound, voice, codes, databases or any other electronic documents /records as contemplated as per Information Technology Act 2000 and the rules framed under the said Act;
- 1.26. **“Effective Date”** means the date on which the Contract is signed or letter of intent is issued by Authority, whichever is earlier and executed by the Parties hereto. If the Contract is executed in parts, then the date on which the last of such Contracts is executed shall be construed to be the Effective Date;
- 1.27. **“Fixes”** means product fixes that are either released generally (such as commercial product service packs) or that are provided to MSI or their Subcontractor when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing.
- 1.28. **“Force Majeure” or “Force Majeure Event”** shall have the meaning set forth in as per Clause [21●];
- 1.29. **“Goods”** means all of the equipment, sub-systems, hardware, software, products accessories, components, software and/or other material/items and includes their user manuals, technical manuals, operating manuals, service mechanisms, policies and guidelines (such as security related, data migration related) and all its modifications which MSI is required to supply, install and maintain under the Contract;
- 1.30. **“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, procedure, efficiency, reliability and prudence which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in activities of a similar scope and complexity to those that are the subject of the Contract and as envisaged under this RFP and under the same or

similar circumstances, where such contractor is seeking to comply with its contractual obligations and all Applicable Laws and regulatory requirements. It would include good engineering practices in the design, engineering, construction and project management and acting generally in accordance with the provisions of this RFP and would include which would be expected to result in the performance of its obligations by the MSI in accordance with the Contract, this RFP, Applicable Laws and Applicable Permits in reliable, safe, environment protected, economical and efficient manner;

- 1.31. **“Go- Live”** means installation, testing, commissioning of Project, and commencement of all smart city components, including training as per Scope of Work mentioned in the Contract or this RFP. MSI should have the approval from Authority for carrying out User Acceptance Test.;
- 1.32. **“Government Instrumentality” / “Government Agency”/ “Government Authority”** means any department, division or sub-division of the Government of India or the Government of Punjab or any other State Government, including but not limited to the Ludhiana Municipal Corporation, Greater Ludhiana Area Development Authority, Ludhiana Smart City Limited, as may be applicable, including any commission, board, body, bureau, authority, agency, instrumentality, court or other judicial or quasi-judicial or administrative body, at central, state or local level, or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the Government of Ludhiana, as the case may be, and having jurisdiction over the MSI, MSI’s Sub Contractor the Project or any portion thereof or the performance of all or any of the Services or obligations of the MSI or MSI’s Sub Contractor under or pursuant to this RFP or under the Contract.;
- 1.33. **“Integrated Command and Control Center” OR “ICCC”** means the integrated/centralized operation center as contemplated under this RFP to implement holistic and integrated solution for multiple (existing and future) IT initiative for LSCL. The IT initiative may be of any department approved by LSCL, such as Ludhiana Municipal Corporation/Ludhiana Police department or any other authority/body which would conduct inter-alia activities like surveillance on security and civil issues through IOT based network on the entire Ludhiana Smart City.;
- 1.34. **“Intellectual Property Rights”** means all rights pertaining to patent, trademarks, copyrights, trade secrets, service marks, logos, brands, trade names, internet domain names, formulae, designs, software (whether in object code or source code), know-how, processes, techniques, methods, technical data, databases, proprietary information, utility models, rights in know- how and other intellectual property rights, whether existing as of the Effective Date or arising thereafter, and all of the goodwill associated with the use of, and symbolized by, any of the foregoing, all rights of indemnification with respect to any of the foregoing, the right to prosecute and sue for past, present and future infringements, dilutions, violations or misappropriations with respect to any of the foregoing, all rights corresponding to any of the foregoing throughout the world, and all proceeds of any the foregoing, including licenses, royalties and proceeds of suit, and any right to any of the foregoing granted under any License.

- 1.35. **“Key Personnel”** means employees of MSI whether employed directly on rolls of MSI or engaged indirectly, providing services to MSI through a contractor and the key personnel of MSI as referred in Section 3.6.3 of the RFP Volume I proposed.
- 1.36. **“Milestone” or “Project Timeline(s)”**: means the stipulated time period fixed under the Contract or under the RFP for completion of Works or part of the Works by the MSI.
- 1.37. **“MSI”** shall mean the successful bidder (Person, organization, Consortium) who is selected by the Authority at the end of the RFP process for execution of the Project and shall be deemed to include the MSI’s successors, agent(s), agency, representatives (approved by LSCL), heirs, Affiliates, executors, administrators and permitted assigns, as the case may be, unless excluded by the terms of the Contract.
- 1.38. **“MSI’s Team”** means the team established/formed by MSI for executing the Works under the present RFP and the Contract and shall include any and/or all of the employees of MSI, agent(s), agency, authorized service providers/partners and representatives or other Personnel employed or engaged either directly or indirectly by MSI for the purposes of the Contract;
- 1.39. **“Notice”** means a written notice, consent, approval or other communication required to be sent to the parties under the Contract;
- 1.40. **“OEM”** means the original equipment manufacturer of any equipment/system/software/product who is/are providing such Goods to the Authority under the scope of this RFP or the Contract;
- 1.41. **“O & M”**: shall mean operation and maintenance.
- 1.42. **“Person”** includes any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Governmental Authority or Government Agency or any other legal entity;
- 1.43. **“Performance Bank Guarantee”/“PBG”** means performance bank guarantee as defined under Annexure 5 of the RFP Volume I
- 1.44. **“Prime Bidder”** means the member of the Consortium who is heading/representing the Consortium and who shall bid on behalf of the Consortium and represent the Consortium before the Authority and shall act as the interface between the Consortium and the Authority
- 1.45. **“Project”** means the project of implementation of ICCC in Ludhiana City by the MSI or by its Sub Contractor(s) in pursuance of the terms and conditions of this RFP/Contract.
- 1.46. **“Project Location(s)”** shall mean the location(s)/ site(s) where the Works are to be executed by the MSI.
- 1.47. **“Project Manager”/ “Authority’s Representative”** shall mean the person appointed by the Authority for supervising and managing the affairs in relation to the Project.
- 1.48. **“Project Office”** means the site office to be set up by the MSI for the execution of the Project. The Project office shall be set up by the MSI at a location to be suggested by the Authority;

- 1.49. **“Project Report(s)”** shall mean the report(s) or the updates to be submitted by the MSI in relation to the Works at regular intervals;
- 1.50. **“Project Team”** means the MSI’s Key Personnel, team members or any other person duly authorized by the Authority for the execution of the Works and the Project.
- 1.51. **“Project Plan” or “Plan” or “Revised Plan” or “Work Plan” or “Program of Work(s)”**: means the plan/ schedule, methodology, design documents, specifications, or any other document submitted by the MSI to the Authority for executing the Works under the Contract or for the fulfillment of its various obligations under the Contract.
- 1.52. **“Replacement Service Provider”** means the organization or agency replacing MSI or its Sub Contractor in case of termination of the Contract for any reasons whatsoever;
- 1.53. **“RFP”** means this Request for Proposal for the selection of MSI for implementation of the Project;
- 1.54. **“Scope of Work”** shall have the meaning as set forth in Clause [4.] of this RFP;
- 1.55. **“Service Levels”**: shall mean the level of service to be provided/rendered by MSI for executing/completing the Works and for meeting it’s various obligations under the Contract and shall include the meaning set forth in Part C of this RFP;
- 1.56. **“Service(s)” or “Activity” or “Activities”** : shall means the Works/Services to be carried out or rendered by the MSI and or its Sub Contractor pursuant to this RFP and the Contract or any other specific assignment awarded by the Authority to MSI;
- 1.57. **“Service Specifications”** shall mean the specifications as set out in PART C-SERVICE LEVELS of this RFP;
- 1.58. **“Schedule of Requirements” or “Scheduled Requirement(s)” or “Schedule Requirement(s)”**: shall have the meaning as set forth under _____;
- 1.59. **“Steering Committee” or “High Powered Committee” or “Project Information Committee”** shall mean a committee formed to supervise/monitor the work of the Project Management Committee and also the Project Manager. It shall consist of ___ number of members and shall act as the appellate body over the decision rendered by the Project Management Committee;
- 1.60. **“Sub-Contractor”** shall mean the entity or agency working on behalf of MSI and who is named in the Contract for any part of the Scope of Work or any Person to whom any part of the Contract has been sublet with the consent in writing by the Authority and shall include the heirs, legal representatives, successors and assignees of such Person;
- 1.61. **“Work(s)” or “Program of Work(s)”** means the entire work or a part of it to be undertaken by MSI for implementation of the ICCC Project in Ludhiana City as envisaged in the present RFP and the Contract together with all Annexures, Schedules, referenced documents and all amendments, corrigendum, addendums and changes thereto.

2. Interpretation

2.1 In this RFP unless a contrary intention is evident:

- a. "Party" shall mean MSI or LSCL individually and "Parties" shall mean MSI and LSCL collectively;
- b. the clause headings are for convenient reference only and do not form part of the Contract;
- c. unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
- d. the word "include" 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;
- e. unless otherwise specified a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of the Contract including any amendments or modifications to the same from time to time;
- f. a word in the singular includes the plural and a word in the plural includes the singular;
- g. a word importing a gender includes any other gender;
- h. a reference to a person includes a partnership and a body corporate;
- i. a reference to legislation includes legislation repealing, replacing or amending that legislation;
- j. 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.
- k. In the event of an inconsistency between the terms of the Contract and the RFP and the Bid, the terms of the RFP shall prevail.
- l. In case there is a contradiction between the clauses mentioned in the RFP, the below hierarchy of clauses in order of precedence shall be applicable:
 - i. Pre-bid clarification and Corrigendum, if any
 - ii. Volume III of RFP
 - iii. Section 4 and 6 of RFP volume II
 - iv. Annexures of RFP volume II
 - v. RFP volume I

3. Conditions Precedent

3.1 The payment and other obligations of LSCL under the Contract shall take effect upon fulfillment of the following conditions precedent by MSI:

- 3.1.1 Furnishing by MSI, an unconditional and irrevocable Performance Bank Guarantee (PBG) as per (Annexure 5 of the RFP Volume I) from a nationalized bank and in a form and manner which is acceptable to the

Authority, which would remain valid until such time as stipulated by the Authority;

- 3.1.2 Obtaining of all statutory Approvals and Permits required for the performance of the Services under the Contract; this may include Approvals/clearances, wherever applicable, that may be required for execution of the Contract e.g. clearances from Government authorities for importing equipment, exemption of tax/duties/levies, work permits/clearances for Bidder/Bidder's team, etc.
- 3.1.3 Furnishing by MSI, the notarized copies of any/all contract(s) duly executed by MSI and its OEMs existing at the time of signing of the Contract in relation to the Project. Failure to do so within stipulated time of signing of Contract would attract penalty
- 3.1.4 Furnishing of such other documents by MSI as the Authority may specify/demand.
- 3.2 The Authority reserves the right to waive any or all of the conditions specified in Clause 3.1 above in writing and no such waiver shall affect or impair any right, power or remedy that the Authority may otherwise have.
- 3.3 In the event that any of the conditions set forth in Clause 3.1 hereinabove are not fulfilled within 1(one) month from the date of the Contract, or such later date as may be mutually agreed upon by the Parties, the Authority may terminate the Contract and upon such termination, MSI shall have no right to claim any damages from the Authority on such account.

4. Scope of work

- 4.1 The Scope of the Work under the Contract shall be as defined in RFP Volume II and Annexures thereto of the said RFP.
- 4.2 The Authority has engaged MSI to provide services related to implementation of ICCC and Smart Components in Ludhiana City, using which the Authority intends to perform its business operations. MSI with prior written approval of the Authority would have the right to appoint a Sub Contractor for subcontracting any part of the Works/Services to such nominated Subcontractor. The Sub Contractor to be appointed and the subcontract shall be in a form and manner acceptable to the Authority. The Subcontractor shall fully abide by the terms and conditions of the Contract. It is a fundamental term of the Contract that appointment of a Sub Contractor would not absolve MSI of any obligations to be performed by the Sub Contractor under the Contract, and MSI shall be responsible for all acts of the Sub Contractor and indemnify the Authority for losses, damages, claims suffered by the Authority due to any acts of omission and commission by the Sub Contractor while performing its obligations under the subcontract.
- 4.3 In addition to the above scope of work mentioned in Clause 4.1 of this RFP, Authority may require MSI to provide such Goods, Products, Services and support as the Authority may deem fit and proper and necessary, during the Term of the Contract, and may include all such processes and activities which are consistent with the

proposals set forth in the Bid, the Tender and the Contract and are deemed necessary by the Authority, in order to meet its business requirements related to the Project.

5. Key Performance Measurements

- 5.1 Unless specified by the Authority to the contrary, MSI shall deliver the Goods, perform the Services and carry out the Scope of Work in accordance with the terms of the RFP and the Contract.
- 5.2 If the Contract, Scheduled Requirements, Service Specification includes more than one Document, then unless the Authority specifies to the contrary, the later in time shall prevail over a Document of earlier date to the extent of any inconsistency.
- 5.3 The Authority may propose to amend any of the terms and conditions in relation to the Contract/Service Specifications which shall be amended in consensus and mutual consent of MSI and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfilment of the Schedule of Requirements and if such directions are resulting in extra time/fund requirement on part of MSI/ consortium members; accordingly Authority shall by way of issuing a change request or otherwise extend the timelines and/or increase the price.

6. Commencement and Progress

- 6.1 Subject to the fulfillment of the Conditions Precedent under Clause 3.1 above, MSI shall commence the performance of its obligations in a manner as per the Scope of Work specified under Clause 4 above.
- 6.2 MSI shall proceed to carry out the Activities/Services with diligence and efficiently in accordance with any stipulation as to the time, manner, mode, and method of execution contained in the Contract.
- 6.3 MSI shall be responsible for and shall ensure that all Activities/Services are performed in accordance with the Contract, Scope of Work, Scheduled Requirements and Service Specifications and that MSI's Team complies with such Service Specifications and all other standards, terms and other stipulations/conditions set out in this RFP and or the Contract.

7. Standards of Performance

- 7.1 MSI shall perform the Activities/Services and carry out its obligations under the Contract with due diligence and in accordance with Good Industry Practices. MSI shall employ appropriate advanced technology and engineering practices, shall maintain high safety standards, safe and effective equipment, machinery, material and methods and shall always act, in respect of any matter relating to this Contract, as faithful advisors to the Authority and shall, at all times, support and safeguard the Authority's interests in any dealings with third parties.

8. Approvals and Required Consents

- 8.1 The Authority shall extend all necessary support to MSI to obtain, maintain and observe all Applicable Permits/Approvals as may be necessary for MSI to fulfill all its

obligations under the Contract and/or for providing Goods and Services to the Authority. The costs of such Applicable Permits/Approvals shall be solely borne by MSI. Authority shall provide all reasonable co-operation, support and information available with it for obtaining such Approvals.

- 8.2 In the event, despite the support provided by the Authority, the Applicable Permit/Approval could not be obtained by MSI, MSI and the Authority shall discuss and co-operate with one another for achieving a reasonable alternative arrangement at the earliest, so that there is minimal disruption of Work or business operations, until such Approval(s) is/are obtained. However, if for any reason, no alternative arrangement could be achieved, Parties shall mutually decide the further course of action, however, until then, MSI shall not be relieved of its obligations to provide the Services and to achieve the Service Levels.

9. Constitution of Consortium

- 9.1 A group of Persons/entities may form a Consortium for submitting a bid under the present RFP. The Consortium shall be headed and represented through a Prime Bidder who shall act as the interface between the Consortium and the Authority. Unless the Authority deems fit and the Contract requires otherwise Prime Bidder shall be solely and absolutely accountable to the Authority for the performance of all obligations under the Contract.
- 9.2 The Consortium Members have agreed that Prime Bidder is the prime point of contact between the Consortium Members and the Authority and it shall be primarily responsible for the discharge and administration of all the obligations contained herein. The Authority, unless it deems necessary shall deal only with the Prime Bidder. However, the Lead bidder and consortium members shall be jointly and severally liable to the Authority. Notwithstanding the foregoing, the Lead Bidder would have the sole responsibility of ensuring the delivery of products and services mentioned in all volumes of this RFP and each consortium member will only be responsible/liable for their scope of work.
- 9.3 Without prejudice to the obligation of the Consortium Members to adhere to and comply with the terms of the Contract, the Consortium Members have executed and submitted a power of attorney in favor of the Prime Bidder authorizing him to act for and on behalf of such members of the Consortium and to do all acts as may be necessary for fulfillment of obligations under the Contract.
- 9.4 No agreement/contract executed within the consortium members be amended, modified and/or terminated without the prior written consent of the Authority. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by SI to the Authority.
- 9.5 Where, during the term of the Contract, Prime Bidder terminates any contract/arrangement or agreement relating to the performance of Services, Prime Bidder shall be responsible and severally liable for any consequences resulting from such termination. Prime Bidder shall in such case ensure the smooth continuation of Services by providing a suitable replacement to the satisfaction of the Authority at no additional charge and at the earliest opportunity.

10. MSI's Obligations

- 10.1 MSI's obligations shall include performance of all the Services as specified in the Scope of Work under Clause 4 of this RFP and also under the other clauses of the RFP (Volume I, II and III), the Contract and any amendments/changes thereof to enable the Authority to meet the objectives and operational requirements in the Contract. It shall be MSI's responsibility to ensure the proper and successful implementation, performance and continued operation of the proposed solution in accordance with and in strict adherence to the terms of its Bid, the RFP and the Contract. In addition to the aforementioned, MSI shall provide Services to manage and maintain the said system and infrastructure as mentioned in RFP Volume II.
- 10.2 MSI shall ensure that the Services are performed through the efforts of MSI's Team/Key Personnel and are in accordance with the terms hereof and to the satisfaction of the Authority. Nothing in this RFP or the Contract will relieve MSI from its liabilities or obligations under the RFP or the Contract to provide the Services in accordance with the Authority's directions and requirements and as stated in the Contract and the Bid to the extent acceptable by the Authority and MSI shall be liable for any non-performance, non-compliance, breach or other loss and damage resulting either directly or indirectly by or on account of its team.
- 10.3 MSI shall be fully responsible for deployment/installation/development and integration of all the software and hardware components and for resolving any problems/issues that may arise due to integration of components.
- 10.4 In addition to the aforementioned, MSI shall provide Services to manage and maintain the said system and infrastructure as mentioned in Section 1 of RFP Volume II.

11. Selection of MSI's Key Personnel:

- 11.1 MSI shall ensure that MSI's Team/Key Personnel is/are competent, professional and possesses the requisite qualifications, skills and experience appropriate to the task they are required to perform under the Contract.
- 11.2 The Authority reserves the right to interview and reject, if found unsuitable, the Key Personnel proposed by MSI that shall be deployed as part of the Project team. .
- 11.3 MSI shall submit profiles of only those Key Personnel who are to be deployed on the Project.

12. Changes in MSI's Key Personnel:

- 12.1 The Authority reserves the right to require changes in MSI's Key Personnel, which shall be communicated to MSI.
- 12.2 With the prior approval of the Authority, MSI may make additions to the Project team. MSI shall provide the Authority with the resume of the proposed Key Personnel and provide such other information as the Authority may reasonably require.

- 12.3 In case of change in MSI's Key Personnel/team members, for any reason whatsoever, MSI shall also ensure that the exiting team members are replaced with at least equally qualified and professionally competent members.
- 12.4 In case of change in its team members and for ensuring a smooth transition between an outgoing team members with a new team member, MSI shall ensure a reasonable amount of time overlap in activities to ensure proper knowledge transfer and handover/takeover of documents and other relevant materials between the outgoing and the new member.

13. Exit of MSI's Key Personnel:

- 13.1 MSI shall ensure that none of the Key Personnel and manpower exit from the Project during the first 6 (six) months of the beginning of the Project. In cases where such exit is unavoidable, MSI shall replace such Key Personnel and manpower with a suitable replacement with prior written approval from the Authority. In case the Authority is not satisfied with the replacement provided, MSI shall have to compensate the Authority by paying a compensation of INR 2 lacs per such replacement

14. Services provided by OEMs:

- 14.1 MSI shall ensure that the OEMs supply all Goods, including associated accessories and software required for the execution of the Works and shall support MSI in the installation, commissioning, integration and maintenance of these components during the entire period of Contract.
- 14.2 MSI shall ensure that the COTS supplied by the OEMs support MSI in the installation/deployment, integration, roll-out and maintenance of the software applications during the entire period of Contract. It must clearly be understood by MSI that warranty and O & M of the System, Products and Services incorporated as part of System would commence from the day of Go-Live of the respective phase including all the solutions proposed.
- 14.3 MSI would be required to explicitly display that it/they have a back to back arrangement for provisioning of warranty/O&M support till the end of Contract period with the relevant OEMs. The annual maintenance support shall include patches and updates of the software, hardware components and other devices.

15. Software, Licenses obtained by MSI

- 15.1 All the software licenses that MSI proposes to obtain or use for the purposes of fulfilling its various obligations under the Contract have to be genuine and should be perpetual in nature. The software licenses shall not be pirated or restricted based on location and the Authority should have the flexibility to use them for other requirements if necessary. All Applicable Permits/Approvals/software licenses shall be obtained by MSI in the name of Authority only unless the Authority expressly agrees to give its consent in writing to do otherwise.
- 15.2 All the OEMs that MSI proposes should have dealer possession licenses.

- 15.3 The Authority reserves the right to review the terms of the warranty and annual maintenance agreements entered into between MSI and OEMs and no such agreement/contract shall be executed, terminated and/ or amended / varied to the detriment of the Authority, without the prior written consent of the Authority. An executed copy of each of such agreements/contracts and any amendments thereto shall, immediately upon execution be submitted by MSI to the Authority
- 15.4 MSI shall ensure that none of the components and sub-components is declared end-of-sale or end-of-support by the respective OEM at the time of submission of Bid. If the OEM declares any of the products/solutions end-of-sale subsequently, the MSI shall ensure that the same is supported by the respective OEM for Contract period.
- 15.5 If a product is de-supported by the OEM for any reason whatsoever, from the date of Acceptance of System till the end of Contract, MSI shall replace the products/solutions with an alternate that is acceptable to the Authority at no additional cost to the Authority and without causing any performance degradation.
- 15.6 MSI shall ensure that the OEMs provide the support and assistance to MSI in case of any problems/issues arising due to integration of components supplied by it with any other component(s)/product(s) under the purview of the overall solution. If the same is not resolved for any reason whatsoever, MSI shall replace the required component(s) with an equivalent or better substitute that is acceptable to Authority without any additional cost to the Authority and without impacting the performance of the solution in any manner whatsoever.
- 15.7 MSI shall ensure that the OEMs shall provide for all hardware servers/equipment supply and/or installation of all types, updates, patches, fixes and/or bug fixes for the firmware or software from time to time at no additional cost to the Authority.
- 15.8 MSI shall ensure that the OEMs for hardware servers/equipment or Bidders trained engineers conduct the preventive maintenance on a quarterly basis and break-fix maintenance in accordance with the Good Industry Practices. MSI shall ensure that the documentation and training services associated with the components shall be provided by the OEM partner or OEM's certified training partner without any additional cost to the Authority. The training mentioned in clause 13.8 above shall be conducted using official OEM course curriculum, mapped with the hardware/software product(s) to be implemented in the Project.
- 15.9 MSI and their Personnel/representative shall not alter/change/replace any hardware component proprietary to the Authority and/or under warranty or during operation and maintenance of third party without prior consent of the Authority.
- 15.10 MSI shall keep and provide the required critical spares/components at the designated Data Center Sites/Project locations/office locations of the Authority (Collectively "Facilities") for meeting any unforeseen eventuality and for ensuring the various compliances and obligations under the Contract.
- 16. Powers of MSI's representative(s)/Key Personnel:**
- 16.1 MSI's representative(s) shall have all the powers requisite for the execution of Scope of Work and performance of Services under the Contract. MSI's representative(s)

shall liaise with the Authority's representative for the proper coordination and timely completion of the Works and on any other matters pertaining to the Works.

- 16.2 MSI's representative(s) shall extend full co-operation to Authority's representative in the manner required by them for supervision/inspection/observation of the equipment/goods/material, procedures, performance, progress, reports and records pertaining to the works. MSI shall also have complete charge of MSI's Team engaged in the performance of the Works and to ensure compliance of rules, regulations and safety practice. MSI's representative(s) shall also cooperate with the other service providers/vendors of the Authority working at the Authority's office locations & field locations and DC Site. Such MSI's representative(s) shall be available to the Authority's Representative at respective Data Center during the execution of Works.
- 16.3 MSI shall be responsible on an ongoing basis for coordination with other vendors and agencies of the Authority in order to resolve issues and oversee implementation of the same. MSI shall also be responsible for resolving conflicts between vendors in case of borderline integration issues.

17. Setting up of Project Office:

- 17.1 MSI shall set up a Project Office at the location to be suggested by the Authority. The technical manpower deployed on and necessary at the Project Office for the execution of the Works shall work from the said Project Office. However, some work may be carried out by MSI from its other offices during the Contract period.

18. Access to Data Center Site

- 18.1 Data Center Site would include Data Center's Server Room and ICC.
- 18.2 The Authority's representative upon receipt of request from MSI intimating commencement of activities at various locations shall give to MSI access to as much of the DC Sites as may be necessary to enable MSI to commence and proceed with the installation of the Works in accordance with the Program of Work or for performance of facilities management services. Any reasonable proposal of MSI for access to DC Site to proceed with the installation of any Works in accordance with the Program of Work shall be considered for approval and shall not be unreasonably withheld by the Authority. Such requests shall be made to the Authority's representative in writing at least 7 (seven) days prior to start of the Work.

19. Commencement of Installation

- 19.1 MSI shall co-ordinate with the Authority and stakeholders for the parallel setup of DC Site along with the installation of other areas as mentioned in Section 4 & 6: of the RFP Volume II document.
- 19.2 As per guidelines of Telecom Regulatory Authority of India (TRAI), resale of bandwidth connectivity is not allowed. In such a case tripartite agreement should be entered into between the Authority, MSI and internet service provider(s). Tri partite agreement to be provided later.

- 19.3 The plan and design documents thus developed shall be submitted by MSI for approval by the Authority.
- 19.4 After obtaining the approval from the Authority, MSI shall commence the installation of products.

20. Reporting Progress

- 20.1 MSI shall monitor progress of all the activities related to the execution of the Contract and shall submit to the Authority progress reports with reference to all related work, Milestones and their progress during the implementation phase.
- 20.2 Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with Project Plan. The Authority on mutual agreement between both Parties may change the formats, periodicity and dissemination mechanism for such reports.
- 20.3 Periodic meetings shall be held between the representatives of the Authority and MSI once in every 15 days during the implementation phase to discuss the progress of implementation. After the implementation phase is over, the meeting shall be held as an ongoing basis, as desired by Authority, to discuss the performance of the Contract.
- 20.4 MSI shall ensure that the respective solution teams involved in the execution of Works are part of such meetings.
- 20.5 Several review committees involving representative of the Authority and senior officials of MSI shall be formed for the purpose of the Project. These committees shall meet at regular intervals, as decided by the Authority at a later stage, to oversee the progress of the implementation of the Project.
- 20.6 All the Goods, Services and manpower to be provided / deployed by MSI under the Contract and the manner and speed of execution and maintenance of the Work and Services are to be conducted in a manner to the satisfaction of Authority's representative in accordance with the Contract.

21. Inspection by the Authority:

- 21.1 The Authority reserves the right to inspect and monitor/assess the progress/performance of the Works/Services/Project at any time during the course of the Contract. The Authority may demand and upon such demand being made, MSI shall provide documents, data, material or any other information which the Authority may require, to enable it to assess the progress/performance of the Works/Services/Project.

22. Monitoring of MSI's performance:

- 22.1 At any time during the course of the Contract, the Authority shall have the right to conduct, either itself or through another agency as it may deem fit, an audit to monitor the performance by MSI of its obligations/functions in accordance with the standards committed to or required under the Contract and MSI undertakes to cooperate with and provide to the Authority or to the said agency any Document(s)

and other details as may be necessary/required by them for this purpose. Such audit shall not include 'MSI's books of accounts.

- 22.2 Should the rate of progress of the Works or any part of it, at any time falls behind the stipulated time for completion of any Milestone related to the Works or is found to be too slow to ensure completion of the Works by the stipulated time, or is in deviation to Tender requirements/standards, the Authority's representative shall so notify MSI in writing.
- 22.3 MSI shall send reply to the written notice giving details of the measures it proposes to take to expedite the progress so as to complete the Works by the prescribed time or to ensure compliance to RFP requirements/Contract. MSI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to the Authority or Authority's representative that the actual progress of the Works does not conform to the Approved Plan, MSI shall produce at the request of the Authority's representative a revised Plan showing the modification to the Approved Plan necessary to ensure completion of the Works within the time for completion or steps initiated to ensure compliance to the stipulated requirements
- 22.4 The submission seeking approval by the Authority or its representative of such Plan shall not relieve MSI of any of its obligations or responsibilities under the Contract.
- 22.5 In case during execution of Works, the progress falls behind schedule or does not meet the Tender requirements, MSI shall deploy extra manpower/resources to make up the progress or to meet the RFP/Contract requirements. Plan for deployment of extra man power/resources shall be submitted to the Authority for its review and approval. All time and cost effect in this respect shall be borne, by MSI within the Contract value.

23. Knowledge of Data Center's Server Room and ICCC

- 23.1 The Authority shall grant MSI access to the Data Center's Server Room and ICCC for inspection of such facilities before commencement of installation. Upon such inspection a plan shall be drawn up mutually by the Parties.
- 23.2 MSI shall be deemed to have familiarized itself with the knowledge of the Data Center's Server Room, /ICCC and its surroundings and information available in connection therewith and to have satisfied itself the form and nature thereof including, the data contained in the Bidding Documents, the physical and climatic conditions, the quantities and nature of the Works and materials necessary for the completion of the Works, the means of access, etc. and in general to have obtained itself all necessary information of all risks, contingencies and circumstances affecting its obligations and responsibilities therewith under the Contract and its ability to perform it. However, if during pre-installation survey/during delivery or installation, MSI detects physical conditions and/or obstructions affecting the Work, MSI shall take all measures to overcome them.

24. Project Plan

- 24.1 Within 15 (fifteen) calendar days of Effective Date of the Contract/issuance of letter of intent/ Letter of Award, MSI shall submit to the Authority for its approval a

detailed Project Plan with details of the Project showing the sequence, procedure and method in which it proposes to carry out the Works. The Plan so submitted by MSI shall conform to the requirements and timelines specified in the Contract. The Authority and MSI shall discuss and agree upon the work procedures to be followed for effective execution of the Works, which MSI intends to deploy and shall be clearly specified. The Project Plan shall include but not be limited to Project organization, communication structure, proposed staffing, roles and responsibilities, processes and tool sets to be used for quality assurance, security and confidentiality practices in accordance with Good Industry Practices and delivery schedule in accordance with the Contract. Approval by the Authority's Representative of the Project Plan shall not relieve MSI of any of its duties or responsibilities under the Contract.

- 24.2 If MSI's Work Plans necessitate a disruption/shutdown in Authority's operation, the Plan shall be mutually discussed and developed so as to keep such disruption/shutdown to the barest unavoidable minimum. Any time and cost arising due to failure of MSI to develop/adhere such a Work Plan shall be to its account.

25. Adherence to safety procedures, rules regulations and restriction

- 25.1 MSI's Team shall comply with the provision of all Applicable Laws including labour laws, rules, regulations and notifications issued there under from time to time. All safety and labour laws enforced by statutory Government Agencies and by Authority shall be applicable in the performance of this Contract and MSI's Team shall abide by these Applicable Laws.
- 25.2 Access to the Data Center's Server Room, ICCC shall be strictly restricted. No access to any person except the essential members of MSI's Team who are duly authorized by the Authority and are genuinely required for execution of the Works or for carrying out management/maintenance shall be allowed entry. Even if access is required to be provided to such unauthorized personnel of MSI, the same shall be with prior approval of Authority's Representative and restricted to the pertaining equipment of the Authority on a need basis only. MSI shall maintain a log of all activities carried out by each of its team/ Key Personnel.
- 25.3 No staff of MSI, except the essential staff who have genuine work-related need, should be given access to the facilities. All such access should be logged in a loss free manner for permanent record with unique biometric identification of the staff to avoid misrepresentations or mistakes.
- 25.4 MSI shall take all measures necessary or proper to protect its Key Personnel, Work and facilities and shall observe all reasonable safety rules and instructions. MSI's Team shall adhere to all security requirement/regulations of the Authority during the execution of the Work. Authority's employees shall also be required to comply with safety procedures/policy.
- 25.5 MSI shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation related to the Works/Project and shall take all necessary emergency control steps to avoid such abnormal situations.

26. Statutory Requirements

- 26.1 During the tenure of the Contract nothing shall be done by MSI or its team including Consortium Members in contravention of Applicable Laws or any amendment thereof governing inter-alia customs, stowaways, foreign exchange etc. and shall keep Authority indemnified in this regard.

27. Authority's Obligations

- 27.1 Authority or its nominated representative shall act as the nodal point for implementation of the Contract and for issuing necessary instructions, approvals, commissioning, acceptance certificates, payments etc. to MSI.
- 27.2 Authority shall ensure that timely approvals are provided to MSI as and when required, which may include approval of Project Plans, implementation methodology, design documents, specifications, or any other document necessary in fulfillment of the Contract.
- 27.3 The Authority's representative shall interface with MSI, to provide the required information, clarifications, and to resolve any issues as may arise during the execution of the Contract. Authority shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of the Authority is proper and necessary.
- 27.4 Authority may provide on MSI's request, particulars/information/or documentation that may be required by MSI for proper planning and execution of the Works and for providing Services covered under the Contract and for which MSI may have to coordinate with respective vendors.
- 27.5 Authority shall provide to MSI only sitting space and basic infrastructure not including, stationery and other consumables at the Authority's office locations.
- 27.6 Authority reserves the right to procure the hardware, including devices on quarterly basis in first year, based on actual deployment and O&M shall be applicable whenever the devices are procured and deployed till end of the Contract.
- 27.7 Readiness of the Project site: Authority hereby agrees to make the Project sites ready as per the agreed specifications, within the agreed timelines. Authority agrees that MSI shall not be in any manner liable for any delay arising out of Authority's failure to make the site ready within the stipulated period.

28. Payments

- 28.1 Authority shall make payments to MSI at the times and in the manner set out in the Payment schedule as specified under Payment Milestones in RFP Volume II subject to the penalties as mentioned under Clause 42 of Section C- Service Levels of Volume 3. Authority shall make all efforts to make payments to MSI within 45 (forty-five) days of receipt of invoice(s) and all necessary supporting documents.
- 28.2 All payments agreed to be made by Authority to MSI in accordance with the Bid shall be inclusive of all statutory levies, duties, taxes and other charges whenever

- levied/applicable, if any, and Authority shall not be liable to pay any such levies/other charges under or in relation to the Contract and/or the Services.
- 28.3 No invoice for extra work/change order on account of change order shall be submitted by MSI unless the said extra work/change order has been authorized/approved by the Authority in writing in accordance with Change Control Note (as mentioned under Annexure I of this section of the RFP)
- 28.4 In the event of Authority noticing at any time that any amount has been disbursed wrongly to MSI or any other amount is due from MSI to the Authority, the Authority may without prejudice to its rights recover such amounts by other means after notifying MSI or deduct/adjust such amount from any payment falling due to MSI. The details of such recovery, if any, shall be intimated to MSI. Similarly, MSI shall also be entitled to receive the payment of any undisputed amount under subsequent invoice for any amount that has been inadvertently omitted in previous invoice on the part of the Authority or MSI.
- 28.5 All payments to MSI shall be subject to the deductions of tax at source under Income Tax Act, and other taxes and deductions as provided for under Applicable Laws. All costs, damages or expenses which Authority may have paid or incurred, for which under the provisions of the Contract, MSI is liable, the same shall be deducted/set off by Authority from any payments/dues payable to MSI. All payments to MSI shall be made after making necessary deductions as per terms of the Contract and recoveries towards facilities, if any, provided by the Authority to MSI on chargeable basis.

29. Intellectual Property Rights

- 29.1 Except for any ownership rights in any intellectual property that have been expressly granted to the MSI under the Framework Agreement, the Authority shall exclusively retain all rights, title and interest in and to any third party licensed technology, including all worldwide technology and Intellectual Property Rights which has been used for the Project.
- 29.2 Preservation of notice: MSI shall not remove, efface or obscure any copyright notices or other proprietary notices or legends from any licensed technology or materials provided under the Contract, and shall reproduce all such notices and legends when incorporating licensed technology or materials into any integrated products.
- 29.3 Authority shall exclusively own and 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 processes, software, technology, processes, methodologies, process improvements, ideas, concepts, products, specifications, reports and other documents which have been newly created and developed by MSI or its Subcontractor solely during the performance of Services/execution of the Contract (hereinafter "Developed Materials") and for the purposes of inter-alia use during the Project. MSI shall have no rights in such Developed Materials and undertakes to promptly disclose to the Authority all such Intellectual Property Rights/Developed Materials created during the performance of the Services/Works. MSI shall promptly assign, completely and in writing to Authority any such Developed Materials and shall execute all such agreements/documents and obtain all permits and approvals that may be necessary

to perfect Authority's rights in the Developed Materials. It is a fundamental provision of the Contract that MSI will not violate or breach any Intellectual Property Rights of the Authority. Should MSI use or provide unauthorized access to the Developed Materials or breach any of the confidentiality of these Developed Materials, the Authority shall have the right to terminate the Contract forthwith and seek injunctive and other equitable reliefs.

- 29.4 Pre-existing work: All Intellectual Property Rights existing prior to the Effective Date of the Contract shall belong to the Party that owned such rights immediately prior to the Effective Date. Subject to the foregoing, the Authority will also have rights to use and copy all Intellectual Property Rights, process, specifications, reports and other document, drawings, manuals etc. provided or used by the MSI / Consortium / Sub-Contractors as part of the Scope of Works under the Contract for the purpose of the Contract on non-exclusive, non-transferable, perpetual, royalty-free license to use basis.
- 29.5 Commercially off the Shelf (COTS): / third party products: All COTS products and related solutions and fixes provided pursuant to the Contract shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such products. Such licenses shall be brought on behalf of and in the name of the Authority or mentioning the Authority as the end user of such licenses. MSI shall be responsible for arranging any licenses associated with products. Unless otherwise specifically restricted by the licensing terms of the COTS products, all Intellectual Property Rights in any development/enhancement/customization etc. done on the COTS products pursuant to the Contract shall be owned by the Authority.
- 29.6 Further, the MSI shall be obliged to ensure that all Applicable Permits which are, inter-alia, necessary for use of the Deliverables, Goods, Services, applications works etc. provided/undertaken by the MSI / Consortium / Sub-Contractors under the Contract shall be acquired in the name of the Authority and to use such permits till the term of such permits on behalf of the Authority solely for the purpose of execution of any of its obligations under the terms of the Contract. However, even subsequent to the Term/expiry of the Contract, such Approvals/Applicable Permits shall endure to the exclusive benefit of the Authority.
- 29.7 MSI shall not copy, reproduce, translate, adapt, vary, modify, disassemble, decompile or reverse engineer or otherwise deal with or cause to reduce the value of the Products except as expressly authorized by Authority in writing.

30. Taxes

- 30.1 MSI shall bear all personal taxes levied or imposed on its Personnel, or any other member of MSI's Team, etc. on account of payment received under the Contract. MSI shall bear all corporate taxes, levied or imposed on MSI on account of payments received by it from the Authority for the Work done/Services provided under the Contract.
- 30.2 MSI shall bear all taxes and duties as may be levied or imposed on MSI under or in relation to the Contract and under the Applicable Laws including but not limited to Goods & Services Tax (GST) (including any IGST,CGST & SGST) and all Income Tax levied under Indian Income Tax Act – 1961 or any amendment thereof during the

entire Contract period and thereafter till such time the liability relates to MSI's obligation under the Contract, i.e., on account of Goods supplied and Services rendered and payments received by it from the Authority under the Contract. It shall be the responsibility of MSI to submit to the concerned Indian authorities the returns and all other connected documents required for this purpose. MSI shall also provide the Authority such information, as it may be required in regard to MSI's details of payment made by the Authority under the Contract for proper assessment of taxes and duties as may be imposed under Applicable Laws. The amount of tax withheld by the Authority shall at all times be in accordance with Indian Tax Law or any other Government Agency and the Authority shall promptly furnish to MSI original certificates for tax deduction at source and paid to the Tax authorities.

- 30.3 MSI agrees that it shall comply with the Indian Income Tax Act or any other Applicable Laws in force from time to time and pay Indian Income Tax or other applicable taxes and duties, as may be imposed/levied on them by the Indian Income Tax Authorities/Government Authorities, for the payments received by them for the Works performed under the Contract.
- 30.4 Bidders shall fully familiarize themselves about the taxes applicable to the Bidders under Applicable Laws on the amounts payable by the Authority to them under the Contract. All such taxes must be included by Bidders in their financial proposal. (Bidder to find out applicable taxes for the components being proposed.)
- 30.5 Should MSI fail to submit returns/pay taxes in times as stipulated under applicable Indian/State Tax Laws, and consequently, any interest or penalty is imposed by the concerned authority on Authority/MSI, MSI shall bear the same. MSI shall indemnify Authority from and against any and all claims, liabilities, losses or damages arising out of the Contract or in connection with such taxes, including interest and penalty levied/assessed by any such tax authority against the Authority/MSI.
- 30.6 The goods and services tax (GST) on Works (central or state) if levied on supplies made from indigenous vendors for the Works shall be borne by MSI within the Contract price. Any other tax/duty, if applicable, shall be payable extra, at actuals by the Authority in accordance with the conditions of the Contract and upon submission of proof of payment of such taxes.
- 30.7 The Authority shall if so required by Applicable Laws in force, at the time of payment, deduct income tax payable by MSI at the rates in force, from the amount due to MSI and pay to the concerned tax authority directly.

31. Indemnity

- 31.1 MSI hereby agrees to indemnify defend and hold harmless the Authority and its Affiliates, respective officers, directors and agents and their respective successors and assigns from and against any and all claims (including from third parties), losses, liabilities of any kind howsoever suffered, fees (including reasonable attorneys' fees, disbursements and costs of investigation), damages, cost and expenses (collectively "Losses"), arising or incurred inter alia during and after Contract period in connection with:

- a) any negligence or wrongful act or omission by MSI or any third party associated with MSI in connection with or incidental to the Contract;
 - b) MSI or its Sub Contractor's actual or alleged failure occurring after the Effective Date to observe or perform any duties or obligations required to be observed or performed by MSI or its Subcontractor under or with respect to any obligations under the Contract;
 - c) the damage to or loss or destruction occurring after the Effective Date of any real or tangible personal property in the possession or under the control of MSI, or any Affiliate thereof;
 - d) the death or bodily injury occurring after the Effective Date of any agent, employee, Subcontractor's employee, visitor of MSI or its Subcontractor;
 - e) any breach of MSI's representations and warranties set forth in the Contract occurring after the Effective Date to the extent caused by MSI or its Affiliates, or its or their agents, employees or Subcontractors;
- 31.2 MSI agrees to indemnify, defend and hold harmless the Authority and/or its Affiliates from and against all losses incurred by the Authority and/or its Affiliates as a result of any allegations that the software, data, intellectual property or other materials supplied by the MSI or used by MSI infringes, misappropriates, or violates any patent, copyright, trademark or trade secret or other intellectual property of any third party. In the event of any third party claim against the Authority and/or its Affiliates in respect of the use of such software data, intellectual property or other materials, in addition to the indemnification obligations set forth herein, the Authority, at its option, may: (a) obtain a right to use such software or materials without obligation on the part of the Authority to the owner of the allegedly infringed Intellectual Property; (b) modify the software or materials, without materially diminishing the functionality or performance thereof, to become non-infringing at MSI's sole expense; or (c) require that the MSI discontinue the use of the infringing software or materials. Notwithstanding the foregoing, the Authority will have no liability for any third party claim of infringement based upon: (i) modifications of the software or materials that are not made by the Authority; (ii) the use of software or materials in connection with another product or service (the combination of which causes the infringement) if the Authority did not approve of such use; or (iii) MSI's non-compliance with the Authority's specific instructions. MSI shall take commercially reasonable steps to mitigate damages arising from the liability arising under this clause.
- 31.3 Regardless of anything contained (except for MSI's liability for bodily injury arising out of gross negligence or willful misconduct for which it is legally liable and its liability for infringement of any Intellectual Property Rights including of any third party in accordance with the terms of the Contract), the total liability of MSI, is restricted to the total value of the Contract.
- 32. Representations and Warranties:**
- 32.1 MSI represents that it is a company duly organized, validly existing and in good standing under the Applicable Laws and has full corporate power and authority to implement the terms hereof. It is specifically agreed between the Parties that MSI has

- all the Approvals and Permits required to execute the Works/provide the Services under the Contract.
- 32.2 MSI warrants that it is not currently in breach of, in default under, or in violation of, and the execution and delivery of the Contract and the performance of its obligations thereunder will not constitute or result in any breach of, default under or violation of, any Applicable Laws, rule or regulation of any governmental unit, or the provisions of the MSI's articles of association or bye-laws, or any franchise or license, or other agreement by which it is bound to abide with.
- 32.3 It is fundamental term of the Contract that MSI has been and shall continue to comply with all the Applicable Laws, including all the applicable labour laws and regulations, and shall keep the Authority indemnified from all acts of commission, breaches and/or any claims and expenses to which the Authority may be put or involved due to MSI's non-compliance of the such laws and regulations.
- 32.4 A comprehensive warranty applicable on Goods supplied under the Contract shall be provided by the MSI for the remaining period of Contract from the date of acceptance of respective system by the Authority.
- 32.5 Technical support for software applications shall be provided by MSI/ the respective OEMs for the period of Contract. The technical support should include all upgrades, updates and patches to the respective software applications.
- 32.6 The MSI warrants that the Goods supplied under the Contract are new, non-refurbished, unused and recently manufactured; shall not be nearing end of sale/End of support; and shall be supported by the MSI and respective OEM along with Service and spares support to ensure its efficient and effective operation for the entire duration of the Contract.
- 32.7 The MSI warrants that the Goods supplied under the Contract shall be of the highest grade and quality and consisted with the established and generally accepted standards for materials of this type. The Goods shall be in full conformity with the specifications and shall operate properly and safely. All recent design improvements in Goods, unless provided otherwise in the Contract, shall also be made available.
- 32.8 The MSI further warrants that the Goods supplied under the Contract shall be free from all encumbrances and defects/faults arising from design, material, manufacture or workmanship (except insofar as the design or material is required by the Authority's specifications) or from any act or omission of the MSI, that may develop under normal use of the supplied Goods in the conditions prevailing at the respective Data Center Sites.
- 32.9 The Authority shall promptly notify the MSI in writing of any claims arising under this warranty.
- 32.10 Upon receipt of such notice, the MSI shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without prejudice to any other rights which the Authority may have against the MSI under the Contract.
- 32.11 If the MSI, having been notified, fails to remedy the defect(s) within a reasonable period, the Authority may proceed to take such remedial action as may be necessary,

at the MSI's risk and expense and without prejudice to any other rights which the Authority may have against the MSI under the Contract.

- 32.12 Any (OEM) specific warranty terms that do not conform to conditions under the Contract shall not be acceptable.
- 32.13 MSI shall provide adequate supervision to ensure correct execution of the Works/performance of the Services in accordance with the prevailing instructions agreed upon between the Authority and the MSI. Further, MSI and its Key Personnel shall take utmost care in the performance of the Works/Services and ensure that none of the properties of the Authority gets damaged due to any action taken or any failure to act on its part.

33. Term and Extension of the Contract

- 33.1 The Contract Term/period shall commence from the date of signing of contract or issuance of letter of intent/letter of award , whichever is earlier, and shall remain valid for 60 (Sixty) months from the date of signing of the Contract (hereinafter "Term"). MSI shall complete all Works stipulated under the Contract within the time period specified under this clause.
- 33.2 If any delay occurs due to circumstances beyond control of MSI such as strikes, lockouts, fire, accident, defective materials, delay in obtaining Applicable Permits/Approvals or any cause whatsoever beyond the reasonable control of MSI, a reasonable extension of time/ Term, upon a request being made by MSI in writing at least three months in advance shall be granted by the Authority in writing.
- 33.3 Notwithstanding what has been stated under Clause 31.2, the Authority shall reserve the sole right to grant any such extension to the Term above mentioned and shall notify in writing to MSI, at least 3 (three) months before the expiration of the Term hereof, whether it shall grant MSI an extension of the Term or not. The decision to grant or refuse the extension of the Term shall be at the Authority's sole discretion and such extension of the Contract, if any, shall be as per terms agreed mutually between the Parties.
- 33.4 Where the Authority is of the view that no further extension of the Term should be granted to MSI, the Authority shall notify MSI of its decision at least 3 (three) months prior to the expiry of the Term. Upon receipt of such notice, MSI shall continue to perform all its obligations hereunder till the duration of the Term. During the notice period, the Authority shall either appoint an alternative agency/Replacement Service Provider/reappoint MSI for a short extension or create its own infrastructure to operate such Services as are provided under the Contract.

34. Dispute Resolution

- 34.1 In case, a dispute is referred to arbitration, the arbitration shall be under the Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.
- 34.2 If during the subsistence of the Contract or thereafter, any dispute between the Parties hereto arising out of or in connection with the validity, interpretation, implementation, breach or any alleged breach of any provision of the Contract or

regarding any question, including as to whether the termination of the Contract by one Party hereto has been legitimate/valid, the Parties hereto shall endeavor to settle such dispute amicably through joint discussion and/or by Conciliation to be governed by the Arbitration and Conciliation Act, 1996. However, despite such efforts, if the dispute, differences or controversy still remains unresolved for a period of 30 days of its having been raised, then the same shall be referred to Arbitration.

34.3 The Arbitration proceedings shall be held in the following manner:

- i. The Arbitration proceedings shall be held in Ludhiana, Punjab, India.
- ii. The Arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996 and any re-enactment(s) and/or modification(s) thereof and of the Rules framed thereunder shall apply to arbitration proceedings.
- iii. The proceedings of Arbitration shall be in English language.
- iv. Any dispute, difference or question to be referred to arbitration shall be initially referred to a mutually acceptable sole arbitrator. In case the Parties are unable to agree upon the sole arbitrator, then each Party shall appoint one arbitrator each and the two arbitrators so appointed shall appoint the third arbitrator, who shall be the Presiding Arbitrator. The consortium of the three Arbitrators shall form the Arbitral Tribunal.
- v. In case, a Party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other Party or if the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of the Punjab High Court or any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon request of one of the Parties.
- vi. Any letter, notice or other communications dispatched to MSI relating to either arbitration proceeding or otherwise whether through the post or through a representative on the address last notified to the Authority by MSI shall be deemed to have been received by MSI although returned with the remarks, refused 'undelivered' where about not known or words to that effect or for any other reasons whatsoever
- vii. If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Authority to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both Parties consent for the same; otherwise, he shall proceed de novo.
- viii. It is a term of the Contract that the Party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.
- ix. It is also a term of the Contract that neither Party to the Contract shall be entitled for any interest on the amount of the award.
- x. The Arbitrator shall give reasoned award and the same shall be final, conclusive and binding on the Parties.

- xi. The fees of the arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the Parties.

35. Conflict of interest

- 35.1 MSI shall disclose to the Authority in writing, all actual and potential conflicts of interest that exist, arise or may arise (either for MSI or MSI's Team) in the course of providing Goods and performing the Works/Services as soon as practical after it becomes aware of that conflict.

36. Publicity

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

37. Force Majeure

- 37.1 Force Majeure shall not include any events caused due to acts/omissions of MSI resulting in a breach/contravention of any of the terms of the Contract and/or MSI's Bid. It shall also not include any default on the part of MSI due to its negligence or failure to implement the stipulated/proposed precautions, as were required to be taken under the Contract.
- 37.2 The failure or occurrence of a delay in performance of any of the obligations of either Party shall constitute a Force Majeure event only where such failure or delay could not have reasonably been foreseen and shall mean an occurrence beyond the reasonable control and without the fault or negligence of either Parties affected and which the other Party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: war, or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, vandalism (due to law & order situation), terrorism, explosions, epidemics, quarantine restriction, strikes, lockouts or act of God, or where despite the presence of adequate and stipulated safeguards the failure to perform obligations has occurred at any location in scope (hereinafter referred to as "Force Majeure Event(s)"). In such an event, the affected Party shall inform the other Party in writing within 5 (five) days of the occurrence of such event. Any failure or lapse on the part of MSI in performing any obligation as is necessary and proper, to negate the damage due to projected Force Majeure Events or to mitigate the damage that may be caused due to the above mentioned events or the failure to provide adequate disaster management/recovery or any failure in setting up a contingency mechanism would not constitute Force Majeure, as set out above.
- 37.3 In case of a Force Majeure Event, all Parties shall endeavor to agree on an alternate mode of performance in order to ensure the continuity of the Service/ Works and implementation of the obligations of a Party under the Contract and to minimize any adverse consequences of Force Majeure.

38. Delivery

- 38.1 MSI shall bear the cost for packing, transport, insurance, storage and delivery of all the Goods for “RFP” for Implementation of the Project in Ludhiana City” at all locations identified by the Authority in Ludhiana City.
- 38.2 The Goods under the Contract shall conform to the standards mentioned in the RFP, and when no applicable standard is mentioned, to the authoritative standards, such standard shall be approved by Authority.
- 38.3 MSI shall only procure the hardware and software after approvals from a designated committee/Authority.
- 38.4 MSI’s Key Personnel shall have the required experience and proper qualifications to perform the Services, and the Authority shall have the right to reject any such Personnel if found unfit by Authority to provide the Services. MSI shall also impart the appropriate training to its engineers and Personnel on the current and emerging technologies, concepts and configurations in order to provide the Services in a more efficient manner.

39. Insurance

- 39.1 The Goods supplied under the Contract shall be comprehensively insured by MSI at its own cost, against any loss or damage, for the entire period of the Contract. MSI shall submit to the Authority, documentary evidence issued by the insurance company, indicating that such insurance has been taken.
- 39.2 MSI shall bear all the statutory levies like customs, insurance, freight, etc. applicable on the Goods and also the charges like transportation charges, GST etc. that may be applicable till the Goods are delivered at the respective sites of installation shall also be solely borne by MSI.
- 39.3 MSI shall take out and maintain at its own cost, on terms and conditions approved by the Authority, all necessary insurance against the risks, and for the coverage’s, as specified below:
- a. at the Authority’s request, shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid; and
 - b. Employer’s liability and workers’ compensation insurance in respect of the Personnel of the MSI, in accordance with the relevant provisions of the Applicable Laws including personal accident and death in respect of its Personnel or any other insurance as may be appropriate and the proof of such insurances shall be provided to Authority, when so requested. Notwithstanding the above, the Key Personnel of MSI shall be and shall remain the employees of MSI and MSI alone shall be responsible for the payment of all dues with respect to them or meeting any statutory obligations under the Applicable Laws with respect to such Personnel.

40. Transfer of Ownership

- 40.1 All Commercially off the Shelf (COTS) products/ Open Source Solutions and related solutions and fixes provided pursuant to this Agreement shall be licensed according to the terms of the license agreement packaged with or otherwise applicable to such products. Such licenses shall be brought on behalf of and in the name of LSCL or mentioning LSCL as the end user of such licenses. MSI shall be responsible for arranging any licenses associated with products. "Product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing which are made available to the Purchaser for license which is published by product owner or its affiliates, or a third party. "Fixes" means product fixes that are either released generally (such as commercial product service packs) or that are provided to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. Unless otherwise specifically restricted by the Licensing Terms of the COTS products/ Open Source Solutions, all intellectual property rights in any development/enhancement/customization etc. done on the COTS products/ Open Source Solutions pursuant to this Agreement shall be owned by LSCL. Further, the MSI shall be obliged to ensure that all approvals, registrations, licenses, permits and rights which are, inter-alia, necessary for use of the Deliverables, goods, services, applications, services etc. provided by the MSI / Consortium / subcontractors under this Agreement shall be acquired in the name of the LSCL and MSI shall have the non-exclusive, limited right to use such licenses till the Term on behalf of the LSCL solely for the purpose of execution of any of its obligations under the terms of this Agreement. However, subsequent to the term of this Agreement, such approvals etc. shall endure to the exclusive benefit of the LSCL.
- 40.2 Forthwith upon expiry or earlier termination of the Contract and at any other time on demand by the Authority, MSI shall deliver to the Authority all Documents provided by or originating from the Authority and all Documents produced by or from or for MSI in the course of performing the Services, unless otherwise directed in writing by the Authority at no additional cost. MSI shall not, without the prior written consent of the Authority store, copy, distribute or retain any such Documents.

41. Exit Management Plan

- 41.1 An Exit Management plan shall be furnished by MSI in writing to the Authority within 90 (ninety) days from the date of signing of the Contract, which shall deal with at least the following aspects of exit management in relation to the Contract as a whole and in relation to the Project implementation, and Service Level monitoring:
- a. a detailed program of the transfer process that could be used in conjunction with a Replacement Service Provider including details of the means to be used to ensure continuing provision of the Services throughout the transfer process or until the cessation of the Services and of the management structure to be used during the transfer;

- b. plans for provision of contingent support to Project and Replacement Service Provider for a reasonable period after transfer;
 - c. Exit Management Plan in case of normal termination of Contract period;
 - d. Exit Management Plan in case of any eventuality due to which Project is terminated before the Contract period; and
 - e. Exit Management Plan in case of termination of MSI.
- 41.2 Exit Management Plan at the minimum shall adhere to the following:
- a. 3 (Three) months of the support to Replacement Service Provider post termination of the Contract;
 - b. all reasonable assistance necessary to ensure that an orderly transfer is achieved with minimal disruption, to Replacement Service Provider, of the Services, functions and operations that were provided prior to termination of Contract/exit of MSI from Project, complete handover of the planning documents, bill of materials, functional requirements specification, technical specifications of all equipment, change requests if any, sources codes, wherever applicable, reports, documents and other relevant items to the Replacement Service Provider/Authority; and
 - c. Certificate of acceptance from authorized representative of Replacement Service Provider issued to MSI on successful completion of handover and knowledge transfer.
- 41.3 In the event of termination or expiry of the Contract, Project implementation, or Service Level monitoring, both MSI and Authority shall comply with the exit management plan.
- 41.4 During the exit management period, MSI shall use its best efforts to deliver the Works/Services.

B. PART B – SPECIAL CONDITIONS OF CONTRACT

42. Performance Security

42.1 To guarantee its performance under the Contract, the MSI shall provide to Authority in its favour a Performance Bank Guarantee (PBG) which is unconditional, unequivocal and irrevocable for an amount equivalent to 10% of the order value of the Contract in the format prescribed in RFP issued by any of the nationalized banks only. The Performance Bank Guarantee shall be kept valid for the Term of the Contract and any extension of the Term and upto a period of 6 (six) months after the termination or expiry of the Contract. The Performance Bank Guarantee shall be encashed by the LSCL in the event of MSI's failure to complete obligations or breach by MSI of any of the terms and conditions of the Contract.

43. Liquidated Damages

43.1 If MSI fails to supply, install or maintain any or all of the Goods or fails to complete the Works or fails to provide the Services as per the Contract, within the time period(s) specified in the RFP Vol II, the Authority without prejudice to its other rights and remedies under the Contract, deduct from the Contract price, as liquidated damage per week of 0.2% of the CAPEX of Contract / request order value per week for first 8 (eight) weeks and 0.3% per week for every subsequent week till such time the default continues.

43.2 The deduction shall not in any case exceed 10 % of the Contract value.

43.3 The Authority may without prejudice to its right to effect recovery by any other method, deduct the amount of liquidated damages from any payments due to MSI in its hands (which includes the Authority's right to claim such amount against MSI's Bank Guarantee) or which may become due to MSI at a prospective date. Any such recovery or liquidated damages shall not in any way relieve MSI from any of its obligations to complete the Work or from any other obligations and liabilities under the Contract.

43.4 Delay not attributable to MSI shall be considered for exclusion for the purpose of computing liquidated damages.

44. Limitation of Liability:

44.1 Limitation of MSI's Liability towards the Authority:

- a. Except as otherwise provided in the Contract or in cases of gross negligence or willful misconduct on the part of MSI or on the part of any person or company acting on behalf of MSI in carrying out the Services, in no event either Party shall be liable to the other Party for any special, exemplary, punitive or similar damages, indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Contract;

44.2 MSI, with respect to damage caused by MSI to Authority's property, shall not be liable to Authority:

- a. for any indirect or consequential loss or damage; and
 - b. For any direct loss or damage that exceeds the total payments payable under the Contract to MSI hereunder.
- 44.3 This limitation of liability shall not be applicable or restrict MSI's liability in any manner for injury, loss of life caused to any person or damage to third party's property or infringement of any Intellectual Property Rights caused by MSI or any Person (including MSI's Subcontractor) acting on behalf of MSI in carrying out the Services
- 44.4 The Authority's liability under the Contract, tort, negligence, default etc whatsoever shall be limited to the amount of fees remaining to be paid to the MSI under the Contract.

45. Ownership and Retention of Documents

- 45.1 The Authority shall own the Document(s), prepared by or for MSI arising out of or in connection with the Contract.
- 45.2 Forthwith upon expiry or earlier termination of this Contract and at any other time on demand by the Authority, MSI shall deliver to the Authority all Documents provided by or originating from the Authority and all Documents produced by or for MSI in the course of performing the Services, unless otherwise directed in writing by the Authority at no additional cost. MSI shall not, without the prior written consent of the Authority store, copy, distribute or retain any such Documents.

46. Information Security

- 46.1 MSI shall not carry any written/printed document, layout diagrams, compact disk, hard disk, storage tapes, other storage devices or any other goods/material proprietary to Authority into/out of any Project Location without written permission from the Authority.
- 46.2 MSI shall not destroy any unwanted documents, defective tapes/media present at any location on their own. All such documents, tapes/media shall be handed over to the Authority.
- 46.3 All documentation and media at any location whether at the Project Location or otherwise, shall be properly identified, labeled and numbered by MSI. MSI shall keep track of all such items and provide a summary report of these items to the Authority whenever asked for.
- 46.4 Access to Authority's data and systems, internet facility by MSI at any location shall be in accordance with the written permission by the Authority. The Authority shall allow MSI to use its facilities in a limited manner subject to availability. It is the responsibility of MSI to prepare and equip itself in order to meet the requirements of providing the Services.
- 46.5 MSI must acknowledge that Authority's business data and other Authority proprietary information or materials, whether developed by Authority or being used by Authority pursuant to a license agreement with a third party (the foregoing

collectively referred to herein as “proprietary information”) are confidential and proprietary to Authority; and MSI along with its team agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than reasonable care used by MSI to protect its own proprietary information. MSI recognizes that the goodwill of Authority depends, among other things, upon MSI keeping such proprietary information confidential and that unauthorized disclosure of the same by MSI or its team could damage the goodwill of Authority, and shall be considered as a material breach of the Contract terms and conditions by MSI. MSI may come into possession of such proprietary information, even though MSI does not take any direct part in or furnish the Services performed for the creation of said proprietary information and it shall limit access of such proprietary information thereto only such employees with a need to such access to perform the Services . MSI and or its Key Personnel shall use such information only for the purpose of performing the said Services.

46.6 MSI shall, upon termination of the Contract for any reason, or upon demand by Authority, whichever is earlier, return any and all information provided to MSI by Authority, which would include any Confidential information or any proprietary information including any copies or reproductions, both hardcopy and electronic of such information.

46.7 By virtue of the Contract, MSI team may have access to information of the Authority and/or a third party which would include any Confidential Information or any proprietary information of such parties and will use such information only with prior approval of the Authority on a need only basis and to the extent required for performing the Services.

47. Records of contract documents

47.1 MSI shall at all-time make and keep sufficient copies of the process manuals, operating procedures, specifications, Contract documents and any other documentation as may be required to fulfil the obligations under the Contract.

47.2 MSI shall keep on the DC Site at least 3 (three) copies of each and every specification and copy of the Contract, in excess of it’s own requirement and those copies shall be available at all times for use by the Authority’s representative and by any other person authorized by the Authority’s representative.

48. Security and Safety

48.1 MSI shall comply with the directions issued from time to time by the Authority and the standards related to the security and safety, in so far as it applies to the provision of the Services.

48.2 MSI shall upon reasonable request by the Authority, or its nominee(s) participate in regular meetings when safety and information technology security matters are reviewed.

49. Confidentiality

- 49.1 MSI shall not, either during the Term or after expiration of the Contract, disclose any proprietary or Confidential Information relating to the Services/Contract and/or Authority's business/operations, information, application/software, hardware, business data, architecture schematics, designs, storage media and other information/documents without the prior written consent of the Authority.
- 49.2 The Authority reserves the right to adopt legal proceedings, civil or criminal, against MSI in relation to a breach of obligation by MSI under this clause
- 49.3 MSI shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with the Authority to the satisfaction of the Authority.
- 49.4 MSI shall notify the Authority promptly if it is aware of any unauthorized disclosure of the Confidential Information otherwise than as permitted by the Contract or with the authority of the Authority.
- 49.5 MSI shall be liable to fully recompense the Authority for any loss of revenue arising from breach of confidentiality.

50. Events of Default by MSI

- 50.1 The failure on the part of MSI to perform any of its obligations or comply with any of the terms of the Contract shall constitute an Event of Default on the part of MSI. The events of default are but not limited to the following:
- a. MSI/MSI's Teams failure to perform/ adhere to any instructions or directives issued by the Authority which it deems proper and necessary to execute the Scope of Work or provide Services under the Contract, or
 - b. MSI/MSI's Teams failure to confirm/adhere to any of the key performance indicators as laid down in the Key Performance Measures/Service Levels, or if MSI has fallen short of matching such standards/benchmarks/targets as the Authority may have designated with respect to the System or any Goods, task or service, necessary for the execution of the Scope of Work and performance of Services under this Contract. The above mentioned failure on the part of MSI may be in terms of failure to adhere to performance, quality, timelines, specifications, requirements or any other criteria as defined by the Authority; or
 - c. MSI's failure to remedy a defect or failure to perform its obligations in accordance with the Service Specifications as per this RFP or any other specifications issued by the Authority, despite being served with a default notice which laid down the specific deviance on the part of MSI/MSI's Team to comply with any stipulations or standards as laid down by the Authority; or
 - d. MSI/MSI's Teams failure to adhere to any amended direction, instruction, modification or clarification as issued by the Authority during the term of the Contract and which the Authority deems proper and necessary for the execution of the Scope of Work under the Contract; or

- e. MSI/MSI's Teams failure to demonstrate or sustain any representation or warranty made by it in the Contract, with respect to any of the terms of the Bid, the RFP and the Contract.
 - f. There is a proceeding for bankruptcy, insolvency, winding up or there is an appointment of receiver, liquidator, assignee, or similar official against or in relation to MSI; or
 - g. MSI/MSI's Team's failure to comply with or is in breach or contravention of any Applicable Laws.
- 50.2 Where there has been an occurrence of such defaults inter alia as stated above, the Authority shall issue a notice of default to MSI, setting out specific defaults/deviances/omissions/non-compliances/non-performances and providing a notice of 30 (thirty) days cure period to enable MSI to rectify such default committed.
- 50.3 Where despite the issuance of a default notice to MSI by the Authority, MSI fails to remedy the default within the cure period provided to the satisfaction of the Authority, the Authority may, where it deems fit, issue to MSI either another default notice or proceed to terminate the Contract forthwith.

51. Termination

- 51.1 The Authority may, terminate the Contract in whole or in part by giving MSI a prior written notice indicating its intention to terminate the Contract under the following circumstances:
- a. Where the Authority is of the opinion that there has been such Event of Default on the part of MSI/MSI's Team which would make it proper and necessary to terminate the Contract and may include failure on the part of MSI to adhere to any part of its obligations under its Bid, the RFP or under the Contract.
 - b. Where it comes to the Authority's attention that MSI (or MSI's Team) is in a position of actual conflict of interest with the interests of the Authority, in relation to any of terms of MSI's Bid, the RFP or the Contract.
 - c. Where MSI's ability to survive as an independent corporate entity is threatened or is lost owing to any reason whatsoever, including *inter-alia* the filing of any bankruptcy proceedings against MSI, any failure by MSI to pay any of its dues to its creditors, the institution of any winding up proceedings against MSI or the happening of any such events that are adverse to the commercial viability of MSI. In the event of the happening of any events of the above nature, the Authority shall reserve the right to take any steps as are necessary, to ensure the effective transition of the sites, pilot site to a successor agency, and to ensure business continuity.
 - d. Termination for Insolvency: The Authority may at any time terminate the Contract by giving written notice to MSI, without compensation to MSI, if MSI becomes bankrupt or otherwise insolvent, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to the Authority.
 - e. MSI may, subject to written approval by the Authority, terminate the Contract before the expiry of the Term by giving the Authority a prior and written notice at least 3 (three) months in advance indicating its intention to terminate the Contract.

- f. In case of Deliverables/ milestone which is approved by the Authority and payment is undisputed, the MSI may terminate the Contract in case of non-payment after 90 (ninety) days of serving the notice to LSCL.

52. Consequence of Termination

- 52.1 In the event of termination of the Contract due to any cause whatsoever, whether consequent to the stipulated term of the Contract or otherwise the Authority shall be entitled to impose any such obligations and conditions and issue any clarifications as may be necessary to ensure an efficient transition and effective business continuity of the Project which MSI shall be obliged to comply with and take all available steps to minimize loss resulting from that termination/breach, and further allow and provide all such assistance to the Authority and/or the successor agency/service provider, Replacement Service Provider as may be required, to take over the obligations of MSI in relation to the execution/continued execution of the requirements of the Contract.
- 52.2 Where the termination of the Contract is prior to its stipulated term on account of a default on the part of MSI or due to the fact that the survival of MSI as an independent corporate entity is threatened/has ceased, or for any other reason, whatsoever, the Authority, through unilateral re-determination of the consideration payable to MSI, shall pay MSI for that part of the Services which have been authorized by the Authority and satisfactorily performed by MSI up to the date of termination. Without prejudice to any other rights, the Authority may retain such amounts from the payment due and payable by the Authority to MSI as may be required to offset any losses caused to the Authority as a result of any acts of omissions or commission by MSI. In case of any loss or damage due to default or inability on the part of MSI in performing any of its obligations with regard to executing the Schedule of Requirements under the Contract, MSI shall compensate the Authority for any such loss, damages or other costs, incurred by the Authority. Additionally, members of its team shall continue performing all its obligations and responsibilities under the Contract in an identical manner as were being performed before the default occurred due to acts of MSI as described above in order to execute an effective transition and to maintain business continuity. All third parties shall continue to perform all/any functions as stipulated by the Authority and as may be proper and necessary to execute the Schedule of Requirements under the Contract in terms of MSI's Bid, the Bid Document and the Contract.
- 52.3 Nothing herein shall restrict the right of the Authority to invoke the Bank Guarantee and other guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to the Authority under the Applicable Law.
- 52.4 The termination hereof shall not affect any accrued right or liability of either Party nor affect the operation of the provisions of the Contract that are expressly or by implication intended to come into or continue in force on or after such termination.
- 52.5 Upon termination or after expiration of Contract, MSI shall forthwith return to the Authority, all papers, material and other properties held by/provided to MSI during the Term of the Contract, including all Confidential Information and proprietary information provided to MSI for its use during the Project.

53. Miscellaneous

53.1 Under this Contract, the relationship between the Parties is that of independent contractors and no other relationship is intended, including a partnership, franchise, joint venture, agency, employee/employer, fiduciary, master/servant relationship, or other special relationship. Neither Party shall act in a manner, which expresses or implies a relationship other than that of independent contractors, nor bind the other Party. MSI and the Sub-contractor shall take care of all liabilities, statutory or otherwise, in relation to persons employed by it or otherwise and the Authority shall not be responsible for the same in any manner whatsoever.

53.2 MSI or any of its Affiliates shall not directly or indirectly, solicit for employment or engagement any employees of the Authority. The provisions of this clause shall be applicable during the Term of the Contract and shall survive the termination of the Contract for a period of 2 years from the date of termination. In addition, MSI shall not proceed to conduct operations/business similar to the Authority with any employee and/or consultant of the Authority who has knowledge of the Confidential Information, without the prior written consent of the Authority.

53.3 It is also agreed between the Parties that the Authority is under no obligation, whatsoever, to procure Services/execute Works from MSI alone. By executing the Contract, the Authority does not commit/guarantee any minimum amount of payments due to MSI for the Services/Works performed by MSI and holds the right to increase or decrease the Scope of Work provided under the Contract and in these cases, the Parties shall mutually agree upon any amendment to the charges which are payable to MSI for the Works/Services performed.

53.4 The Authority reserves the right to propose amendment or modification, of the terms of the Contract or any part of it by giving MSI a notice in writing. No variation, amendment, modification or addition to the Contract shall be effective or binding on either of the Parties unless set forth in writing and executed by them through their authorized representatives.

53.5 The Contract shall be governed by and construed in accordance with the laws of India. The Parties agree to accept the non-exclusive jurisdiction of the competent courts of Ludhiana.

53.6 The Contract sets forth the entire agreement and understanding between the Parties as to the subject matter therein and shall supersede and override all previous communications, negotiations, commitments, agreements, and understandings, either oral or written, between the Parties with respect to the subject matter of the Contract.

53.7 Notice

I. Unless otherwise provided herein, all notices or other communications to be given pursuant to the Contract shall be made in writing, in English and by letter/email (save as otherwise stated) and shall be deemed to be duly given or made, in the case of personal delivery of the letter, when delivered; in the case of email, when sent, or, in the case of a letter, 3 (three) Business Days after being deposited in the post (by registered post, with acknowledgment due), postage

prepaid, to such Party at its address or facsimile number specified herein or at such other address or facsimile number as such party may hereafter specify for such purposes to the other by notice in writing.

The addresses referred to above are:

a) In the case of a notice to the Authority:

Address : [●]

Attention : [●]

Telephone : [●]

Email : [●]

b) In the case of the MSI

Address : [●]

Attention : [●]

Email : [●]

c) In the case of the Subcontractor (if applicable):

Address : [●]

Attention : [●]

Email : [●]

- II. A notice or other communication received on a day other than a Business Day, or after business hours in the place of receipt, shall be deemed to be given on the next following Business Day in such place.
- III. The address or email address for serving notices can be changed by any Party by properly serving notices on the other Parties informing them of the changes of address.
- IV. In the event that a Party refuses delivery or acceptance of a notice, request or other communication, under the Contract, it shall be deemed that the notice was given upon proof of the refused delivery, provided the same was sent in the manner specified in the Contract.

53.8 No failure by either party to enforce any rights hereunder shall be construed as a waiver of such right(s).

53.9 If any provision of the Contract is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein

contained inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences or Clauses contained in the Contract shall not affect the remaining portions of the Contractor any part hereof, and they shall otherwise remain in full force and effect.

- 53.10 Neither MSI nor its employees or its Subcontractor shall have the right, power, or authority to create any contract or obligation, express or implied, on behalf or, in the name of or binding on Authority.
- 53.11 The rights and obligations under the Contract are personal to MSI and shall not be assigned by it, to any third party, without the express prior written authorization of the Authority.

54. Change Control Note (CCN)

- 54.1 This applies to and describes the procedure to be followed in the event of any proposed change to Contract, site Implementation, and Service levels. Such change shall include, but shall not be limited to, changes in the scope of services provided by MSI and changes to the terms of payment.
- 54.2 Change requests in respect of the Contract, the site implementation, or the Service levels shall emanate from the Parties' representative who shall be responsible for obtaining approval for the change and who shall act as its sponsor throughout the Change Control Process and shall complete Part A of the CCN (Annex I, Section 3 of the RFP). CCNs shall be presented to the other Party's representative who shall acknowledge receipt by signature of the authorized representative of the Authority.
- 54.3 MSI and the Authority while preparing the CCN, shall consider the change in the context of whether the change is beyond the scope of Services including ancillary and concomitant services required. The CCN shall be applicable for the items which are beyond the stated/implied scope of work as per the RFP document.
- 54.4 MSI shall assess the CCN and complete Part B of the CCN. In completing Part B of the CCN MSI shall provide as a minimum:
- a. a description of the change;
 - b. a list of Deliverables required for implementing the change;
 - c. a timetable for implementation;
 - d. an estimate of any proposed change; or any relevant acceptance criteria;
 - e. an assessment of the value of the proposed change;
 - f. Material evidence to prove that the proposed change is not already covered within the scope of the RFP, Contract and Service Levels.
- 54.5 Prior to submission of the completed CCN to the Authority or its nominated agencies, MSI shall undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, MSI shall consider the materiality of the proposed change in the context of the Contract, the sites, Service levels affected by the change and the total effect that may arise from implementation of the change.

- 54.6 Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided MSI meets the obligations as set in the CCN. In the event MSI is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party shall be borne by MSI. Change requests and CCNs shall be reported monthly to each Party's representative who shall prioritize and review progress.

C. PART C – SERVICE LEVELS

55. Purpose of Service Levels

- 55.1 The purpose is to define/measure the levels of the Service provided by MSI to the Authority for the duration of the Contract. The benefits of this are:
- a. Implement a process to define Service level parameters or permissible threshold within which MSI would be required to perform the Services, and failure of performing the Services by MSI within the said acceptable parameters would be considered as a deficiency in Services;
 - b. help the Authority control the levels and performance of MSI's Services; and
 - c. alert MSI to improve its Services and/or remove deficiencies in Services in case the Service Levels agreed between the Authority and MSI are breached by MSI

56. Service Level Agreements & Targets

- 56.1 This section is agreed to by Authority and MSI as the key performance indicator for the Project. This may be reviewed and revised according to the procedures detailed in Clause 69 (Service Level Change Control).
- 56.2 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.
- 56.3 The procedures in Clause 34 shall be used if there is a dispute between Authority and MSI on what the permanent targets should be.

57. General principles of Service Level Agreements

The Service Level Agreements have been logically segregated in the following categories:

58. Service Level Agreements (SLA)

- 58.1 SLA shall become the part of Contract between LSCL and the MSI. SLA defines the terms of the MSI's responsibility in ensuring the timely delivery of the Deliverables and the correctness of the same based on the agreed Performance Indicators as detailed in this section.
- 58.2 The MSI has to comply with service level requirements to ensure adherence to Project Timelines, quality and availability of services, throughout the period of this Contract i.e. for a period mentioned in the project timeline of volume 2 of this RFP. The MSI has to supply appropriate software/hardware/automated tools as may be required to monitor and submit reports of all the SLAs mentioned in this section.

- 58.3 For purposes of the SLA, the definitions and terms as specified in the Document along with the following terms shall have the meanings set forth below:
- i. **"Total Time"** - Total number of hours in the quarter (or the concerned period) being considered for evaluation of SLA performance.
 - ii. **"Uptime"** - Time period for which the specified services/outcomes are available in the period being considered for evaluation of SLA. Formulae for calculation of Uptime:
$$\text{Uptime (\%)} = \{1 - [(\text{Downtime}) / (\text{Total time} - \text{scheduled maintenance time})]\} * 100$$
 - iii. **"Downtime"**- Time period for which the specified services/components/outcomes are not available in the concerned period, being considered for evaluation of SLA, which would exclude downtime owing to Force Majeure & Reasons beyond control of the successful bidder.
 - iv. **"Scheduled Maintenance Time"** - Time period for which the specified services/components with specified technical and service standards are not available due to scheduled maintenance activity. The successful bidder is required to take at least 10 days prior approval from LSCL for any such activity. The scheduled maintenance should be carried out during non-peak hours (like post mid-night, and should not be for more than 4 hours. Such planned downtime would be granted max 4 times a year.
 - v. **"Incident"** - Any event/abnormalities in the service being rendered, that may lead to disruption in normal operations and services to the end user.
 - vi. **"Response Time"** - Time elapsed from the moment an incident is reported in the Helpdesk over phone or by any applicable mode of communication, to the time when a resource is assigned for the resolution of the same.
 - vii. **"Resolution Time"** - Time elapsed from the moment incident is reported to Helpdesk either in person or automatically through system, to the time by which the incident is resolved completely and services as promised are restored.

59. Measurement of SLA

- 59.1 The SLA metrics provided specifies performance parameters as baseline performance, lower performance and breach. All SLA calculations will be done on quarterly basis.
- 59.2 The SLA also specifies the liquidated damages for lower performance and breach conditions.
- 59.3 Payment to the MSI is linked to the compliance with the SLA metrics. The matrix specifies three levels of performance, namely:
- a. The MSI will get 100% of the Contracted value if all the baseline performance metrics are compiled and the cumulative credit points are 100;
 - b. The MSI will get lesser payment in case of the lower performance. (For e.g. if SLA point score is 80 then the MSI will get 20% less on the quarterly payment - The formula calculating the deductions is $(100 - \text{SLA Point Score})\%$)
 - c. If the performance of the Agency in respect of any parameter falls below the prescribed lower performance limit, debit points are imposed for the breach.

- 59.4 The credit (+) points earned during the quarter will be considered for computing penalty. The quarterly payment shall be made after deducting the liquidated damages as mentioned above.
- 59.5 The aforementioned SLA parameters shall be measured as per the individual SLA parameter requirements and measurement methods, through appropriate SLA Measurement tools to be provided by the MSI and approved and audited by LSCL or its appointed Consultant for accuracy and reliability.
- 59.6 LSCL shall also have the right to conduct, either itself or through any other agency as it may deem fit, an audit / revision of the SLA parameters. The SLAs defined, shall be reviewed by LSCL on an annual basis after consulting the MSI, Project Management Consultants and other experts. All the changes would be made by LSCL after consultation with the MSI and might include some corrections to reduce undue relaxation in Service Levels or some corrections to avoid unrealistic imposition of liquidated damages, which are noticed after project has gone live.
- 59.7 Total liquidated damages to be levied on the MSI shall be capped at 10% of the total contract value. However, LSCL would have right to invoke termination of the Contract in case the overall liquidated damages equals 10% of total contract value. Liquidated damages to be levied during Post Implementation period shall be capped at 10% of the OPEX value. LSCL would also have right to invoke termination of Contract in case cumulative debit point (breach points) are above 30 in 2 consecutive quarters.

60. Pre Implementation SLA

Timely delivery of the Scope of Work shall be as under:

Definition	Timely delivery of Deliverables would comprise entire bill of material and the application systems, and as per successful UAT of the same.
Service Level Requirement	All the Deliverables defined in the Contract has to be submitted on-time on the date as mentioned in the Contract with no delay.
Measurement of Service Level Parameter	To be measured in Number of weeks of delay from the timelines mentioned in the section "Project Timelines"
Penalty for non-achievement of SLA Requirement	Any delay in the delivery of the Project Deliverables (solely attributable to vendor) would attract a liquidated damage per week of 0.2% of the CAPEX of Contract / Request Order value per week for first 8 weeks and 0.3% per week for every subsequent week. If the liquidated damage reaches 10% of the total Contract value, Authority may invoke termination clause. Liquidated Damage will be computed on Capex

Definition	Timely delivery of Deliverables would comprise entire bill of material and the application systems, and as per successful UAT of the same.
	value of Contract/ Request order value of the particular phase

61. SLA Matrix for Post Implementation SLAs

- 61.1 These SLAs shall be used to evaluate the performance of the Services on monthly basis.
- 61.2 Penalty levied for non- performance as per SLA requirements shall be deducted through subsequent payments due from LSCL or through the Performance Bank Guarantee.
- 61.3 The SLA parameters shall be measured for each of the sub systems’ SLA parameter requirements and measurement methods, through appropriate SLA measurement tools. All such required tools should be provided by the MSI. LSCL will have the authority to audit these tools for accuracy and reliability.
- 61.4 The upper limit of penalty would be capped at 10% of the OPEX value for each quarter. In case the calculated penalty crosses 10% penalty of the OPEX value in 2 subsequent quarters, LSCL reserves the right to invoke the termination clause.
- 61.5 SLAs for street IT infrastructure such as CCTV Cameras, Variable Message Display (VMD) boards, Environmental Sensors, Public Address system, ECB, Other equipment etc.

#	Uptime SLA (Monthly)	Penalty Clause
1	Uptime >= 98%	No Deduction
2	Uptime < 98%	(98%- Uptime %) of monthly Operational Expense for the component. For example if uptime of component is 95%, then penalty imposed will be 98%-95% i.e. 3% of operational expense.

- 61.6 SLAs for Network Availability for all GPRS enabled equipment and other connectivity for equipment including Variable Message Display boards etc.

#	Uptime SLA (Monthly)	Penalty Clause
1	Uptime >= 98%	No Deduction
2	Uptime < 98%	(98%- Uptime %) of monthly Operational Expense for the component.

61.7 SLAs for Network Quality of Service

#	SLA (Monthly)	Penalty Clause
1	99% throughput of minimum stipulated bandwidth during	No Deduction

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#	SLA (Monthly)	Penalty Clause
	24*7 hours	
2	≥97% and <99% throughput of minimum stipulated bandwidth during 24*7 hours	1.0% deduction from Quarterly Operational Payment
3	<97% throughput of minimum stipulated bandwidth during 24*7 hours	2.0% deduction from Quarterly Operational Payment
4	Average Packet loss exceeding 0.5% over a month (at Data Center and WAN level)	0.5% deduction from Quarterly Operational Payment
5	Latency Delay > 150 ms (every instance) (at Data Center and WAN level)	0.5% deduction from Quarterly Operational Payment

61.8 SLAs for IT Infrastructure including software applications, hardware, video walls, workstations and other equipment of ICC.

#	Performance Area	Baseline		Lower Performance	Breach		
		Metric	Points	Metric	Points	Metric	Points
1. Application Performance (includes any user/system application related to the project)							
1	Overall application(s) availability – Command & Control Center	99.5%	20	≥ 96.5 % to <99%	10	< 96.5 %	0
2	Reports Generation Response Time (Alerts/MIS/Logs etc.)	Simple query - < 5secs Medium complexity query - <30 secs High Complexity query - < 1min	5	Simple complexity Query = 5.01 – 10 secs Medium complexity query = 30.01 – 60 secs High Complexity query = < 60.1 sec – 2 min	2.5	Simple complexity Query = > 10 secs Medium complexity query = > 60 secs High Complexity query = > 2 min	0

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#	Performance Area	Baseline		Lower Performance	Breach		
		Metric	Points	Metric	Points	Metric	Points
3	Maximum time for successful settings modification of field devices	< 4 secs	5	4.01 – 6.0 secs	2.5	>6 secs	0
2. End-User Equipment Uptime							
1	Monitoring workstations at Command Centers	99%	4	>= 96 % to <99%	2	< 96 %	0
2	IP Phones	98%	3	>= 96 % to <98%	1.5	< 96 %	0
3	Video Wall	99%	3	>= 96 % to <99%	1.5	< 96 %	0
3. Underlying IT Infrastructure Uptime/Availability at Data Centers							
1	Production Servers Uptime	99.5%	20	>= 99.3 % to <99.5%	10	< 99.3%	0
2	Storage System Uptime	99.5%	20	>= 99.3 % to <99.5%	10	< 99.3%	0
4. Security /Patch Services for IT Infrastructure							
1	Firewall and any other security appliance Uptime	100%	15	97 % to 99.99%	7.5	< 97%	0
2	Security rules update within 2 hours of approved change management request	0 violations of service parameters	1	1 – 4 violations	0.5	> 4 violations	0
3	Anti-virus, Anti-spyware, Anti-spam updates within 24 hrs. of request	0 violations of service parameters	1	1 – 4 violations	0.5	> 4 violations	0
4	Critical Patches – within 48 hours of patch release.	0 violations of service parameters	1	1 – 4 violations	0.5	> 4 violations	0
5	Non Critical Patches – within 15 days of patch release.	Up-to 1 violations of service parameters	1	2 – 5 violations	0.5	> 5 violations	0

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#	Performance Area	Baseline		Lower Performance	Breach		
		Metric	Points	Metric	Points	Metric	Points
6	Resolution of Issue	<8 Hrs (for Critical issue) <16 Hrs (for Medium issue) <4 days (for Low issue)	1	<12 Hrs and >=8 hrs (for Critical issue) <24 Hrs and >=16 (for Medium issue) <8 days and >=4 (for Low issue)	0.5	>12 Hrs (for Critical issue) >24 Hrs (for Medium issue) >8 days (for Low issue)	0
Total Score			100		50		0

61.9 SLA and Penalty for Helpdesk Response and Resolution time

#	Parameter	Penalty Clause
1	For <= 1% of the calls not getting responded in less than or equal to 60 seconds per quarter	No Deduction
2	For > 1% of the calls not getting responded in less than or equal to 60 seconds per quarter	0.5% of the monthly OPEX value

61.10 SLA for Change Requests or enhancements

#	Parameter	Metric	Frequency	Penalty
1	Criticality of Change - Low	< T, where T is the timeframe for completion of the Change request as agreed upon by LSCL and successful bidder	Weekly per Occurrence	1 % of change request value per week for the first two weeks for each occurrence, 2 % of change request value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the

#	Parameter	Metric	Frequency	Penalty
				contract.
2	Criticality of Change - Medium	< T, where T is the timeframe for completion of the Change request as agreed upon by LSCL and successful bidder	Weekly per Occurrence	1.5 % of change request value per week for the first two weeks for each occurrence, 2.5 % of change request value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the contract.
3	Criticality of Change - High	< T weeks, where T is the timeframe for completion of the Change request as agreed upon by LSCL and successful bidder	Weekly per Occurrence	2 % of change request value per week for the first two weeks for each occurrence, 3 % of change request value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the Contract.

62. SLA for issue resolution

#	Parameter	Metric	Frequency	Penalty
1	Severity 1 Issue	Resolution Time: <= 8 Hrs from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the contract.
2	Severity 2 Issue	Resolution Time: <= 4 Days from	Daily	0.1% of monthly opex value per

#	Parameter	Metric	Frequency	Penalty
		the time the call is logged by end user.		week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the Contract.
3	Severity 3 Issue	Resolution Time: <= 10 Days from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the Contract.
4	Severity 4 Issue	Resolution Time: <= 20 Days from the time the call is logged by end user.	Daily	0.1% of monthly opex value per week for the first two weeks for each occurrence, 0.2% of monthly opex value per week for every subsequent week, subject to a maximum of 10% post which LSCL may invoke annulment of the contract.

63. Miscellaneous SLAs

#	Parameter	Metric	Frequency	Penalty
1	Compliance in document versioning and maintenance (FRS, SRS,	100% as per requirement timelines	Daily per occurrence	Rs.10,000 per occurrence per day of delay.

#	Parameter	Metric	Frequency	Penalty
	Business Blue Prints, User Training Manual etc.), application version control, updates & patches etc.			
2	Manpower Availability & Readiness	100% as per requirement timelines	Daily	Rs. 10,000 per day in case there is shortage in manpower deployment or lack of adequate skills
3	Scheduled downtime for System Maintenance per week	<= 2 times per month	Per Occurrence	Rs. 1,00,000 per occurrence for unscheduled downtime or scheduled downtimes exceeding the specified metric.
4	Resource Replacement	Within 7 days of exit of resource (in case of LSCL initiated or supplier initiated)	Per Occurrence	Rs. 5,000.00 per day of unavailability of resource
5	Application Security	Cyber Crime/Hacking/Data Theft/Fraud attributable to the service provider	Per Occurrence	Depending on the type of incident and its impact, a Penalty of 10% on the entire contract value or in case of severe issue (as defined by LSCL) such breach may lead to termination of contract

64. Operational SLAs

- i. The proposed storage for all the production related applications should be on latest generation technology. The latency of storage should always be less than 1ms for all transactions.

- ii. The proposed solution for backup should be cost optimized to provide lowest cost per TB of capacity. It should provide flexibility to schedule policy and retention levels as required and mandated from time to time.
- iii. The proposed backup solution should include features like deduplication, compression and encryption. The proposed backup solution should also allow flexibility to migrate the backups from one CSP to another CSP without needing to de-duplicate, compress and encrypt the data again.

65. Definitions:

- i. Severity 1: ICCC or Smart City applications down for more than 70% users.
- ii. Severity 2: ICCC or Smart City applications down for more than 30% users.
- iii. Severity 3: Modules of ICCC not functional for users.
- iv. Severity 4: Minor functionality issues with ICCC or Smart City applications
- v. Response Time: Response time is defined as the time the support vendor takes to respond from the time that ticket was raised.
- vi. Resolution Time: Resolution time is defined as the time the vendor takes to resolve the issue or provide acceptable workaround for the issue.

66. Conditions for No Penalties

- a. Penalties shall not be levied on the Bidder in the following cases:
 - i. There is a Force Majeure event effecting the SLA which is beyond the control of the MSI. Force Majeure events shall be considered in line with the clause mentioned RFP.
 - ii. The non-compliance to the SLA has been due to reasons beyond the control of the successful bidder.
 - iii. Theft cases by default/vandalism would not be considered as “beyond the control of MSI”. Hence, the MSI should be taking adequate anti-theft measures, spares strategy, Insurance as required to maintain the desired Required SLA.

67. Reporting Procedures

- 67.1 MSI representative shall prepare and distribute Service level Performance Reports in a mutually agreed format by the 5th working day of subsequent month. The Reports shall include “actual versus target” Service Level Performance, a variance analysis and discussion of appropriate issues or significant events. Performance Reports shall be distributed to Authority management personnel as directed by Authority.
- 67.2 Also, MSI may be required to get the Service Level Performance Report audited by a third-party Auditor appointed by the Authority.

68. Issue Management Procedures

68.1 General

- a. This process provides an appropriate management structure for the orderly consideration and resolution of business and operational issues in the event that quick consensus is not reached between Authority and MSI.

- b. Implementing such a process at the beginning of the outsourcing engagement significantly improves the probability of successful issue resolution. It is expected that this pre-defined process shall only be used on an exception basis if issues are not resolved at lower management levels.

68.2 Issue Management Process

- a. Either Authority or MSI may raise an issue by documenting the business or technical problem, which presents a reasonably objective summary of both points of view and identifies specific points of disagreement with possible solutions.
- b. Any unresolved issues/disputes concerning the Project/Contract between the Parties shall first be referred in writing to the Project Manager for his consideration and resolution. If the Project Manager is unable to resolve any issue/dispute within 5 days of reference to him, the Project Manager shall refer the matter to the Program Management Committee. If the Program Management Committee is unable to resolve the issues/disputes referred to them within 15 days, the unresolved issue/dispute shall be referred to Steering Committee/High Powered Committee/Project Implementation Committee for resolution. The Steering Committee or the High Powered Committee / Project Implementation Committee within 30 days of reference to them shall try to resolve the issue/dispute.
- c. If the Steering Committee or the High Powered Committee / Project Implementation Committee fails to resolve a dispute as per the above clause, the same shall be referred to arbitration. The arbitration proceedings shall be carried out as per the Arbitration procedures mentioned in Clause 34 of this of RFP.

69. Service Level Change Control

69.1 General

- a. It is acknowledged that this Service levels may change as Authority's business needs evolve over the course of the Contract period. As such, this document also defines the following management procedures:
 - i. A process for negotiating changes to the Service Levels
 - ii. An issue management process for documenting and resolving particularly difficult issues.
 - iii. Authority 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.
- b. Any changes to the levels of service provided during the Term of the Contract shall be requested, documented and negotiated in good faith by both Parties. Either Party can request a change.
- c. Service Level Change Process: The Parties may amend Service Level by mutual agreement. 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 Authority. Additional copies of the current Service Levels shall be available at all times to authorized parties.

- d. 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.

ANNEXURES

Annexure I: Change Control Note

Change Control Note		CCN Number:
Part A: Initiation		
Title		
Originator		
Sponsor		
Date of Initiation		
Details of Proposed Change		
(To include reason for change and appropriate details/specifications. Identify any attachments as A1, A2, and A3 etc.)		
Authorized by Authority	Date	
Name		
Signature		
Received by the Bidder	Date	
Name		
Signature		
Change		
Change Control Note		CCN Number:
Part B: Evaluation		
(Identify any attachments as B1, B2, and B3 etc.)		
Changes to Services, payment terms, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue.		
Brief Description of Solution:		
Deliverables:		
Timetable:		
Charges for Implementation:		
Other Relevant Information:		
(including value-added and acceptance criteria)		
Authorized by Authority	Date	
Name		
Signature		
Change Control Note		CCN Number:
Part C: Authority to Proceed		
Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate)		
Approved		
Rejected		
Requires Further Information (as follows, or as Attachment 1 etc.)		
For Authority and its nominated agencies	For MSI	
Signature	Signature	
Name	Name	
Title	Title	
Date	Date	

Annexure II: FORM OF AGREEMENT

This **Agreement** (hereinafter “Framework Agreement”) made on this _____ day of _____, 2018 BETWEEN Ludhiana Smart City Limited (hereinafter referred to as the “**Authority**”, which expression shall include its successors and assigns) of the One Part; AND

_____ (hereinafter referred to as the “**MSI**” which expression shall include its successors and assigns) of the Other Part.

AND WHEREAS, the Authority invited bids for the selection of Master System Integrator (MSI) for implementation of Integrated Command & Control Center (ICCC) and Smart Components in Ludhiana City.

AND WHEREAS, pursuant to the bid submitted by the MSI, vide _____ (here in after referred to as the “Bid or Offer”) for the execution of Works, the Authority by its Letter of Acceptance dated _____ accepted the offer submitted by the MSI for the execution and completion of such Works as specified in the RFP documents and on the conditions in accordance with the documents listed in para 2 below.

AND WHEREAS, the MSI by a deed of undertaking dated _____ has agreed to abide by all the terms of the Bid, including but not limited to the amount quoted for the execution of Contract, as stated in the Bid, and also to comply with such terms and conditions as may be required from time to time.

AND WHEREAS, pursuant to the Bid submitted by the MSI vide _____ (hereinafter referred to as the “the Offer”), the Authority has by its Letter of Acceptance no. _____ dated _____ accepted the Offer submitted by the MSI for the execution and completion of such Works and the remedying of any defects therein, on terms and conditions of the Framework Agreement;

AND WHEREAS, the MSI has agreed to undertake such Works and has furnished a Performance Bank Guarantee / PBG pursuant to clause 40 of the Section II.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Framework Agreement words and expressions shall have the same meanings as are respectively assigned to them in the conditions of Contract hereinafter referred to;

2. The following documents shall be deemed to form and be read and constructed as part of this Framework Agreement viz. (a) Complete Request for Proposal (RFP) documents being Volumes I, II and III of the RFP and Corrigendum and addendum, (b) MSI’s Offer, (c) Letter of Acceptance or Letter of Award OR Letter of Intent issued by the Authority, (d) the acceptance of Letter of Award from MSI, (e) Notice to Proceed with the Work, and (f) Any other document listed in the Contract Data.

3. The foregoing documents shall be constructed as complementary and mutually explanatory one with another. Should any ambiguities or discrepancy be noted then the order of precedence of these documents shall subject to the condition of particular application be as follows:

(a) Complete Request for Proposal (RFP) documents being Volumes I, II and III of the RFP and Corrigendum and addendum, (b) Framework Agreement, (c) MSI’s Offer, (d) Letter of Acceptance or Letter of Award or Letter of Intent issued by the Authority, (e) the acceptance

of Letter of Award from MSI, (f) Notice to Proceed with the Work, and (g) Any other document listed in the Contract Data.

4. In consideration of the payments to be made by the Authority to the MSI as hereinafter mentioned, the MSI hereby covenants with the Authority to execute and complete the Works and remedy any defects therein in conformity in all respect with the provisions of the Contract.

5. the Authority hereby covenants to pay the MSI in consideration of the execution and completion of the Works and the remedying of defects therein the Contract price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS WHEREOF, the Parties here to have caused this Framework Agreement to be executed on the day and year first before written.

For and on behalf of
Ludhiana Smart City Limited
By.....
Signature

For and on behalf of
MSI (Company Name)
By.....
Signature

.....
Print Name

.....
Print Name

.....
Title

.....
Title

Witness.....
Print Name

Witness.....
Print Name

.....
Print Address
.....

.....
Print Address
.....

Annexure III: Non-Disclosure Agreement

This Non-Disclosure Agreement ("Agreement") is made and entered into ___ day of, 2018 by and between

.....having its office at _____(hereinafter referred to as "Client")

And

.....,having its office at _____(hereinafter referred to as :Master System Integrator" and/or "MSI")

"Client" and "MSI" shall be individually referred to as **Party** and collectively as **Parties** to this Agreement.

Whereas, the Parties have entered into a Contract bearing reference number _____ dated _____ for _____provision of _____ (hereinafter referred to as 'Contract'); and

Whereas, during the execution of the Contract, PARTIES may disclose to each other certain information which is confidential and proprietary in nature and as such they wish to protect such information from unauthorized disclosure and use;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein and in the Contract, the Parties agree as follows:

1. Definitions. As used herein:

(a) The term "Confidential Information" shall include, without limitation, all information and materials, furnished by a Party ("Discloser") to another Party (Recipient) in connection with Government/corporates/citizen/users/persons/customers data, products and/or services, including information transmitted in writing, orally, visually, (e.g. video terminal display) or on magnetic or optical media, and including all proprietary information, customer & prospect lists, trade secrets, trade names or proposed trade names, methods and procedures of operation, commercial or marketing plans, licensed document know-how, ideas, concepts, designs, drawings, flow charts, diagrams, quality manuals, checklists, guidelines, processes, formulae, source code materials, specifications, programs, software packages, codes and other intellectual property relating to such Party's data, computer database, products and/or services. Confidential Information shall also include results of any tests, sample surveys, analytics, data mining exercises or usages etc. carried out by Discloser in connection with the Recipients' or any government department's / Corporates information including citizen/users/persons/customers personal or sensitive personal information as defined under any law for the time being in force.

(b) The term, "MSI" shall include the directors, officers, employees, agents, consultants, contractors and representatives of MSI including its affiliates, subsidiary companies and permitted assigns and successors.

2. Protection of Confidential Information. With respect to any Confidential Information disclosed by the Discloser to the Recipient or to which any Party has access, both the Parties agree that it shall:

(a) Use the Confidential Information only for accomplishment of the Services to be performed under the Contract and in accordance with the terms and conditions

contained herein;

- (b) Maintain the Confidential Information in strict confidence and take all reasonable steps to enforce the confidentiality obligations imposed hereunder, but in no event take less than reasonable care than it takes to protect the confidentiality of its own proprietary and confidential information and that of its Clients;
- (c) Not make or retain copy of any Confidential Information except as necessary, under prior written permission from other Party in connection with the Services to be performed under the Contract, and ensure that any such copy is immediately returned to the other Party even without express demand from such Party to do so;
- (d) Not disclose or in any way assist or permit the disclosure of any Confidential Information to any person or entity without the express written consent of discloser except as provided in clause 6 below; and
- (e) Return to Discloser, or destroy, at Discloser's direction, any and all Confidential Information disclosed in a printed form or other permanent record, or in any other tangible form (including without limitation, all copies, notes, extracts, analyses, studies, summaries, records and reproductions thereof) immediately upon the earlier to occur of:
 - (i) expiration or termination of the Contract, or
 - (ii) on request of Discloser.
- (f) Not discuss with any member of public, media, press or any other person about the nature of arrangement entered between the Parties or the nature of services to be provided by the MASTER SYSTEM INTEGRATOR / MSI to the Authority/ CLIENT.

3. Onus. Recipient shall have the burden of proving that any disclosure or use inconsistent with the terms and conditions hereof falls within any of the exceptions provided in clause 4 below.

4. Exceptions. The obligations of confidentiality as mentioned in this Agreement shall not apply to any information:

- (a) Which has become generally available to the public without breach of this Agreement by Recipient; or
- (b) Which at the time of disclosure to Recipient was known to Recipient free of confidentiality restriction as evidenced by documentation in Recipient's possession;
or
- (c) Which either Party agrees in writing is free of such confidentiality restrictions.

5. Remedies. The Parties acknowledge and agree that

- (a) any actual or threatened unauthorized disclosure or use of the Confidential Information by Recipient would be a breach of this Agreement and may cause immediate and irreparable harm to Discloser;
- (b) Damages from such unauthorized disclosure or use may be impossible to measure accurately and injury sustained by Client may be impossible to calculate and remedy

fully. Recipient acknowledges that in the event of such a breach or threatened breach of any provision of this Agreement, Discloser shall be entitled to specific performance by Recipient of Recipient's obligations contained in this Agreement. Recipient shall indemnify, save, hold harmless and defend Discloser promptly upon demand and at its expense, at any given point in time from and against any and all suits, proceedings, actions, demands, losses, claims, damages, liabilities, costs (including reasonable attorney's fees and disbursements) and expenses (collectively "Losses") to which Discloser may become subject to, in so far as such Losses arise out of, in any way relate to, or result from breach of obligations under this Agreement by Recipient. Such Party shall also be entitled, without the requirement of posting a bond or other security, to seek preliminary and final injunctive relief, as well as any and all other applicable remedies at law or equity, including the recovery of damages.

- 6. Need to Know.** The Parties shall restrict disclosure of Confidential Information to its employees and/or consultants who have a need to know such information for accomplishment of Services under the Contract provided such employees and/or consultants have agreed to abide by the terms and conditions of this Agreement and agree that they shall not disclose such Confidential Information to any affiliates, subsidiaries, associates and/or third party without prior written approval of Discloser.
- 7. Intellectual Property Rights Protection.** No license to Recipient, under any trademark, patent, copyright, design right, mask work protection right, or any other intellectual property right is either granted or implied by the conveying of Confidential Information to Recipient by the Discloser.
- 8. No Conflict.** The Parties represent and warrant that the performance of their obligations hereunder do not and shall not conflict with any other agreement or obligation of the respective Parties to which they are a party or by which the respective Parties are bound.
- 9. Authority.** The Parties represent and warrant that they have all necessary authority and power to enter into this Agreement and perform their obligations hereunder.
- 10. Governing Law.** This Agreement shall be interpreted in accordance with and governed by the substantive and procedural laws of India and the Parties hereby consent to submit to the exclusive jurisdiction of Courts and/or Forums situated at LUDHIANA, PUNJAB, INDIA only.
- 11. Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties, and supersedes all previous or contemporaneous agreement or communications, both oral and written, representations and under standings among the Parties with respect to the subject matter hereof.
- 12. Amendments.** No amendment, modification and/or discharge of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives.
- 13. Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 14. Severability.** It is the intent of the Parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such provision shall be modified to the extent necessary to render it, as modified, valid and enforceable under Applicable Laws, and such invalidity or unenforceability shall not affect the other provisions of this Agreement.

- 15. Waiver.** If either Party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 16. Survival.** The Parties agree that all of their obligations undertaken herein with respect to Confidential Information received pursuant to this Agreement and obligations of indemnity shall survive for a period of 10 years after any expiration or termination of this Agreement.
- 17. Non-solicitation.** During the term of this Agreement and thereafter for a further period of two (2) years post termination/expiry of Term of the Contract in case the Parties execute the Contract, the Parties shall not solicit or attempt to solicit each other's employees and/or consultants, for the purpose of hiring/contracting with such employees and/or consultants. In addition, MSI shall not proceed to conduct operations/business similar to the Client with any employee and/or consultant of the Client who has knowledge of the Confidential Information, without the prior written consent of the Client. This section will survive irrespective of the fact whether there exists a commercial relationship between MSI and Client.
- 18. Term.** This Agreement shall come into force on the date first written above and, subject to aforesaid clause 16, shall remain valid up to two (2) years from the expiry or termination of the Contract.

IN WITNESS HEREOF, and intending to be legally bound, the Parties have executed this Agreement to make it effective from the date and year first written above.

For CLIENT,
Name:
Title:

For: Master System Integrator
Name:
Title:

WITNESSES:

- 1.
- 2.