

उत्तर प्रदेश UTTAR PRADESH

EF 672382

Contract Agreement

08/2018-19
28.08.18

THIS AGREEMENT is made on the 28th day of August 2018

BETWEEN

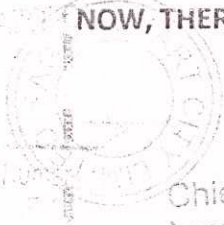
Agra Smart City Limited (ASCL incorporated under laws of India having its registered office at Agra Smart City Building, Agra Nagar Nigam Campus, Near Sursadan, M.G. Road, Agra - 282 002, Uttar Pradesh, India, (hereinafter referred to as "ASCL"), of the one part

AND

Bharat Electronics Limited, a corporation incorporated under the laws of India and having its principal place of business at Outer Ring Road, Nagavara, Bengaluru - 560 045 (hereinafter referred to as "MSI" who is the successful Bidder, which expression unless repugnant to the context or meaning thereof, be deemed to mean and include its beneficiaries, successors, administrators and permitted assigns) of the other part.

WHEREAS the ASCL desires to engage the Master System Integrator (MSI) to Supply, Implement, Integrate, Operate and Maintain the Smart City ICT Components for Agra City, and the MSI has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED between the parties as follows:



Chief Executive Officer
Agra Smart City Ltd.



Article 1: Contract Documents:

- 1.1 Contract Documents: The following documents shall constitute the Contract between ASCL and the MSI, and each shall be read and construed as an integral part of the Contract:
- a) This Contract Agreement and the Appendices attached to the Contract Agreement;
 - b) Special Conditions of Contract;
 - c) General Conditions of Contract;
 - d) Complete Request for Proposal (RFP) Document (Volumes I, II and III of the RFP and corrigendum and addendum, if any)
 - e) Bidder's bid and original Financial Proposal
 - f) MSI's Letter of acceptance dated 24th August 2018.
 - g) Letter of Intent dated 25th August 2018 issued by ASCL to the MSI
- 1.2 Order of Precedence: In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1 (Contract Documents) above, provided that Appendix 5 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1 above
- 1.3 Definitions: Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2: Contract Price and Terms of Payment:

- 2.1 Contract Price Rs.282, 65, 73, 296/- (including GST), ASCL hereby agrees to pay to the MSI the Contract Price in consideration of the performance by the MSI of its obligations under the Contract. The Contract Price shall be the aggregate of Rs. Two Hundred and Eighty Two Crores Sixty Five Lakhs Seventy Three Thousand and Two Hundred Ninety Six, as specified in the Price Schedule.

The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified.

Article 3: Effective Date for Determining Time for Operational Acceptance:

- 3.1 Effective Date: Effective Date (Reference GCC Clause 19): The time allowed for supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:
- a) This Contract Agreement has been duly executed for and on behalf of ASCL and the MSI;

Vijay Kumar
A.C.I. S.E.O.
Agra Smart City Ltd., Chief Executive Officer
Agra Smart City Limited

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- b) The MSI has submitted to ASCL the performance security in accordance with GCC Clause 51;
- c) Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the Effective Date as per GCC Clause 19, because of reasons not attributable to the MSI, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Achieving Operational Acceptance and/or other relevant conditions of the Contract.

Article 4: Appendices:

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

APPENDIXES

- Appendix 1: Bill of Material submitted by the Bidder as part of Technical Bid response
- Appendix 2: Price Schedule as per Revised Commercial offer


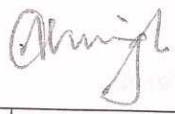
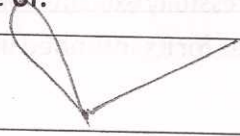
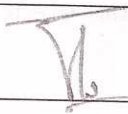
IN WITNESS WHEREOF ASCL and the MSI have caused this Contract Agreement to be duly executed by their duly authorized representatives the day and year first written above

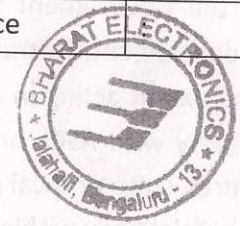
R. K. SINGH
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AGRA SMART CITY LTD.

Chief Executive Officer
Agra Smart City Limited




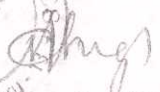
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For and on behalf of ASCL		For and on behalf of the MSI	
Signed 		Signed 	
Name	: Arun Prakash	Name	: A.K. SINGH
Designation	: Municipal Commissioner/C.E. ASCL	Designation	: GM HCS & COB
Date	: 28.8.18	Date	:
Place	: Agra.	Place	:
in the presence of:		in the presence of:	
Signed 		Signed 	
Name	: Vijay Kumar	Name	: G.S.N. MURTHY
Designation	: Additional Municipal Commissioner/ASCL	Designation	: AGM
Date	: 28.08.18	Date	:
Place	: Agra	Place	:



R. K. SINGH
NODAL
AGRA SMART CITY LTD.


Vijay Kumar
Additional Municipal Commissioner
Agra Smart City Limited
Chief Executive Officer
Agra Smart City Limited


A.K. Singh
General Manager
Bharat Electronics Limited


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II. GENERAL CONDITIONS OF CONTRACT (GCC)

A. GENERAL PROVISIONS

1. Definition of Terms

- 1.1. **Activity:** means an activity or action specified in Scope of Work (RFP Volume II), which is to be performed by the MSI as a part of the scope of work.
- 1.2. **Acceptance of System:** The system shall be deemed to have been accepted by ASCL, subsequent to its installation, rollout & deployment of trained manpower, when all the activities as defined in Scope of Work (RFP Volume II) have been successfully executed and completed to the satisfaction of ASCL or when ASCL uses the deliverables for its intended use, whichever is earlier.
- 1.3. **Affiliates** means, in relation to the MSI, a Person who Controls or is controlled by such MSI, or a Person who is under the common Control of the same Person who Controls such MSI.
- 1.4. **Authority** means the Government of India, Government of Uttar Pradesh or any local authority or any department, instrumentality or agency thereof or any statutory body or corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with ASCL or the MSI) or commission under the direct or indirect control of the central, state or local government or any political sub-division thereof or any court, tribunal or judicial body within India.
- 1.5. **Applicable Law(s):** means all laws in force and effect in India, as on the date of the Contract, or which may be promulgated or brought into force and effect after the date of the Contract, including all regulations, rules and notifications made there under and all judgments, decrees, injunctions, writs, orders, directives and notifications issued by any court or Authority, as may be in force and effect during the subsistence of the Contract and applicable to either Party, their obligations or this Contract, from time to time.
- 1.6. **ASCL** means the Agra Smart City Limited. The project shall be executed in Agra City and shall be owned by Agra Smart City Limited and Agra Municipal Corporation.
- 1.7. **Bidder** means organization/consortium submitting the proposal in response to this RFP.
- 1.8. **Contract** means the Contract entered into by the parties with the entire documentation specified in the RFP, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.


Jay Kumar
Chief Executive Officer
Agra Smart City Limited



- 1.9. **Consortium** means the entity named in the contract for any part of the work has been sub-let with the consent in writing of ASCL and the heirs, legal representatives, successors and assignees of such person.
- 1.10. **Command and Control Centre (CCC)** means the centre from where Agra Municipal Corporation would conduct centralized operations and management of all smart city solutions and related infrastructure for the entire Agra City.
- 1.11. **Contract Value/ Price** means the price payable to MSI under this Contract for the full and proper performance of its contractual obligations.
- 1.12. **Commercial Off-The-Shelf (COTS)** refers to software products that are ready-made and available for sale, lease, or license to the general public.
- 1.13. **Data Centre (DC)/ Disaster Recovery (DR) Site** means the DC/DR sites including their respective Data Centre / Disaster Recovery space & other infrastructure, 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.
- 1.14. **Defect Liability Period** (also referred to as the "Warranty Period") means the period of validity of the warranties given by the MSI commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the MSI is responsible for defects with respect to the System (or the relevant Subsystem[s]) as provided in GCC Clause 75 (Defect Liability).
- 1.15. **Deliverable** means a work product (including materials, equipment, installations, reports, software, know-how, design, drawings, diagrams, maps, models, specifications, analysis, solutions, data base, programmes, technical information, data and other documents) to be prepared and submitted by the MSI as a part of the Services, in accordance with the terms of this Contract and the term "Deliverables" shall be construed accordingly.
- 1.16. **Deliverable Due Date** means, with respect to a particular deliverable, the date by which such Deliverable (in a final and approved form) is required to be submitted by the MSI to ASCL for all the Modules.
- 1.17. **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 as per Information Technology Act, 2000.

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- 1.18. **Effective Date** means the date on which this Contract is signed or Letter of Intent is issued by ASCL, whichever is earlier and executed by the parties hereto. If this 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.
- 1.19. **GCC** means General Conditions of Contract
- 1.20. **Goods** means all the equipment, sub-systems, hardware, software, products accessories, software and/or other material / items which MSI is required to supply, install and maintain under the contract.
- 1.21. **Good Industry Practices** means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used and exercised by a skilled and experienced MSI engaged in the performance of services of the type, size and nature similar to the services required of MSI under this Contract.
- 1.22. **Go-Live** means commissioning of project after commencement of all smart city components, including training as per scope of work mentioned in RFP. Bidder should have the approval from ASCL for user acceptance testing.
- 1.23. **Intellectual Property Rights** means, in respect of the Services, any copyright, trademarks, technology, knowhow, industrial processes, proprietary information, licenses, patents, permissions from or agreements with licensors of any processes, methods and systems incorporated or to be incorporated in the performance of the Services, registered designs, franchises, trade secrets, data bases, source codes, brand names, service marks, trade names, and any other intellectual and industrial property rights, whether registrable or not, subsisting or recognized under the Applicable Law or laws of any other jurisdiction, including all applications, renewals, extensions and revivals thereof.
- 1.24. **Key Expert** means an individual engaged by the MSI to provide the Services or any part thereof (required of MSI under this Contract), who has the minimum qualification and experience as specified in RFP.
- 1.25. **MSI** means the bidder who is selected by ASCL at the end of this RFP process. The agency shall carry out all the services mentioned in the scope of work of this RFP. This shall also include any and/or all the employees of MSI, authorized service providers/ partners and representatives or other personnel employed or engaged either directly or indirectly by MSI for the purposes of this Contract.


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GR. SMART CITY

Chief Executive Officer
Agra Smart City Limited



- 1.26. **Notice** means a notice; or consent, approval or other communication required to be in writing under this Contract.
- 1.27. **Operation Command Centre (OCC)** means the centre from where Agra City Police Department would conduct centralized management & surveillance for civil & crime, traffic management & enforcement, etc. for the entire Agra City.
- 1.28. **OEM** means Original Equipment Manufacturer of any equipment / system / software / product which are providing such goods to ASCL under the scope of this RFP.
- 1.29. **Operational Acceptance Certificate** means a certificate issued by ASCL to the MSI upon ASCL's approval of the relevant Deliverable/milestone, which may be endorsed by ASCL in accordance with GCC Clause 68.3.
- 1.30. **Performance Security** means a duly executed, irrevocable and unconditional bank guarantee to be procured and maintained by the MSI in accordance with GCC Clause 15.1 read with the SCC, to secure the due and proper performance of the Contract.
- 1.31. **Person** means any individual, company, corporation, firm, partnership, trust, sole proprietor, limited liability partnership, co-operative society, Government Company or any other legal entity.
- 1.32. **Post-Warranty Service Period** means the number of years defined in the SCC (if any), following the expiration of the Warranty Period during which the MSI may be obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s). This shall also be referred as Operation & Maintenance Phase.
- 1.33. **Replacement Service Provider** means the organization replacing MSI in case of contract termination for any reasons arising out of breach of contract by MSI.
- 1.34. **Sub-Contractor** shall mean the entity named in the contract for any part of the work or any person to whom any part of the contract has been sublet with the consent in writing of ASCL and the heirs, legal representatives, successors and assignees of such person.
- 1.35. **SCC** means Special Conditions of Contract.
- 1.36. **Services** mean the work to be performed by the agency pursuant to this RFP and to the contract to be signed by the parties in pursuance of any specific assignment awarded by ASCL.


 R.K. Bhatnagar
 AGRA SMART CITY LTD.
 Chief Executive Officer
 Agra Smart City Limited

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1.37. **Taxes** means all taxes, duties, imposts, levies and charges pursuant to any law (whether currently in force or coming into force on or after the Effective Date), including income tax, goods & service tax, value added tax, central sales tax, customs duty excise duty, fees, cess, octroy, entry tax, and any interest, surcharge, penalty or fine in connection therewith.

2. Relationship between the Parties

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

3. Governing Law

3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Laws of India and the State of Uttar Pradesh.

4. Language

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

5. Headings

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

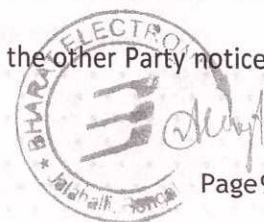
6. Communications

6.1 Any communication, approval, notice, report, consent, certificate or request required or permitted to be given or made pursuant to this Contract ("Communication") shall be in writing in English language. Unless otherwise specified in the Contract, any such Communication shall be sent by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the address specified below. Any Communication sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address specified below.

6.2 A Party may change its address for Communication hereunder by giving the other Party notice of

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Chief Executive Officer
Agra Smart City Limited



such change to the address specified below.

6.3 Address for Communication:

Agra Smart City Limited (ASCL) Agra Smart City Building Agra Nagar Nigam Campus Near Sursadan, M.G. Road AGRA – 282 002. Name of Authorized Representative: Arun Prakash, CEO, ASCL Telephone: 0562 - 2520616 93582 77455 Email: amcagra1@gmail.com Website: www.agrasmartcity.in	Master System Integrator Bharat Electronics Ltd. HLS & SCB SBU Jalahalli P.O BANGALORE – 560 013. Name of Authorized Representative: G.S.N. Murthy Telephone: 080 - 2219 7160 / 94483 55106 Email: suryanarayanamurthyg@bel.co.in Website: www.bel-india.co.in
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7. Location

7.1 The System shall be deployed at such locations as are specified in RFP Volume II – Scope of Work and, where the location of a particular task is not so specified, as ASCL may approve.

8. Authorized Representatives of Parties (ASCL and MSI):


8.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by ASCL or the MSI may be taken or executed by the officials specified below.


Agra Smart City Limited Name of Authorized Representative: Arun Prakash, CEO, ASCL Telephone: 0562 - 2520616 93582 77455 Email: amcagra1@gmail.com	Master System Integrator Bharat Electronics Ltd. Name of Authorized Representative: A.K. Singh, GM (HLS & SCB) Telephone: 080 - 2838 6958 / 94490 22162 Email: amrendrakumarsingh@bel.co.in
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9. Corrupt and Fraudulent Practices

9.1 ASCL requires that Bidders/Suppliers/Contractors under this contract, observe the highest standard of ethics during the procurement and execution of this contract. In pursuance of this policy, ASCL:

9.2 Defines, for the purpose of these provisions, the terms set forth below as follows:


Arun Prakash, CEO, ASCL
Agra Smart City Limited


A.K. Singh, GM (HLS & SCB)
Bharat Electronics Ltd.

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- i. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- ii. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of ASCL, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive ASCL of the benefits of free and open competition.

9.3 ASCL will reject a proposal for award of work if he determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

9.4 ASCL will declare a Bidder non-eligible, either indefinitely or for a stated period of time, to be awarded a contract/contracts, if he at any time determines that the Bidder has engaged in corrupt or fraudulent practices in competing for, or in executing, the contract.

9.5 Bidders or member of the Joint Venture / Consortium shall not be under a declaration or ineligibility for corrupt and fraudulent practices issues by Government of India / State Governments / Government Departments/ Centre and State PSUs and other Central and State government entities.

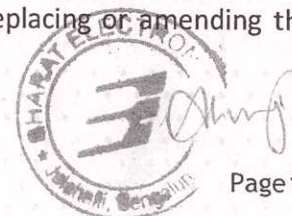
10. Interpretation

10.1 In this Contract unless a contrary intention is evident:

- a) the clause headings are for convenient reference only and do not form part of this Contract;
- b) unless otherwise specified a reference to a clause number is a reference to all of its sub-clauses;
- c) 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;
- d) unless otherwise specified a reference to a clause, sub-clause or section is a reference to a clause, sub-clause or section of this Contract including any amendments or modifications to the same from time to time;
- e) a word in the singular includes the plural and a word in the plural includes the singular;
- f) a word importing a gender includes any other gender;
- g) a reference to a person includes a partnership and a body corporate;
- h) a reference to legislation includes legislation repealing, replacing or amending that legislation;

R. K. SINGH
NODAL
AGRA SMART CITY LTD

Chief Executive Officer
Agra Smart City Limited



- i) where a word or phrase is given a particular meaning, it includes the appropriate grammatical forms of that word or phrase which have corresponding meanings.
- j) in the event of an inconsistency between the terms of this Contract and the RFP and the Bid, the terms hereof shall prevail.

11. Conditions Precedent

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

- 11.1 Furnishing by MSI, an unconditional and irrevocable Performance Bank Guarantee of 10% of the contract value (PBG) and acceptable to ASCL which would remain valid until such time as stipulated by ASCL.
- 11.2 Obtaining of all statutory and other approvals required for the performance of the Services under this Contract. This may include approvals/clearances, wherever applicable, that may be required for execution of this contract e.g. clearances from Government authorities for importing equipment, exemption of Tax/Duties/Levies, work permits/clearances for Bidder/Bidder's team, etc.
- 11.3 Furnish notarized copies of any/all contract(s) duly executed by MSI and its OEMs existing, at the time of signing of this contract in relation to the project.
- 11.4 Furnishing of such other documents as ASCL may specify/demand.
- 11.5 ASCL reserves the right to waive any or all of the conditions specified in Clause 11 above in writing and no such waiver shall affect or impair any right, power or remedy that ASCL may otherwise have.
- 11.6 In the event that any of the conditions set forth in Clause 11 herein above are not fulfilled within 1 month from the date of this Contract, or such later date as may be mutually agreed upon by the parties, ASCL may terminate this Contract.
- 11.7 In case there is a contradiction between the sections, the below hierarchy of sections in order of precedence:
 - Pre-bid clarification and Corrigendum, if any
 - Volume III of RFP (SCC holds precedence over GCC)
 - Section 1 and 2 of RFP volume II
 - Section 4 and Annexure of RFP volume II
 - RFP volume I

Chief Executive Officer
Agra Smart City Limited



12. Scope of work

- 12.1 Scope of the work shall be as defined in RFP Volume II and Annexures thereto of the RFP.
- 12.2 ASCL has engaged MSI to provide services related to implementation of Smart City solutions using which ASCL intends to perform its business operations. MSI is required to provide such goods, services and support as ASCL may deem proper and necessary, during the term of this Contract, and includes all such processes and activities which are consistent with the proposals set forth in the Bid, the RFP and this Contract and are deemed necessary by ASCL, to meet its business requirements including dimensional measurement, etc of the tagged property as part of Enterprise and City GIS solution (hereinafter 'scope of work').

13. Fairness and Good Faith

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

14. Amicable Settlement

- 14.1 The Parties shall seek to any dispute amicably by mutual consultation.
- 14.2 If either Party objects to any action or inaction of the other Party, the objecting Party may send a written notice of dispute to the other Party providing in detail the basis of the dispute. The Party receiving the notice of dispute will consider it and respond in writing within fourteen (14) days after receipt. If such Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, GCC Clause 31 shall apply.

15. Performance Security

- 15.1 MSI shall furnish Performance Security to ASCL at the time of signing the Contract which shall be equal to 10% of the value of the Contract and shall be in the form of a Bank Guarantee Bond from a Nationalized / Scheduled Bank in the Performa given within 15 days after issuance of letter of Intent (LOI) or Letter of Award (LoA) which would remain valid until such time as stipulated by ASCL.

16. Key Performance Measurements

- 16.1 Unless specified by ASCL to the contrary, MSI shall deliver the goods, perform the services

and carry out the scope of work in accordance with the terms of this Contract, Scope of Work and the Service Specifications as laid down under Service Level Agreement section.


- 16.2 If the Contract, scheduled requirements, service specification includes more than one document, then unless ASCL specifies to the contrary, the later in time as mutually agreed and discussed by both parties shall prevail over a document of earlier date to the extent of any inconsistency.
- 16.3 ASCL reserves the right to amend any of the terms and conditions in relation to the Contract/Service Specifications with mutual discussion and agreement and may issue any such directions which are not necessarily stipulated therein if it deems necessary for the fulfillment of the Contract/Service Specifications.

17. Assignment

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

18. Publicity

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


R. K. SINGH
 MODAL
 AGRA SMART CITY LTD.
 Chief Executive Officer
 AGRA SMART CITY LIMITED



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III. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

19. Effectiveness of Contract

19.1 This Contract shall come into force and effect on the date (the "Effective Date") of issuance of Letter of Award (LOA) to the MSI.

20. Commencement and Progress

20.1 The MSI shall submit in writing an acceptance of LOA and start the Project with Kick-off meeting no later than the date agreed between the parties as specified in the SCC.

20.2 MSI shall subject to the fulfillment of the conditions precedent above, commence the performance of its obligations in a manner as per the Scope of Work.

20.3 MSI shall proceed to carry out the activities / services with diligence and expedition in accordance with any stipulation as to the time, manner, mode, and method of execution contained in this Contract.

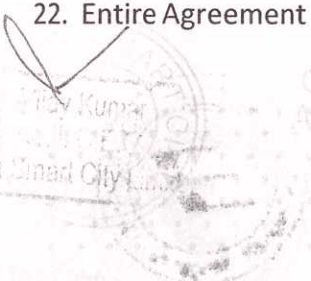
20.4 MSI shall be responsible for and shall ensure that all activities /services are performed in accordance with the Contract, Scope of Work and Service Specifications and that MSI's Team complies with such Specifications and all other standards, terms and other stipulations/conditions set out hereunder.

20.5 MSI shall perform the activities / services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used in the industry and shall observe sound management, engineering and security practices. MSI shall always act, in respect of any matter relating to this Contract, as faithful advisors to ASCL and shall, at all times, support and safeguard ASCL's legitimate interests in any dealings with Third parties.

21. Expiration of Contract:

21.1 Unless terminated earlier pursuant to GCC Clause 29, this Contract shall expire at the end of such time period after the Effective Date (as specified in Letter of Award (LOA) to the MSI), unless extended in accordance with this Contract.

22. Entire Agreement



Chief Executive Officer
Agra Smart City Limited



22.1 This Contract constitutes the entire understanding between the Parties regarding the scope of work and supersedes all prior written or oral understandings, offers, agreements, communication or representations affecting the same subject matter. It is clarified that the obligations of the MSI under the RFP shall continue to subsist and shall be deemed to form part of the Contract.

23. Change or Modifications or Variations

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

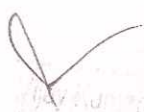
23.2 Both ASCL and the MSI may, at any time during the term of the Contract, propose a variation to the System or Solution and/or any other provision of the Contract (Variation).

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

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

23.5 ASCL Proposed Variation:

- i. ASCL may, at any time during the term of the Contract, instruct the MSI, by issuing a written notice, to carry out a Variation (a Variation Order). Provided that, ASCL shall not propose a Variation which is not technically or financially feasible, such feasibility being determined in accordance with Good Industry Practice, or any Variation that constitutes unrelated work;
- ii. Within fifteen (15) days of receipt of a Variation Order, the MSI shall submit a proposal setting out in sufficient detail the implications of the proposed Variation, including the (a) description of the work required or no longer required; (b) an estimate of the increase or decrease in the Total Value of Contract; (c) the Service Schedule; (d) the Supply Schedule and (e) Payment Schedule;
- iii. Based on its review of the proposal submitted by the MSI, ASCL may: (a) accept the proposal and the corresponding adjustments to the Total Value of Contract, Services Schedule, Supply Schedule and Payment Schedule; (b) provide its


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- comments on the proposal seeking amendments and/or justification for the implications put forth by the MSI; or (c) reject the proposal submitted by the MSI and withdraw the Variation Order, within seven (7) days from the date of receipt of the MSI's proposal under Clause 23.5(ii);
- iv. If ASCL accepts the MSI's proposal under Clause 23.5(ii) of this Section, it shall issue an instruction identifying the offer that is being accepted and requesting the MSI to proceed with the Variation. Upon ASCL's acceptance of the MSI's proposal, the MSI shall proceed with the Variation;
 - v. To the extent ASCL seeks amendments and/or justification in the proposal submitted by the MSI, the MSI shall incorporate or address, in writing, ASCL's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 23.5 (iv), the MSI shall proceed with the Variation;
 - vi. On implementation of a Variation Order, the MSI shall be entitled to the agreed increase in the Total Value of Contract and/or adjustment to the Supply Schedule, Services Schedule or Payment Schedule for carrying out the Variation;
 - vii. Notwithstanding anything to the contrary in this Clause 23.5, the MSI shall be bound to implement any Variation that is necessitated by a Change in Law (discussed in Clause 15 below) and any consequent adjustment in the Total Value of Contract, Supply Schedule, Services Schedule or Payment Schedule, on account of such Variation, shall be determined in accordance with GCC Clause 25 below.

23.6 MSI Proposed Variation:

- i. The MSI may propose a Variation, which it considers necessary or desirable to improve the quality of the System and Solution to be deployed. While proposing a Variation, the MSI shall submit a proposal to ASCL, with a statement setting out: (a) detailed particulars of the Variation; (b) the work required or no longer required; (c) an estimate of any adjustment in the Total Value of Contract; (d) any adjustment to the Supply Schedule, Services Schedule or Payment Schedule; and (e) any other effect the proposed Variation would have on any other provision of the Contract;
- ii. Based on its review of the Variation proposed by the MSI, ASCL may: (a) confirm the Variation; (b) provide its comments on the proposed Variation; or (c) reject the proposed Variation, while giving reasons in writing for such rejection, within seven (7) days of the submission of the proposal for a Variation. Upon ASCL's acceptance of the proposed Variation, the MSI shall proceed with the Variation;
- iii. To the extent ASCL seeks amendments in the proposed Variation, the MSI shall incorporate or address, in writing, ASCL's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 23.6(ii), the MSI shall proceed with the Variation;

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- iv. If the Parties are unable to reach agreement regarding the terms of a Variation Order, such disagreements shall be resolved pursuant to GCC Clause 31.
- 23.7 Notwithstanding anything contained in this Clause 23, a Variation made necessary due to any act, omission or default of the MSI in the performance of its obligations under the Contract will not result in any increase in the Total Value of Contract or extension of any Deliverable Due Date.
- 23.8 No Variation invalidates the Contract. The MSI agrees that a Variation may involve the omission of any part of the Scope and further, the MSI agrees that ASCL may engage others to perform that part of the Scope which has been omitted. The MSI further acknowledges that any omission or omissions will not constitute a basis to allege that ASCL has repudiated the Contract no matter the extent or timing of the omission(s).
- 23.9 Notwithstanding anything contained in this Clause 23, ASCL shall not agree to any Variation if: (i) the MSI seeks any Variation in its obligations which is due to any shortcoming or deficiency in the documents provided by the MSI; (ii) the Variation relates to repeat performance of the Solution due to the MSI's failure to comply with ASCL's requirements; or (iii) escalation in the cost of equipment, materials or the work force, other than on account of a Change in Law.
- 23.10 If due to any reason the MSI and ASCL are not able to finalize a change in the system (ex: including a hardware component or a software functionality which was not anticipated earlier), ASCL reserves a right to get the change executed by any other third party. The component or functionality being a part of the comprehensive system, the original MSI shall have obligation to support any integration effort required whatsoever and extend full co-operation to the third party and ASCL.
- 23.11 The unit rates as indicated in the Contract shall be fixed during the MSI's performance of the Contract and shall not be subject to increase on any account for any variation order during the currency of the Contract.
24. Change Control Note (CCN)
- 24.1 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.

- 24.2 Change requests in respect of the contract, shall emanate from the MSI, either on his own or as instructed by ASCL, However the same shall be approved by ASCL who shall act as its sponsor throughout the Change Control Process, for which MSI shall complete Part A of the CCN (Annexure I of RFP Volume 3).
- 24.3 MSI and ASCL while preparing the CCN, shall consider the change in the context of whether the change is beyond the scope of Services. The CCN shall be applicable for the items which are beyond the stated/implicit scope of work as per the RFP document.
- 24.4 In event, there is no common consensus between both the parties, a Committee of Subject/Industry Expert will be appointed by ASCL and the decision of the Committee will be final and binding on both the parties.
- 24.5 In the event the MSI has quoted for an infrastructure that has already been listed in his quote and is easily tangible, the same shall be applicable if variation order is placed at any point during the 5 years of MSI's appointment. CCN will be applicable only for any new functional requirement and new infrastructure requirement.
- a) 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 description of the change;
 - a list of deliverables required for implementing the change;
 - a timetable for implementation;
 - an estimate of any proposed change;
 - any relevant acceptance criteria;
 - an assessment of the value of the proposed change;
 - Material evidence to prove that the proposed change is not already covered within the scope of the RFP, Agreement and Service Levels
- b) Prior to submission of the completed CCN to ASCL 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 Agreement, the sites, Service levels affected by the change and the total effect that may arise from implementation of the change.
- c) Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in 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.

25. Change in Law

25.1 For the purposes of this Contract, "Change in Law" means the occurrence of any of the following events after the date of execution of the Contract: (i) the modification, amendment or repeal of any existing Applicable Law; (ii) the enactment, promulgation, bringing into effect, adoption of any new Applicable Law; (iii) change in the interpretation or application of any Applicable Law by any Authority; (iv) the introduction of a requirement for the MSI to obtain any new approval or permit or the unlawful revocation of an applicable approval or permit; or (v) the introduction of any new Tax or a change in the rate of an existing Tax. Change in Law does not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the MSI; (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of the Contract and which is a matter of public knowledge; or (iii) a draft statutory instrument or delegated legislation that has been published prior to the date of the Contract, which is under the active consideration or contemplation of the GoI or GoUP and which is a matter of public knowledge.

25.2 If, after the date of this Contract, there is any Change in Law which:

- (i) Increases the cost incurred by the MSI in deploying the Project; and/or
- (ii) affects the Project Schedule.

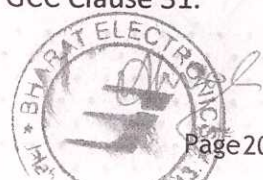
then the MSI may notify ASCL and appropriate adjustments shall be made to the Total Value of Contract to account for the Change in Law. The notice shall be accompanied by all supporting documents, details and information required by ASCL to assess the claims of the MSI. Provided that, if a Change in Law becomes applicable as a result of a delay by the MSI, then the MSI shall not be entitled to any adjustment in the Total Value of Contract and/or the Project Schedule.

Where it is not possible to address the effect of a Change in Law (through an adjustment in the Total Value of Contract and/or the Project Schedule), the Parties shall agree on a mechanism, including amending the terms of the Contract, to mitigate the adverse effects of the Change in Law to MSI. If the Parties are unable to reach an agreement within thirty (30) days of the notification of a Change in Law, then the matter shall be referred to dispute resolution in accordance with GCC Clause 31.

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26. Joint Venture/Consortium

26.1 For the purposes of fulfillment of its obligations as laid down under the Contract, where ASCL deems fit and unless the contract requires otherwise, Lead Bidder shall be the sole point of interface for ASCL and would be absolutely accountable for the performance of its own, the other member of Consortium and/or its Team's functions and obligations.

26.2 The Consortium member has agreed that the lead member of MSI is the prime point of contact between the MSI and the ASCL and it shall be primarily responsible for the discharge and administration of all the obligations contained herein and, the ASCL, unless it deems necessary shall deal only with lead bidder of MSI.

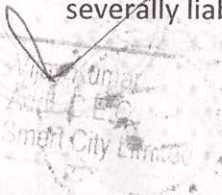
If the MSI is a Joint Venture/Consortium of two or more firms, the Lead Partner in Charge and each other Party to the extent of their respective scopes, shall be jointly and severally liable to ASCL for the fulfillment of the provisions of the Contract. The composition or constitution of the Consortium as specified in the Consortium Agreement submitted as part of the Proposal shall not be altered for the duration of the Contract without the prior consent of ASCL.

26.3 The Consortium member has agreed that the lead bidder of MSI is the prime point of contact between the Consortium member and ASCL and it shall be primarily responsible for the discharge and administration of all the obligations contained herein and, ASCL, unless it deems necessary shall deal only with Lead bidder of MSI. The sole bidder/Lead bidder shall be and solely responsible for the project execution

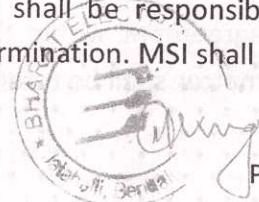
26.4 Without prejudice to the obligation of the Consortium member to adhere to and comply with the terms of this Contract, the Consortium member has executed and submitted a Power of Attorney in favor of Lead bidder authorizing him to act for and on behalf of such member of the Consortium and do all acts as may be necessary for fulfillment of contractual obligations.

26.5 No agreement/contract executed within the consortium members be amended, modified and/or terminated without the prior written consent of ASCL. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by MSI to ASCL.

26.6 Where, during the term of this Contract, MSI terminates any contract/arrangement or agreement relating to the performance of Services, MSI shall be responsible and severally liable for any consequences resulting from such termination. MSI shall in



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such case ensure the smooth continuation of Services by providing a suitable replacement to the satisfaction of ASCL at no additional charge and at the earliest opportunity.

27. Approvals and Required Consents

27.1 ASCL shall extend necessary support to MSI to obtain, maintain and observe all relevant and customary regulatory and government licenses, clearances and applicable approvals (hereinafter the "Approvals") necessary for MSI to provide the Services. The costs of such Approvals shall be borne by MSI. Both parties shall give each other all reasonable co-operation and information.

27.2 ASCL shall also provide necessary support to MSI in obtaining the Approvals. In the event that any Approval is not obtained, MSI and ASCL shall co-operate with each other in achieving a reasonable alternative arrangement.

28. Suspension

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

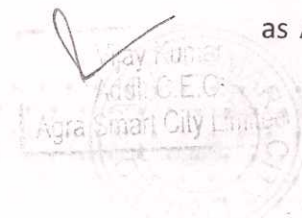
29. Termination

This Contract may be terminated by either Party as per provisions set out below:

29.1 By ASCL for MSI's default:

29.1.1 A "MSI Event of Default" means any of the events set out below, unless such event has occurred as a consequence of a default by ASCL as set out in GCC Clause 29.2.1 (By the MSI for ASCL's default), a Change in Law or any event of Force Majeure ("MSI Event of Default"):

- (i) if the MSI fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 28 (Suspension) within thirty (30) days of receipt of such notice of suspension or within such further period as ASCL may have subsequently granted in writing;



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- (ii) if the MSI becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary or, if the MSI is a corporation, a resolution is passed or order is made for its winding up;
- (iii) if the MSI's liability to pay delay liquidated damages reaches the cap on delay liquidated damages specified in GCC Clause 89 (Liquidated Damages) but the delay in respect of which the delay liquidated damages are payable continues to exist;
- (iv) If the MSI:
 - a. has abandoned or repudiated the Contract;
 - b. has without valid reason failed to commence work on the System promptly;
 - c. persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
 - d. refuses or is unable to provide sufficient Materials, Services, or labour to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 60 (Project Plan) at rates of progress that give reasonable assurance to ASCL that the MSI can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended;
 - e. fails to provide sufficient Manpower, Material and Services for maintenance as required for meeting the SLA's specified in RFP (Service Level Agreement) during the Maintenance Period (including warranty period and post-warranty service period);
 - f. If the penalties calculated as per SLA's specified in RFP Requirements (Service Level Agreement), exceed three quarterly deductions of 30 % of the applicable fee on account of any reasons shall be deemed to be an event of default
- (v) if the MSI has engaged in corrupt, fraudulent, collusive, coercive, undesirable or restrictive practice in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract;
- (vi) if the MSI fails to furnish, renew and/or maintain the Performance Security in accordance with this Contract;
- (vii) if the MSI assigns or transfers the Contract or its rights and obligations under this Contract without the prior written consent of ASCL;
- (viii) if any of the MSI's representations and warranties are found to be false and/or misleading; or
- (ix) if the MSI is in breach of any Applicable Laws.

29.1.2 Without prejudice to other provisions of this Contract, upon the occurrence of a MSI Event of Default, ASCL may deliver a notice to the MSI specifying the nature of the

breach and giving a cure period of thirty (30) days to the MSI to cure the MSI Event of Default.

Provided that, in case of occurrence of a MSI Event of Default set out in Clauses 9.1.1(ii), or 29.1.1 (iv), ASCL shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.

29.1.3 Subject to Clause 29.1.2, and except in case of the event set out at Clause 29.1.1 (iii), if by the end of the cure period, the MSI has not remedied the MSI Event of Default or taken steps to remedy the MSI Event of Default to the satisfaction of ASCL, then ASCL shall have the right to issue a termination notice, upon which this Contract shall terminate forthwith.

29.1.4 Upon receipt of the notice of termination under GCC Clause 29.1.1, the MSI shall, either immediately or upon such date as is specified in the notice of termination:

- a) cease all further work, except for such work as ASCL may specify in the notice of termination for the sole purpose of protecting that part of the System already executed or any work required to leave the site in a clean and safe condition;
- b) terminate all subcontracts, except those to be assigned to ASCL pursuant to GCC Clause 29.1.4(d) below;
- c) deliver to ASCL the parts of the System executed by the MSI up to the date of termination;
- d) to the extent legally possible, assign to ASCL all right, title and benefit of the MSI to the System or Subsystems as at the date of termination, and, as may be required by ASCL, in any subcontracts concluded between the MSI and its Subcontractors;
- e) deliver to ASCL all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as at the date of termination in connection with the System.

29.1.5 ASCL may enter upon the site, expel the MSI, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as ASCL thinks appropriate, ASCL shall give notice to the MSI that such MSI's Equipment will be returned to the MSI at or near the site and shall return such MSI's Equipment to the MSI in accordance with such notice. The MSI shall thereafter without delay and at its cost remove or arrange removal of the same from the site.

29.1.6 (a) If the termination takes place prior to the Operational Acceptance subject to GCC Clause 29.1.7(a), the MSI shall be entitled to be paid the Contract Price attributable to the portion of the System executed as on the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 29.1.4(a). Any sums due to ASCL from the MSI

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Stamp of the Chief Executive Officer, Agra Smart City Limited.

accruing prior to the date of termination shall be deducted from the amount to be paid to the MSI under the Contract.

(b) If the termination takes place after the Operational Acceptance subject to GCC Clause 29.1.7(b), the MSI shall be entitled to be paid the Contract Price attributable for supply of the System (Supply and Installation Cost) if any and portion of the recurrent cost up to the date of termination, and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 29.1.4(a). Any sums due to ASCL from the MSI accruing prior to the date of termination shall be deducted from the amount to be paid to the MSI under the Contract.

29.1.7 (a) If the termination takes place before the Operational acceptance, the cost of completing the System by ASCL as per the Contract shall be determined. If the sum that the MSI is entitled to be paid, pursuant to GCC Clause 29.1.6 (a), plus the reasonable costs incurred by ASCL in the completing the Scope of Work, exceeds the Total cost, the MSI shall be liable to reimburse such excess money to ASCL. If such excess is greater than the sums due to the MSI under GCC Clause 29.1.6, the MSI shall pay the balance to ASCL, and if such excess is less than the sums due to the MSI under GCC Clause 29.1.6(a), ASCL shall pay the balance to the MSI. ASCL and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.

(b) If the termination takes place after Operational acceptance, the cost of completing the remaining Scope of Work by ASCL as per the Contract shall be determined. If the prorated sum that the MSI is entitled to be paid for the maintenance period, pursuant to GCC Clause 29.1.6 (b), plus the reasonable costs incurred by ASCL in the completing the Scope of Work, exceeds the total pro-rata Recurrent Cost of the Contract due, the MSI shall be liable to reimburse such excess money to ASCL. If such excess is greater than the sums due to the MSI for the maintenance period under GCC Clause 29.1.6 (b), the MSI shall pay the balance to ASCL, and if such excess is less than the sums due to the MSI for the maintenance period under GCC Clause 29.1.6 (b), ASCL shall pay the balance to the MSI. ASCL and the MSI shall agree in writing, on the computation described above and the manner in which any sums shall be paid.

29.2 By the MSI for ASCL's default

29.2.1 A "ASCL Event of Default" means any of the following events set out below, unless such event has occurred as a consequence of a default by the MSI as set out in GCC

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Clause 29.1.1 (By ASCL for MSI's default), a Change in Law or any event of Force Majeure:

- (i) if ASCL fails to pay any undisputed money due to the MSI pursuant to this Contract within forty five (45) calendar days after receiving written notice from the MSI that such payment is overdue;
- (ii) if ASCL is in material breach of its obligations under this Contract and has not remedied the same within forty five (45) days (or such longer period as the MSI may have subsequently approved in writing) following the receipt by ASCL of the MSI's notice specifying such breach;
- (iii) if the MSI is unable to carry out any of its obligations under the Contract for any reason attributable to ASCL, including but not limited to ASCL's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the System;
- (iv) if ASCL becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (v) if ASCL suspends the performance of the Services for more than sixty (60) days, for reasons not attributable to the MSI.

29.2.2 Without prejudice to other provisions of this Contract, upon the occurrence of a ASCL Event of Default, the MSI may deliver a notice to ASCL specifying the nature of the breach and giving a cure period of thirty (30) days to ASCL to cure ASCL Event of Default. Provided that, in case of occurrence of a ASCL Event of Default set out in Clauses 29.2.1(iii) or 29.2.1(iv), the MSI shall have the right to terminate the Contract immediately, without any obligation to provide a cure period.

29.2.3 If the Contract is terminated under GCC Clause 29.2.1, then the MSI shall immediately:

- a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- b) terminate all subcontracts, except those to be assigned to ASCL pursuant to Clause 29.2.3 (d) (ii);
- c) remove all MSI's Equipment from the site and repatriate the MSI's and its sub-contractor's personnel from the site;
- d) In addition, the MSI, subject to the payment specified in GCC Clause 29.2.4, shall:
 - (i) deliver to ASCL parts of the System executed by MSI up to the date of termination;

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- (ii) to the extent legally possible, assign to ASCL all right, title, and benefit of the MSI to the System, or Subsystems, as of the date of termination, and, as may be required by ASCL, in any subcontracts concluded between the MSI and its Subcontractors;
- (iii) to the extent legally possible, deliver to ASCL all drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System.

29.2.4 If the Contract is terminated under GCC Clause 29.2.1, ASCL shall pay to the MSI all payments specified in GCC Clause 29.3.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the MSI arising out of, in connection with, or in consequence of such termination.

29.2.5 Termination by the MSI pursuant to this GCC Clause 29.2 is without prejudice to any other rights or remedies of the MSI that may be exercised in lieu of or in addition to rights conferred by GCC Clause 29.2.

29.2.6 In this GCC Clause 29, the expression "portion of the System executed" shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the MSI and used or intended to be used for the purpose of the System, up to and including the date of termination.

29.2.7 In this GCC Clause 29, in calculating any monies due from ASCL to the MSI, account shall be taken of any sum previously paid by ASCL to the MSI under the Contract, including any advance payment paid pursuant to the SCC.

29.3 At ASCL's convenience

29.3.1 ASCL may at any time terminate the Contract for any reason by giving the MSI a notice of termination that refers to this GCC Clause 29.3.

29.3.2 Upon receipt of the notice of termination under GCC Clause 29.3.1, the MSI shall either as soon as reasonably practical or upon the date specified in the notice of termination:

- a) cease all further work, except for such work as ASCL may specify in the notice of termination for the sole purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- b) terminate all subcontracts, except those to be assigned to ASCL pursuant to GCC Clause 29.3.2 (d) (ii) below;

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- c) remove all MSI's Equipment from the site, repatriate the MSI's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- d) in addition, the MSI, subject to the payments specified in GCC Clause 29.3.3, shall
 - (i) deliver to ASCL the parts of the System executed by the MSI up to the date of termination;
 - (ii) to the extent legally possible, assign to ASCL all right, title, and benefit of the MSI to the System, or Subsystem, as at the date of termination, and, as may be required by ASCL, in any subcontracts concluded between the MSI and its Subcontractors;
 - (iii) deliver to ASCL all non-proprietary drawings, specifications, and other documents prepared by the MSI or its Subcontractors as of the date of termination in connection with the System;
 - (iv) If termination takes place after operational acceptance is achieved, the MSI shall fully comply with the Exit Management Plan as specified in Section E of GCC.

29.3.3 In the event of termination of the Contract under GCC Clause 29.3.1, ASCL shall pay to the MSI the following amounts:

- a) the Contract Price, properly attributable to the parts of the System executed by the MSI and payable recurrent cost on pro-rata basis, if project is in Maintenance Period, as on the date of termination;
- b) the costs reasonably incurred by the MSI in the removal of the MSI's Equipment from the site and in the repatriation of the MSI's and its Subcontractors' personnel;
- c) any amount to be paid by the MSI to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- d) costs incurred by the MSI in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 29.3.2 (a); and
- e) the cost of satisfying all other obligations, commitments, and claims that the MSI may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clause 29.3.3 (a) through (d) above.

29.4 Termination for Force Majeure

29.4.1 If a Force Majeure event affecting any Party subsists for a continuous period of one hundred eighty (180) days, then either Party may issue a notice of termination to the other Party. Upon receipt of this notice, the Parties shall have a period of fifteen (15) days to agree on the manner in which the Contract may be progressed upon cessation of the Force Majeure event and the variations, if any, required to the

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Contract to address the consequences of the Force Majeure event. If on the expiry of the fifteen (15) day period, the Parties fail to arrive at an agreement, either Party may immediately terminate this Contract by written notice to the other Party.

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

29.5 Cessation of Rights and Obligations

- 29.5.1 Upon termination of this Contract pursuant to Clause 29, or upon expiration of this Contract pursuant to Clause 21 (Expiration of Contract), all rights and obligations of the Parties hereunder shall cease, except

- (i) any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any provision of the Contract as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry or termination of the Contract,
- (ii) the obligation of confidentiality set forth in GCC Clause 58,
- (iii) the MSI's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clause 38,
- (iv) the indemnity obligations of the Parties as set out in GCC Clause 90;
- (v) the obligations in relation to intellectual property rights under GCC Clause 55;
- (vi) any right which a Party may have under the Applicable Law.

29.6 Cessation of Services

- 29.6.1 Upon termination of this Contract by either Party, the MSI shall:

- (i) immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum; and
- (ii) transfer to ASCL all documents, data, programmes, applications, software, equipment etc. developed or acquired by ASCL for the purposes of performing the System along with the right to use the Intellectual Property in such documents, data, programmes, applications, software, equipment for the Project.

30. Consequence of Termination

- 30.1 In the event of termination of the Contract due to any cause whatsoever, whether consequent to the stipulated Term of the Contract or otherwise ASCL 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 ASCL and/ or the successor agency/ 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.

- 30.2 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, ASCL, shall pay MSI for that part of the Services which have been authorized by ASCL and satisfactorily performed by MSI up to the date of termination.
- 30.3 Nothing herein shall restrict the right of ASCL to invoke the Bank Guarantee and other Guarantees furnished hereunder and pursue such other rights and/or remedies that may be available to ASCL under law.
- 30.4 Termination hereof shall not affect any accrued right or liability of either Party nor affect operation of provisions of Contract that are expressly or by implication intended to come into or continue in force on or after such termination.

31. Dispute Resolution and Settlement

31.1 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.

31.2 The procedure for arbitration shall be as follows:

- a) In case of dispute or difference arising between the employer and the contractor relating to any matter arising out of concerned with this agreement it shall be settled in accordance with the arbitration and conciliation act 1996. The disputes or differences shall be referred to a sole Arbitrator. The sole Arbitrator shall be appointed by agreement between the parties; failing such agreement, by the Appointing Authority.
- b) The Arbitration proceedings shall be held in Agra, Uttar Pradesh, India
- c) The cost and expenses of arbitration proceedings will be paid as determined by the Arbitrator. However the expenses incurred by each party in connection with the preparation, presentation, etc. shall be borne by each party itself

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- d) Performance under the contract shall continue during the arbitration proceedings and the payment due to the contractor by ASCL shall not be withheld unless they are the subject matter of the arbitration proceedings

31.3 Arbitration proceedings shall be governed by Arbitration and Conciliation Act, 1996

31.4 The Arbitration proceeding shall be governed by the substantive laws of India.

31.5 The proceedings of Arbitration shall be in English language.

31.6 The list of organizations which are considered as appointing authorities for appointment of sole arbitrators

- a) Indian Council of Arbitration, New Delhi
- b) International Centre for Alternate Dispute Resolutions

B. RIGHTS AND OBLIGATIONS OF MSI

32. Bidder's (MSI) Obligations

32.1 MSI's obligations shall include all the activities as specified by ASCL in the Scope of Work and other sections of the Tender and Contract and changes as mutually agreed by both parties, thereof enable ASCL to meet the objectives and operational requirements. 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 his Bid, the Tender and this Contract.

32.2 In addition to the aforementioned, MSI shall provide services to manage and maintain the system and infrastructure as mentioned in the RFP.

32.3 ASCL reserves the right to interview the personnel proposed that shall be deployed as part of the project team. If found unsuitable, ASCL may reject the deployment of personnel. But ultimate responsibility of the project implementation shall lie with MSI.

32.4 ASCL reserves the right to require changes in personnel which shall be communicated to MSI. MSI with the prior approval of ASCL may make additions to the project team. MSI shall provide ASCL with the resume of Key Personnel and provide such other information as ASCL may reasonably require. ASCL also reserves the right to interview the personnel and reject, if found unsuitable. In case of change in its team members, for any reason whatsoever, MSI shall also ensure that the exiting members are replaced with at least equally qualified and professionally competent members.

32.5 MSI shall ensure that none of the Key Personnel and manpower exit from the project during first 6 months of the beginning of the project.

32.6 MSI should submit profiles of only those resources who shall be deployed on the project. Any change of resource should be approved by ASCL and compensated with equivalent or better resource.

32.7 In case of change in its team members, 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.

32.8 MSI shall ensure that MSI's Team is competent, professional and possesses the requisite qualifications and experience appropriate to the task they are required to

perform under this Contract. MSI shall ensure that the services are performed through the efforts of MSI's Team, in accordance with the terms hereof and to the satisfaction of ASCL. Nothing in this Contract relieves MSI from its liabilities or obligations under this Contract to provide the Services in accordance with requirements and as stated in this Contract and the Bid to the extent accepted by ASCL 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.

32.9 MSI shall be fully responsible for deployment / installation / development/ and integration of all the software and hardware components and resolve any problems / issues that may arise due to integration of components.

32.10 MSI shall ensure that the OEMs supply equipment/ components (including associated accessories & software) are available and shall ensure installation, commissioning, integration and maintenance of these components during the entire period of contract. MSI shall ensure that supply the software applications and shall ensure the installation / deployment, integration, roll-out and maintenance of these 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 Go-Live of system as complete Smart city applications including all the solutions proposed. MSI would be required to explicitly display that he/ 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 software patches and updates, hardware components and other devices.

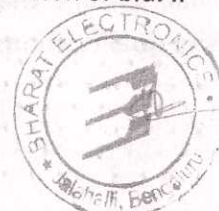
32.11 All the software licenses that MSI proposes should be perpetual software licenses. The software licenses shall not be restricted based on location and ASCL should have the flexibility to use the software licenses for other requirements, if required.

32.12 All OEMs that MSI proposes should have Dealer/Manufacturer possession licenses.

32.13 ASCL 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, amended, modified and/or terminated without the prior written consent of ASCL. An executed copy of each of such agreements/contracts shall, immediately upon execution be submitted by MSI to ASCL.

32.14 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

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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.

32.15 If a product is de-supported by the OEM for any reason whatsoever, from the date of Acceptance of the System till the end of contract, MSI should replace the products/ solutions with an alternate that is acceptable to ASCL at no additional cost to ASCL and without causing any performance degradation.

32.16 The Licenses will be in the name of ASCL only.

32.17 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 him 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 ASCL without any additional cost to ASCL and without impacting the performance of the solution in any manner whatsoever.

32.18 MSI shall ensure that the OEMs for hardware servers/equipment supply and/or install all type of updates, patches, fixes and/or bug fixes for the firmware or software from time to time at no additional cost to ASCL and update should happen Over the Air.

32.19 MSI shall ensure that the OEMs for hardware servers/ equipment or Bidder's trained engineers conduct the preventive maintenance on a Quarterly basis and break-fix maintenance in accordance with the best practices followed in the industry. 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 ASCL.

32.20 The training has to be conducted using official OEM course curriculum mapped with the hardware/Software Product's to be implemented in the project.

32.21 MSI and their personnel/representative shall not alter / change / replace any hardware component proprietary to ASCL and/or under warranty or O&M of third party without prior consent of ASCL.

32.22 MSI shall provision the required critical spares/ components at the designated OCC/CCC/DC/DR Sites/ office locations of ASCL for meeting the uptime commitment of the components supplied by him.

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32.23 MSI's representative(s) shall have all the powers requisite for the execution of scope of work and performance of services under this contract. MSI's representative(s) shall liaise with ASCL's representative for the proper coordination and timely completion of the works and on any other matters pertaining to the works. MSI shall extend full co-operation to ASCL'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. He shall also have complete charge of MSI's personnel engaged in the performance of the works and to ensure compliance of rules, regulations and safety practice. He shall also cooperate with the other Service Providers/Vendors of ASCL working at ASCL's office locations & field locations and DC & DR sites. Such MSI's representative(s) shall be available to ASCL's Representative at respective Data centre during the execution of works.

32.24 MSI shall be responsible on an ongoing basis for coordination with other vendors and agencies of ASCL 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.

32.25 MSI is expected to set up a project office in Agra. The technical manpower deployed on the project should work from the same office. However, some resources may be required to work from ASCL office during the contract period.

32.26 Access to Sites:

- a) Sites would include, all field level activities, Data Centre, Command and Control Centre/City Operation Centre
- b) ASCL's representative upon receipt of request from MSI, intimating commencement of activities at various locations, shall give access to MSI as much of the Sites as may be necessary to commence and proceed with the installation of the works in accordance with the program of work. Any reasonable proposal of MSI for access to Site to proceed with the installation of work in accordance with the program of work shall be considered for approval and shall not be unreasonably withheld by ASCL. Such requests shall be made to ASCL's representative in writing at least 7 days prior to start of the work.

32.27 Start of Installation

- a) Bidder shall co-ordinate with ASCL and stakeholders for the complete setup of sites before commencement of installation. MSI shall also co-ordinate regarding Network / Bandwidth connectivity in order to prepare the installation plan and detailed design / architectural design documents.
- b) As per TRAI guidelines, resale of bandwidth connectivity is not allowed.

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- c) The plan and design documents thus developed shall be submitted by MSI for approval by ASCL.
- d) After obtaining the approval from ASCL, MSI shall commence the installation.

32.28 Reporting Progress

- a) MSI shall monitor progress of all the activities related to the execution of this contract and shall submit to ASCL, progress reports in every 15 days, with reference to all related work, milestones and their progress during the implementation phase.
- b) Formats for all above mentioned reports and their dissemination mechanism shall be discussed and finalized along with project plan. ASCL on mutual agreement between both parties may change the formats, periodicity and dissemination mechanism for such reports.
- c) Periodic meetings shall be held between the representatives of ASCL 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 ASCL, to discuss the performance of the contract.
- d) MSI shall ensure that the respective solution teams involved in the execution of work are part of such meetings.
- e) Several review committees involving representative of ASCL and senior officials of MSI shall be formed for the purpose of this project. These committees shall meet at intervals, as decided by ASCL later, to oversee the progress of the implementation.
- f) 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 ASCL's representative in accordance with the Contract.
- g) ASCL reserves the right to inspect and monitor/ assess the progress/ performance of the work / services at any time during the course of the Contract. ASCL may demand and upon such demand being made, MSI shall provide documents, data, material or any other information which ASCL may require, to enable it to assess the progress/ performance of the work/ service.
- h) At any time during the course of the Contract, ASCL shall also 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 by ASCL and MSI undertakes to cooperate with and provide to ASCL/ any other agency appointed by ASCL, all Documents and other details as may be required by them for this purpose. Such audit shall not include Bidder's books of accounts.

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- i) Should the rate of progress of the works or any part of them at any time fall behind the stipulated time for completion 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, ASCL's representative shall so notify MSI in writing.
- j) MSI shall reply to the written notice giving details of the measures he proposes to take to expedite the progress so as to complete the works by the prescribed time or to ensure compliance to RFP requirements. MSI shall not be entitled to any additional payment for taking such steps. If at any time it should appear to ASCL or ASCL's representative that the actual progress of work does not conform to the approved plan MSI shall produce at the request of ASCL'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
- k) The submission seeking approval by ASCL or ASCL's representative of such plan shall not relieve MSI of any of his duties or responsibilities under the Contract.
- l) 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 requirements. Plan for deployment of extra man power/ resources shall be submitted to ASCL for its review and approval. All time and cost effect in this respect shall be borne, by MSI within the contract value.

32.29 Knowledge of Data Centre/ Disaster Recovery Centre, Command and Control Centre/ City Operation Command Centre:

- a) MSI shall be granted access to the sites for location of Data Centre /Disaster Recovery Centre, Command and Control Centre/ City Operation Command Centre for inspection by ASCL before commencement of installation. The plan shall be drawn mutually at a later stage.
- b) MSI shall be deemed to have knowledge of the Data Centre/ Disaster Recovery Centre, Command and Control Centre/ City Operation Command Centre 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 his obligations and responsibilities therewith under the Contract and his 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.



32.30 Adherence to safety procedures, rules, regulations and restriction

- a) MSI's Team shall comply with the provision of all laws including labour laws, rules, regulations and notifications issued there under from time to time. All safety and labour laws enforced by statutory agencies and by ASCL shall be applicable in the performance of this Contract and MSI's Team shall abide by these laws.
- b) Access to the Data Centre / Disaster Recovery Centre, Command and Control Centre/ City Operation Command Centre shall be strictly restricted. No access to any person except the essential members of MSI's Team who are authorized by ASCL and are genuinely required for execution of work or for carrying out management/ maintenance shall be allowed entry. Even if allowed, access shall be restricted to the pertaining equipment of ASCL only. MSI shall maintain a log of all activities carried out by each of its team personnel.
- c) No access to any staff of MSI, except the essential staff who has genuine work- related need, should be given. 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
- d) MSI shall take all measures necessary or proper to protect the personnel, work and facilities and shall observe all reasonable safety rules and instructions. MSI's Team shall adhere to all security requirement/ regulations of ASCL during the execution of the work. ASCL's employee also shall comply with safety procedures/ policy.
- e) MSI shall report as soon as possible any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations.

32.31 Statutory Requirements

- a) During the tenure of this Contract nothing shall be done by MSI or his team including consortium in contravention of any applicable law, act and/ or rules/regulations, there under or any amendment thereof governing inter-alia customs, stowaways, foreign exchange etc. and shall keep ASCL indemnified in this regard.

33. Standards of performance

- 33.1 MSI shall perform the services and carry out its obligations under the Contract with due diligence, efficiency and economy, in accordance with generally accepted

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techniques and best practices used in the industry and with Information & Communication Technology standards recognized by international professional bodies and shall observe sound management, engineering and security practices. It shall employ appropriate technology and engineering practices and safe and effective equipment, machinery, material and methods. MSI shall always act, in respect of any matter relating to the Contract, as faithful advisors to ASCL and shall, at all times, support and safeguard ASCL's legitimate interests in any dealings with Third Parties.

- 33.2 The MSI confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by ASCL and on the basis of information that the MSI could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the MSI relating to the System as at the date twenty-eight (28) days prior to bid submission. The MSI acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 33.3 The MSI shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Clause 60) within the time schedule specified in the Implementation Schedule in the Terms of Reference Section. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 18 a.
- 33.4 The MSI shall adhere to the SLA requirements as specified in RFP.
- 33.5 The MSI shall comply with Exit Management Plan as specified in GCC.
- 33.6 The MSI shall not subcontract (unless otherwise specified in the SCC) any part of the Services required of MSI under this Contract.
- 33.7 Other obligations of the Bidder as specified in SCC.

34. Law Applicable

- 34.1 The MSI shall comply with all laws in force in India. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the MSI. The MSI shall indemnify and hold harmless ASCL from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the MSI or its

personnel, including the Subcontractors and their personnel. The MSI shall not indemnify ASCL to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of ASCL.

34.2 Throughout the duration of the Contract, the MSI shall comply with the prohibitions in India in relation to the import of goods and services when as a matter of law or official regulation, there is a prohibition on entering into or maintaining commercial relations with the country from where the import is proposed to be made.

34.3 The MSI shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings that are necessary for the performance of the Contract, including, without limitation, visas for the MSI's and Subcontractor's personnel and entry permits for all imported MSI's Equipment. The MSI shall acquire all other permits, approvals, and/or licenses that are not the responsibility of ASCL and that are necessary for the performance of the Contract.

35. Conflict of Interest

35.1 The MSI shall hold ASCL's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

35.2 **MSI Not to Benefit from Commissions, Discounts, etc.:** The Contract Value/Price pursuant to GCC Clause 47 shall constitute the MSI's only payment in connection with this Contract and the MSI shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the MSI shall use its best efforts to ensure that the Personnel and agents or either of them, similarly shall not receive any such additional payment.

35.3 **MSI and Affiliates Not to Engage in Certain Activities:** The MSI agrees that, during the term of this Contract and after its termination/completion, the MSI and its Affiliates, shall be disqualified from providing consultancy related to the Services, for the implementation of the Smart City ICT Components Project.

35.4 **Prohibition of Conflicting Activities:** The MSI shall not engage, and shall cause its Personnel to not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

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35.5 **Strict Duty to Disclose Conflicting Activities:** The MSI has an obligation and shall ensure that its Personnel shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of ASCL, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the MSI or the termination of this Contract.

36. Liability of the MSI

36.1 Neither Party shall be liable to the other Party for any indirect or consequential loss or damage (including loss of revenue and profits) arising out of or relating to the Contract.

36.2 Except in case 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, MSI, with respect to damage caused by MSI to ASCL's property, shall not be liable to ASCL: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds (A) the total payments payable under the Contract to MSI hereunder, or (B) the proceeds MSI may be entitled to receive from any insurance maintained by MSI to cover such a liability, whichever of (A) or (B) is higher.

36.3 This limitation of liability shall not affect MSI liability, if any, for damage to Third Parties caused by MSI or any person or company acting on behalf of MSI in carrying out the Services.

37. Accounting, and Auditing

37.1 ASCL shall be named as co-insured under all insurance policies taken out by the MSI pursuant to GCC Clause 37.1, except for the Third-Party Liability. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

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

37.3 If the MSI fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, ASCL may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the MSI under the Contract any premium that ASCL shall have paid to the insurer or may otherwise recover such amount as a debt due from the MSI.

37.4 Unless otherwise provided in the Contract, the MSI shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 25, and all monies payable by any insurers shall be paid to the MSI. ASCL shall give to the MSI

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all such reasonable assistance as may be required by the MSI in connection with any claim under the relevant insurance policies. With respect to insurance claims in which ASCL's interest is involved, the MSI shall not give any release or make any compromise with the insurer without the prior written consent of ASCL. With respect to insurance claims in which the MSI's interest is involved, ASCL shall not give any release or make any compromise with the insurer without the prior written consent of the MSI.

38. Accounting, and Auditing

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

38.2 The MSI shall permit, ASCL and/or persons appointed by ASCL to inspect all accounts and records relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by ASCL, if requested by ASCL. Any act intended to materially impede the exercise of ASCL's inspection and audit rights provided for under this Clause 38.2 shall constitute a material breach of the Contract, which would give ASCL the right to terminate the Contract.

39. Time for Commencement and Operational Acceptance

39.1 The MSI shall commence work on the System within the period specified in the SCC, and without prejudice to GCC Clause 73.2, the MSI shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule in the Scope of Work Section and any refinements made in the Agreed and Finalized Project Plan.

39.2 The MSI shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time specified in the SCC and in accordance with the time schedule specified in the Implementation Schedule in the Scope of Work Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the MSI shall be entitled under GCC Clause 74 (Extension of Time for Achieving Operational Acceptance).

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C. RIGHTS AND OBLIGATIONS OF ASCL

40. ASCL's Obligations

- 40.1 ASCL or his/her 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.
- 40.2 ASCL shall ensure that timely approval is 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 fulfilment of this contract.
- 40.3 ASCL'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. ASCL shall provide adequate cooperation in providing details, coordinating and obtaining of approvals from various governmental agencies, in cases, where the intervention of ASCL is proper and necessary.
- 40.4 ASCL may provide on MSI's request, particulars/ information/ or documentation that may be required by MSI for proper planning and execution of work and for providing services covered under this contract and for which MSI may have to coordinate with respective vendors.
- 40.5 ASCL reserves the right to procure the hardware in a phased manner, which will be finalized during implementation, and O&M shall be applicable whenever the devices are procured and deployed till end of the contract.
- 40.6 Site Not Ready: ASCL hereby agrees to make the project sites ready as per the agreed specifications, within the agreed timelines. ASCL agrees that MSI shall not be in any manner liable for any delay arising out of ASCL's failure to make the site ready within the stipulated period.
- 40.7 ASCL agrees that MSI shall not be in any manner liable for any delay arising out of ASCL's failure to make the site ready within the stipulated period
- 40.8 ASCL shall make payments to MSI at the times and in the manner set out in the Payment schedule as specified Payment Milestones subject to the liquidated damages and penalties as mentioned under GCC Clause 89 and GCC Clause 100 respectively.

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41. Assistance and Services

41.1 Unless otherwise specified in the SCC, ASCL shall:

- (i) Assist the MSI with obtaining any applicable permits, including work permits and such other documents as shall be necessary to enable the MSI to perform the Services required of MSI under this Contract;
- (ii) ASCL shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 60) within the time schedule specified in the Implementation Schedule in the Scope of Work Section.

41.2 If requested by the MSI, ASCL shall use its best endeavours to assist the MSI in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities or public service undertakings that such authorities or undertakings require the MSI or Subcontractors or the personnel of the MSI or Subcontractors, as the case may be, to obtain.

41.3 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the MSI, as specified in the Scope of Work, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, ASCL shall use its best endeavours to assist the MSI in obtaining such services in a timely and expeditious manner.

41.4 ASCL shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the MSI. Delay by ASCL may result in an appropriate extension of the Time for Operational Acceptance, at the MSI's discretion.

41.5 ASCL assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 62.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the MSI's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.

41.6 The MSI is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles.

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41.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 41 shall be the responsibility of ASCL, save those to be incurred by the MSI with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Clause 62.2.

41.8 ASCL may depute Project Management Consultant (PMC) or competent personnel to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Scope of Work Section's Implementation Schedule and the Agreed and Finalized Project Plan.

41.9 Provide to the MSI any such other assistance as may be specified in the SCC.

42. Access to Project Office

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

43. Counterpart Personnel

43.1 Unless otherwise specified in the Contract or agreed upon by ASCL and the MSI, ASCL shall provide sufficient, properly qualified operating and technical personnel, as required by the MSI to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Terms of Reference Section's Implementation Schedule and the Agreed and Finalized Project Plan.

43.2 ASCL will designate appropriate staff for the training courses to be given by the MSI and shall make all appropriate logistical arrangements for such training as specified in the Scope or Work, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.

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D. PERSONNEL

44. Description of Key Experts

44.1 The title, agreed job description and minimum qualification of each Key Expert to carry out the Work are described in Instruction to Bidders - RFP Volume I.

44.2 All Key Experts as proposed by the Bidder should be full time employees of the Bidder (or JV/Consortium members).

45. Replacement of Key Experts

45.1 Except as ASCL may otherwise agree in writing and no changes shall be made in the Key Experts without the prior consent of ASCL.

45.2 A request for substitution of a Key Expert during the term of the Contract may be considered based on the MSI's written request.

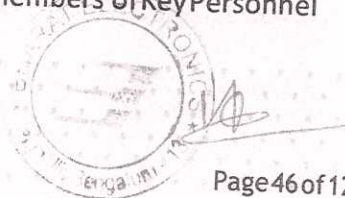
45.3 ASCL may make a request in writing for the substitution of a Key Expert with an equal or better qualification and experience. On receiving request, the MSI shall provide substitution within 30 days of receipt of request for the respective Key Expert.

45.4 In case any proposed resource resigns, then the MSI has to inform ASCL within one week of such resignation and the MSI shall promptly initiate a search for a replacement to ensure that the role of any member of the Key Personnel is not vacant at any point in time during the contract period, subject to reasonable extensions requested by the MSI and its approval by ASCL.

45.5 If ASCL objects to any such replacement appointment, the MSI shall not assign the individual to that position and shall seek an alternative candidate in accordance with the resource requirements.

45.6 The MSI needs to ensure at least 4 weeks of overlap period in such replacements. ASCL will not be responsible for any knowledge transition to the replacement resource and any impact/escalation of cost incurred by the MSI due to resource replacement.

45.7 If in the first 6 month period from the Contract Effective Date and in any rolling 12 months period during the Term of the Contract, 15 percent or more of the members of Key Personnel cease or reduce their involvement in the Services required of MSI



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under this Contract for any reason other than with ASCL's prior written consent, the MSI shall:

- (i) provide ASCL with a reasonably detailed explanation as to the reasons for such change, including, where applicable and permitted, notes from any exit interviews conducted by the MSI with any departing member of the Key Personnel; and
- (ii) if such change to Key Personnel has or is likely to have any material adverse impact on the provision of the Services required of MSI under this Contract or any substantial part thereof, undertake, at its own costs, such remediation acts as are reasonably necessary in order to improve the retention of the Key Personnel including making reasonable changes to the human resources policies and procedures applicable to the Key Personnel (including those related to compensation, benefits and other conditions so that they are competitive with the market) as may be necessary to ensure that such policies and procedures comply with Good Industry Practice.

46. Removal of Personnel

46.1 If ASCL finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or if ASCL determines that MSI's Personnel have engaged in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices while performing the Work, the MSI shall, at ASCL's written request, provide a replacement for such Personnel.

46.2 In the event that any of Personnel is found by ASCL to be incompetent or incapable in discharging assigned duties, ASCL, specifying the grounds therefore, may request the MSI to provide a replacement.

46.3 The replacement of any Personnel shall possess equivalent or better qualifications and experience and shall be approved by ASCL.

R. K. SINGH
Addl. CEO
Agra Smart City Limited

Chief Executive Officer
Agra Smart City Limited



E. PAYMENTS TO THE MSI

47. Total Value / Price of the Contract

47.1 The Contract Price shall be as specified in the Contract Agreement.

47.2 The Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the System pursuant to GCC Clause 23 or to other clauses in the Contract;

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

48. Currency of Payment

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

49. Mode of Billing and Payment

49.1 The MSI's request for payment shall be made to ASCL in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and by documents submitted pursuant to GCC Clause 64.5 and upon fulfilment of other obligations stipulated in the Contract.

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

49.3 Payments shall be made promptly by ASCL, but in no case later than forty-five (45) days after submission of a valid invoice by the MSI.

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

- (i) Any penalties applicable on the MSI as per SLA;
- (ii) Failure by the MSI to provide certificates of insurance;
- (iii) Any overpayments made by ASCL in a previous payment;
- (iv) Any payment required to be withheld under any Applicable Law;
- (v) The invoice is not accompanied by all necessary supporting documents;



- MSI
- (vi) A dispute exists as to the accuracy or completeness of any invoice; or
 - (vii) Any amounts due to ASCL from the MSI under the Contract.

49.5 The currency in which payments shall be made to MSI under this Contract shall be Indian Rupees (INR) only.

49.6 All remittance charges, if any, shall be borne by MSI.

49.7 In case of disputed items, the disputed amount shall be withheld and shall be paid only after settlement of the dispute.

49.8 Taxes, as applicable, shall be deducted / paid, as per the prevalent rules and regulations

49.9 All payments under this Contract shall be made by wire transfer to the accounts of the MSI specified in the SCC.

50. Interest on Delayed Payments

50.1 If ASCL had delayed payments beyond forty five (45) days after the due date stated in GCC Clause 73, interest shall be paid to the MSI on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

51. Performance Bank Guarantee (PBG)

51.1 Within fifteen (15) working days from the date of issuance of LOI, the successful Bidder shall at his own expense submit unconditional and irrevocable Performance Bank Guarantee (PBG) of 10% of the contract value to the ASCL. The PBG shall be from a Nationalized Bank or a Scheduled Commercial Bank in the format prescribed in Section 9 - Annexure 7 (a) of Instructions to Bidders – RFP Volume I, payable on demand, for the due performance and fulfillment of the contract by the bidder.

51.2 This Performance Bank Guarantee shall be for an amount equivalent to 10% of total contract value. PBG shall be invoked by ASCL, in the event the Bidder:

- (i) fails to meet the overall penalty condition as mentioned in RFP Volume II or any changes agreed between the parties,
- (ii) fails to perform the responsibilities and obligations as set out in the RFP to the complete satisfaction of ASCL,
- (iii) Misrepresents facts/information submitted to ASCL

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51.3 The performance bank guarantee shall be valid till satisfactory completion of Post Implementation Support. The performance bank guarantee may be discharged/returned by ASCL upon being satisfied that there has been due performance of the obligations of the bidder under the contract. However, no interest shall be payable on the performance bank guarantee.

51.4 In the event of the Bidder being unable to service the contract for whatever reason(s), ASCL shall have the right to invoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of ASCL under the contract in the matter, the proceeds of the PBG shall be payable to ASCL as compensation for any loss resulting from the bidder's failure to perform/comply its obligations under the contract.

51.5 ASCL shall notify the bidder in writing of the exercise of its right to receive such compensation within 40 days, indicating the contractual obligation(s) for which the bidder is in default. ASCL shall also be entitled to make recoveries from the bidder's bills, performance bank guarantee, or from any other amount due to him, an equivalent value of any payment made to him due to inadvertence, error, collusion, misconception or misstatement.

51.6 In case the project is delayed beyond the project schedule, the performance bank guarantee shall be accordingly extended by the MSI till completion of scope of work as mentioned in RFP Volume II.

51.7 This Performance Bank Guarantee of 10% shall be valid only up to the completion of the period of 'Go- Live' and it will be reduced by 2.5% after all components have completed 'Go-Live' till the end of the O&M contract of 60 Months.

51.8 On satisfactory performance and completion of the order in all respects and duly certified to this effect by the Project Coordinator, Contract Completion Certificate shall be issued. The remaining 7.5 percent shall be released to the MSI only after successful completion of the Post Warranty Service Period/Operation & Maintenance (AMC) Phase.

52. Payments

52.1 ASCL shall make payments to MSI at the times and in the manner set out in the Payment schedule as specified Payment Milestones subject to the liquidated damages and penalties as mentioned under GCC Clause 89 and GCC Clause 100 respectively. ASCL shall make all efforts to make payments to MSI within 60 days of receipt of invoice(s) and all necessary supporting documents.



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- 52.2 All payments agreed to be made by ASCL 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 ASCL shall not be liable to pay any such levies/ other charges under or in relation to this Contract and/or the Services.
- 52.3 No invoice for extra work on account of change order shall be submitted by MSI unless the said extra work /change order has been authorized/approved by ASCL in writing in accordance with Change Control Note.
- 52.4 In the event of ASCL noticing at any time that any amount has been disbursed wrongly to MSI or any other amount is due from MSI to ASCL, ASCL may without prejudice to its rights recover such amounts by other means after notifying MSI or deduct such amount from any payment falling due to MSI. The details of such recovery, if any, shall be intimated to MSI. MSI shall receive the payment of undisputed amount under subsequent invoice for any amount that has been omitted in previous invoice by mistake on the part of ASCL or MSI.
- 52.5 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 law, rule or regulation. All costs, damages or expenses which ASCL may have paid or incurred, for which under the provisions of the Contract, MSI is liable, the same shall be deducted by ASCL from any dues 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 ASCL to MSI on chargeable basis.

53. Payment Schedule:

53.1 Payment Schedule: Payments to MSI, after successful completion of target milestones (including specified project deliverables), shall be made as under:

Sr. No.	Scope of Work	Timelines	Payment
A	Phase I		
1.	Advance	On resource mobilisation	10% of contract value
2.	Upon finalization SRS, FRS & SDD	T+2 Months	As completed 10% of contract value

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B	Phase II		
3.	On Supply, Installation and Commissioning of each component	T + 6 Months	As completed 20 % of contract value of each component
C	Phase III		
4.	After 3 Months Testing & Go Live of all components	T + 9 Months	As completed 20% of contract value of each component
D	Phase IV		
5.	Operations & Maintenance of 60 months from the date of Go Live	T1 + 60 Months	40% of Contract Value in equal quarterly installments to be paid over a period of 60 months
Note:	<ul style="list-style-type: none"> • <i>T is the date of signing of contract</i> • <i>T1 is the date of Go Live.</i> • <i>GST amount to be claimed as per the Act and same to be reimbursed at actual in the respective stage of payment. However, the total claim to be made will be within the contract value of Rs.282,65,73,296/- including GST.</i> • <i>In the 'price schedule as per the revised commercial offer', decimal digits under the column 'Unit rate' and 'Tax' are not visible (as the same are hidden). The MSI is allowed to incorporate the decimal digits while raising the invoices / claims.</i> 		

54. Taxes

54.1 MSI shall bear all personnel taxes levied or imposed on its personnel, or any other member of MSI's Team, etc. on account of payment received under this Contract. MSI shall bear all corporate taxes, levied or imposed on MSI on account of payments received by it from ASCL for the work done under this Contract.

54.2 MSI shall bear all taxes and duties etc. levied or imposed on MSI 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 ASCL such information, as it may be required in regard to MSI's details of payment made by ASCL under the Contract for proper assessment of taxes and duties. The amount of tax withheld by ASCL shall at all times be in accordance with Indian Tax Law and ASCL shall promptly furnish to MSI original certificates for tax deduction at source and paid to the Tax Authorities.



- 54.3 MSI agrees that he shall comply with Indian Income Tax Act in force from time to time and pay Income Tax, as may be imposed/levied on them by the Indian Income Tax Authorities, for payments received by them for the works under the Contract
- 54.4 MSI shall fully familiarize themselves about the applicable domestic taxes (such as value added tax, sales tax, goods & service tax, income taxes, duties, fees, levies, etc.) on amounts payable by ASCL under the Agreement. All such taxes must be included by Bidders in the financial proposal.
- 54.5 MSI shall indemnify ASCL against any and all liabilities or claims arising out of this Contract for such taxes including interest and penalty by any such Tax Authority may assess or levy against ASCL/Lead Bidder.

F. INTELLECTUAL PROPERTY

55. Intellectual Property Rights

- 55.1 Retention of Ownership except for the rights expressly granted to the MSI under this Agreement, ASCL shall retain all right, title and interest in and to the Licensed Technology, including all worldwide Technology and intellectual property and proprietary rights.
- 55.2 Preservation of Notice Licensee shall not remove, efface or obscure any copyright notices or other proprietary notices or legends from any Licensed Technology or materials provided under this Agreement, and shall reproduce all such notices and legends when incorporating Licensed Technology or materials into any Integrated Products.
- 55.3 MSI must ensure that while using any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person/Company. MSI shall keep ASCL indemnified against all costs, expenses and liabilities howsoever, arising out any illegal or unauthorized use (piracy) or in connection with any claim or proceedings relating to any breach or violation of any permission/license terms or infringement of any Intellectual Property Rights by MSI or MSI's Team during the course of performance of the Services. MSI's liability is excluded regarding any claim based on any of the following (a) anything ASCL provides which is incorporated into the Solution; (b) ASCL's modification of the solution; (c) the combination, operation, or use of the solution with other materials, if the third party claim has been caused by the combination, operation or use of the solution
- 55.4 ASCL shall own and have a right in perpetuity to use all newly created Intellectual Property Rights which have been developed solely during execution of this Contract, including but not limited to all processes, products, specifications, reports and other

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Chief Executive Officer
Agra Smart City Limited



documents which have been newly created and developed by MSI solely during the performance of Services and for the purposes of inter-alia use or sub-license of such Services under this Contract. MSI undertakes to disclose all such Intellectual Property Rights arising in performance of the Services to ASCL, execute all such agreements/ documents and obtain all permits and approvals that may be necessary in regard to the Intellectual Property Rights of ASCL.

55.5 If ASCL desires, MSI shall be obliged to ensure that all approvals, registrations, licenses, permits and rights etc. which are inter-alia necessary for use of the goods supplied / installed by MSI, the same shall be acquired in the name of ASCL, prior to termination of this Contract and which may be assigned by ASCL to MSI for the purpose of execution of any of its obligations under the terms of the Bid, Tender or this Contract. However, subsequent to the term of this Contract, such approvals, registrations, licenses, permits and rights etc. shall endure to the exclusive benefit of ASCL.

55.6 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 Materials except as expressly authorized by ASCL in writing

56. Copyright

56.1 The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.

56.2 ASCL agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 57, except that additional copies of Standard Materials may be made by ASCL for use within the scope of the project of which the System is a part, in the event that the MSI does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.

56.3 ASCL may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the MSI's prior written consent, under the following circumstances:

- a) To any agency that shall be responsible to operate the project in the future in the event of dilution of ASCL or the responsibility being transferred from ASCL to other agency;
- b) To any location or to any third party service provider if ASCL decides to outsource the ICT maintenance to a third party;
- c) Integrating with additional similar or non-similar hardware for additional functional needs as deemed suitable by ASCL;
- d) In the event of termination of contract during the operational period.

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- 56.4 The MSI shall protect ASCL from any liabilities arising there from. The MSI shall indicate all those components in the software, if any, that cannot be bound by this condition explicitly while responding to the bid, and supporting with the corresponding evidence for the same.
- 56.5 As applicable, ASCL's and MSI's rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials, are specified in the SCC. Subject to the SCC, the Intellectual Property Rights in all Custom Software and Custom Materials shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in ASCL. The MSI shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that ASCL may consider necessary or desirable to perfect the right, title, and interest of ASCL in and to those rights. In respect of such Custom Software and Custom Materials, the MSI shall ensure that the holder of a moral right in such an item does not assert it, and the MSI shall, if requested to do so by ASCL and where permitted by applicable law, ensure that the holder of such a moral right waives it.
- 56.6 The Parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are specified in the SCC and in accordance with the SCC.

57. Software License Agreements

- 57.1 Except to the extent that the Intellectual Property Rights in the Software vest in ASCL, the MSI hereby grants to ASCL license to access and use the Software, including all inventions, designs, and marks embodied in the Software. All software licenses and applications specific to this Project shall be provided with perpetual, royalty free licenses.
- 57.2 Such License to access and use of the Software shall be: (i) nonexclusive; (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates before Operational Acceptance pursuant to GCC Clauses 29.2 and 29.3; (iii) valid throughout the territory of India; and
- 57.3 Such License should permit the Software to be: (i) used or copied for use on or with the computer(s) for which it was acquired (if specified in the Terms of Reference and/or the MSI's bid), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup; (ii) the Software license shall permit

the Software to be used or copied for use or transferred to a replacement computer; provided the replacement computer falls within approximately the same or a higher class of machine and maintains approximately the same number of users, if a multi-user machine; (iii) if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access; (iv) reproduced for safekeeping or backup purposes; (v) customized, adapted, or combined with other computer software for use by ASCL, provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract; (vi) the Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by: support service MSIs or their subcontractors, exclusively for such MSIs or subcontractors in the performance of their support service contracts, subject to the same restrictions set forth in this Contract; (vii) In addition to the persons specified in this Clause 57.3 (vi), the Software may be disclosed to, and reproduced for use by, ASCL or its SPV entities or any other party which would take over the project in the future subject to the same restrictions as are set forth in this Contract.

- 57.4 The MSI's right to audit the Standard Software will be subject to the following terms:
- (i) Maximum of 1 audit per calendar year is allowed by ASCL and the duration of such audit shall not exceed 3 consecutive working days; (ii) The MSI shall get a prior written approval from ASCL at least 1 week in advance on the nature, number of people and duration of the audit. ASCL does not have any financial implication for conducting any such audit and can only extend necessary logistic support pertaining to relevant technical man power resources.

58. Confidential Information

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

- 58.1 For the purposes of GCC Clause 58.1, the MSI is also deemed to be the Receiving Party of Confidential Information generated by the MSI itself in the course of the

performance of its obligations under the Contract and relating to the businesses, finances, MSIs, employees, or other contacts of ASCL or ASCL's use of the System.

58.2 Notwithstanding GCC Clauses 58.1 and 58.2: (a) The MSI may furnish to its Subcontractor Confidential Information of ASCL to the extent reasonably required for the Subcontractor to perform its work under the Contract; and (b) ASCL may furnish Confidential Information of the MSI: (i) to its support service MSIs and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause 58 as if that person were party to the Contract in place of the Receiving Party.

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

58.4 The obligation of a party under GCC Clause 58.1 through 58.4 above, however, shall not apply to that information which: (a) now or hereafter enters the public domain through no fault of the Receiving Party; (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party; (c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

58.5 The above provisions of this GCC Clause 58 shall not in any way modify any undertaking of confidentiality given by either of the Parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

58.6 The provisions of this GCC Clause 58 shall survive the termination, for whatever reason, of the Contract for three (3) years or such longer period as may be specified in the SCC.

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G. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

59. Representatives

59.1 Project Manager: If the Project Manager is not named in the Contract, then within fourteen (14) days from the Effective Date, ASCL shall appoint and notify the MSI in writing of the name of the Project Manager. ASCL may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the MSI without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the MSI. The Project Manager shall have the authority to represent ASCL on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of ASCL.

59.2 MSI's Representative:

- (i) If the MSI's Representative is not named in the Contract, then within twenty one (21) days of the Effective Date, the MSI shall appoint the MSI's Representative and shall request ASCL in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the MSI's Representative. If ASCL does not object to the appointment within fourteen (14) days, the MSI's Representative shall be deemed to have been approved. If ASCL objects to the appointment within fourteen (14) days giving the reason therefore, then the MSI shall appoint a replacement within fourteen (14) days of such objection in accordance with this Clause
- (ii) Subject to the extensions and/or limitations specified in the SCC (if any), the MSI's Representative shall have the authority to represent the MSI on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the MSI;
- (iii) The MSI shall not revoke the appointment of the MSI's Representative without ASCL's prior written consent, which shall not be unreasonably withheld. If ASCL consents to such an action, the MSI shall appoint another person of equal or superior qualifications as the MSI's Representative, pursuant to the procedure set out in GCC Clause 59.2 (i);
- (iv) The MSI's Representative and staff are obliged to work closely with ASCL's Project Manager and staff, act within their own authority, and abide by directives issued

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by ASCL that are consistent with the terms of the Contract. The MSI's Representative is responsible for managing the activities of its personnel and any subcontracted personnel;

- (v) The MSI's Representative may, subject to the approval of ASCL (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the MSI's Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered;
- (vi) Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 59.2 (v) shall be deemed to be an act or exercise by the MSI's Representative.

59.3 Objections and Removals

- (i) ASCL may by notice to the MSI object to any representative or person employed by the MSI in the execution of the Contract who, in the reasonable opinion of ASCL, may have behaved inappropriately, be incompetent, or be negligent. ASCL shall provide evidence of the same, whereupon the MSI shall remove such person from work on the System;
- (ii) If any representative or person employed by the MSI is removed in accordance with GCC Clause 59.3 (i), the MSI shall, where required, promptly appoint a replacement.

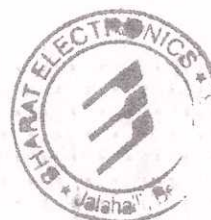
60. Project Plan

60.1 In close cooperation with ASCL and based on the Preliminary Project Plan included in the MSI's bid, the MSI shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as specified in the SCC.

60.2 The MSI shall formally present to ASCL the Project Plan in accordance with the procedure specified in the SCC.

60.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 23 and 74.

60.4 The MSI shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.



60.5 The Progress and other reports specified in the SCC shall be prepared by the MSI and submitted to ASCL in the format and frequency specified in the Technical Requirements.

61. Project Implementation Timelines & Deliverables

ASCL intends to implement the project in phased manner approach, distributed in three phases as mentioned below:

61.1 Phase I – T + 2 months (T is the date of signing of the contract with MSI):

A	Phase I: Mobilization and Design	D + 2 months
1	Resource Mobilization	D + 1 months
2	<p>Detailed Project Study for all ICT solution:</p> <p>a) Detailed Survey of identified Sites, Network and Power Requirements</p> <p>b) Hardware and Software Deployment plans</p> <p>c) Detailed Project Plan including Operations management, Contract management, Risk Management, Information Security and Business Continuity</p> <p>d) FRS, SRS, SDD Documents for all workstreams & components</p>	D + 2 months

61.2 Phase II – T + 6 months:

B	Phase II: Supply, Installation, Testing & Go Live	D + 6 months
1	Data Center and Disaster Recovery Site	D + 5 Months
2	City Communication Network	D + 2 Months
3	Geographical Information System for City	D + 4 Months
4	Adaptive Traffic Management System	D + 4 Months
5	Intelligent Traffic Management Solution	D + 4 Months
6	CCTV and Surveillance Based System for City	D + 4 Months
7	Environment Sensors	D + 4 Months
8	ICT Enabled Solid Waste Management	D + 6 Months

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9	Integrated City and Command Control Centre (ICCC) for ASCL	D + 6 Months
10	Existing Integration Components	D + 6 Months

61.3 Phase III – T + 9 months:

C	Phase III: Testing & Go Live		T + 9 Months
1	Functional Testing	Compliance Report	T + 8 Months
2	Load and Performance Testing	Compliance Report	T + 8 Months
3	Failover and Rollback Testing of DC and DR Sites	Compliance Report	T + 8 Months
4	User Acceptance Testing	-	T + 9 Months
5	Go Live	-	T + 9 Months

61.4 Phase IV – T1 + 60 months (T1 is the date of Go Live of all application):

D	Phase IV: Operations & Maintenance phase for a period of 60 months from the date of Go Live		
1	Operation & Maintenance	SLA Compliance Report	Every Quarter

62. Subcontracting

62.1 SCC to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by ASCL. If no Subcontractors are listed for an item, the MSI shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The MSI may from time to time propose additions to or deletions from any such list. The MSI shall submit any such list or any modification to the list to ASCL for its approval in sufficient time so as not to impede the progress of work on the System. ASCL shall not withhold such approval unreasonably. Such approval by ASCL of a Subcontractor(s) shall not relieve the MSI from any of its obligations, duties, or responsibilities under the Contract.

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62.2 The MSI may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 62.1. If the MSI wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek ASCL's prior approval under GCC Clause 62.3.

62.3 For items for which pre-approved Subcontractor lists have not been specified in SCC, the MSI may employ such Subcontractors as it may select, provided: (i) the MSI notifies ASCL in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either ASCL has granted its approval in writing or fails to respond. The MSI shall not engage any Subcontractor to which ASCL has objected in writing prior to the end of the notice period. The absence of a written objection by ASCL during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of ASCL of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either ASCL or MSI as they are specified in GCC Clauses 62.1 and 62.2, in the SCC.

63. Design and Engineering

63.1 Technical Specifications and Drawings

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

63.2 Codes and Standards; Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified in the SCC. During Contract execution, any changes in such codes and standards shall be applied after approval by ASCL and shall be treated in accordance with GCC Clause 23.6.

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63.3 Approval/Review of Technical Documents by the Project Manager.

- (i) The MSI shall prepare and furnish to the Project Manager the documents as specified in the SCC for the Project Manager's approval or review; Any part of the System covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents. GCC Clause 63.3 (i) through 63.3 (vii) shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.
- (ii) Within thirty (30) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 63.3 (i), the Project Manager shall either return one copy of the document to the MSI with its approval endorsed on the document or shall notify the MSI in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the thirty (30) days, then the document shall be deemed to have been approved by the Project Manager;
- (iii) The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice;
- (iv) If the Project Manager disapproves the document, the MSI shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 63.3 (ii). If the Project Manager approves the document subject to modification(s), the MSI shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 63.3 (v). The procedure set out in GCC Clause 63.3 (ii) through 63.3 (iv) shall be repeated, as appropriate, until the Project Manager approves such documents;
- (v) If any dispute occurs between ASCL and the MSI in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the Parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 31. If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The MSI shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the MSI's view on the dispute, then the MSI shall be reimbursed by ASCL for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall



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

- (vi) The Project Manager's approval, with or without modification of the document furnished by the MSI, shall not relieve the MSI of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the MSI by or on behalf of ASCL;
- (vii) The MSI shall not depart from any approved document unless the MSI has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 63.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 95 shall apply to such request.

64. Procurement, Delivery, and Transport

64.1 Subject to related ASCL's responsibilities pursuant to GCC Clauses 41 to 43 and Clause 54, the MSI shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.

64.2 Delivery of the Information Technologies, Materials, and other Goods shall be made by the MSI in accordance with the Volume III – Scope of Work.

64.3 Early or partial deliveries require the explicit written consent of ASCL, which consent shall not be unreasonably withheld.

64.4 Transportation

(i) The MSI shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with ASCL's instructions to the MSI.

(ii) The MSI will bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Incoterms.

64.5 Unless otherwise specified in the SCC, the MSI will provide ASCL with shipping and other documents, as specified below:



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(iii) For Goods supplied from outside ASCL's Country: Upon shipment, the MSI shall notify ASCL and the insurance company contracted by the MSI to provide cargo insurance by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The MSI shall promptly send the following documents to ASCL by mail or courier, as appropriate, with a copy to the cargo insurance company:

- Two copies of the MSI's invoice showing the description of the Goods, quantity, unit price, and total amount;
- Usual transportation documents;
- Insurance certificate;
- Certificate(s) of origin; and
- Estimated time and point of arrival in India and at the site.

(iv) For Goods supplied locally (i.e., from within India): Upon shipment, the MSI shall notify ASCL by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The MSI shall promptly send the following documents to ASCL by mail or courier, as appropriate:

- Two copies of the MSI's invoice showing the Goods' description, quantity, unit price, and total amount;
- Delivery note, railway receipt, or truck receipt;
- Certificate of insurance;
- Certificate(s) of origin; and
- Estimated time of arrival at the site.

64.6 Customs Clearance: The MSI will bear responsibility for, and cost of, customs clearance into India in accordance the particular Inco term(s) used for Goods supplied from outside India in the Price Schedules.

65. Product Upgrades

65.1 At any point during performance of the Contract, should technological advances be introduced by the MSI for Information Technologies originally offered by the MSI in its bid and still to be delivered, the MSI shall be obligated to offer to ASCL the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 23.

65.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the MSI will also pass on to ASCL any cost reductions and additional and/or improved support and facilities that it offers to other ASCLs of the MSI in India, pursuant to GCC Clause 23.



65.3 During performance of the Contract, the MSI shall offer to ASCL all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the MSI to other ASCLs of the MSI in India, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for these Software exceed those quoted by the MSI in the Recurrent Costs tables in its bid.

65.4 The MSI shall provide ASCL: with all new versions, releases, and updates for all Software used in the system during the Maintenance Period at no additional cost to the ASCL.

65.5 In case the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the MSI shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the MSI stop supporting or maintaining a version or release of the Software after ASCL receives a production-ready copy of a subsequent version, release, or update. The ASCL shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty-four-month-long stop date.

66. Implementation, Installation, and Other Services

66.1 The MSI shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.

66.2 Prices charged by the MSI for Services, if not included in the Contract, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged by the MSI to other Clients in India for similar services.

67. Inspections and Tests

67.1 ASCL or its representative shall have the right to inspect and/or test any components of the System, as specified in the Volume III – Scope of Work, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.

67.2 ASCL or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that ASCL shall bear all costs and expenses incurred in



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connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.

67.3 Should the inspected or tested components fail to conform to the Contract, ASCL may reject the component(s), and the MSI shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to ASCL.

67.4 The Project Manager may require the MSI to carry out any inspection and/or test not specified in the Contract, provided that the MSI's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impeded the progress of work on the System and/or the MSI's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.

67.5 If any dispute shall arise between the Parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the Parties within a reasonable period of time, either Party may invoke the process pursuant to GCC Clause 31 (Disputes Resolution and Settlement), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

67.6 ASCL may employ qualified inspectors to inspect and certify the Information Technologies, Materials, and other Goods prior to shipment. A Prototype Approval Test might be requested by ASCL to be conducted before shipment. If such a test is required, the expenses of the trip for the Inspectors shall be borne by the MSI.

68. Installation of the System

68.1 As soon as the System, or any Subsystem, has, in the opinion of the MSI, been delivered, Pre-commissioned, and made ready for Commissioning and Operational Acceptance Testing in accordance with the Volume III – Scope of Work, the SCC and the Agreed and Finalized Project Plan, the MSI shall so notify ASCL in writing.

68.2 The Project Manager shall, within fourteen (14) days after receipt of the MSI's notice under GCC Clause 68.1, either issue an Installation Certificate in the form specified in the Sample Forms Section in the Bidding Documents, stating that the System, or major component or Subsystem has achieved Installation by the date of the MSI's notice under GCC Clause 68.1, or notify the MSI in writing of any defects and/or deficiencies,

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including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The MSI shall use all reasonable endeavours to promptly remedy any defect and/or deficiencies that the Project Manager has notified the MSI of. The MSI shall then promptly carry out retesting of the System or Subsystem and, when in the MSI's opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify ASCL in writing, in accordance with GCC Clause 68.1. The procedure set out in this GCC Clause 68.2 shall be repeated, as necessary, until an Installation Certificate is issued.

- 68.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the MSI of any defects and/or deficiencies within fourteen (14) days after receipt of the MSI's notice under GCC Clause 68.1, or if ASCL puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the MSI's notice or repeated notice, or when ASCL puts the System into production operation, as the case may be.

69. Commissioning and Operational Acceptance

69.1 Commissioning

- (i) Commissioning of the System shall be commenced by the MSI: (a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 68.2; or (b) as otherwise specified in the Scope of Work or the Agreed and Finalized Project Plan; or (c) immediately after Installation is deemed to have occurred, under GCC Clause 68.3.
- (ii) ASCL shall supply the operating and technical personnel and all materials and information reasonably required to enable the MSI to carry out its obligations with respect to Commissioning; Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.

69.2 Operational Acceptance Tests

- (i) The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of ASCL (in accordance with GCC Clause 41.5), but shall be conducted with the full cooperation of the MSI during Commissioning of the System, to ascertain whether the System (or major component or Subsystem[s]) conforms to the Scope of Work and meets the standard of performance quoted in the MSI's bid, including, but not restricted to, the functional and technical performance requirements. Operational Acceptance Testing shall be conducted in accordance with System, Subsystems, tests, test procedures, and the required results for acceptance as specified in Scope of Work (Testing Requirements); At

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ASCL's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

- (ii) If for reasons attributable to ASCL, the Operational Acceptance Test of the System cannot be successfully completed within the period specified in the SCC, from the date of Installation or any other period agreed upon in writing by ASCL and the MSI, the MSI shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Scope of Work, SCC and/or the Agreed and Finalized Project Plan, and GCC Clause 73.2 and 73.3 shall not apply.

69.3 Operational Acceptance

- (i) Subject to GCC Clause 69.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when: (a) the Operational Acceptance Tests, as specified in the Terms of Reference, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or (b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to ASCL within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 69.2 (ii) above; or (c) ASCL has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the MSI shall notify ASCL and document such use.
- (ii) At any time after any of the events set out in GCC Clause 69.3 (i) have occurred, the MSI may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate;
- (iii) After consultation with ASCL, and within fourteen (14) days after receipt of the MSI's notice, the Project Manager shall: (a) issue an Operational Acceptance Certificate; or (b) notify the MSI in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or (c) issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 69.3 (i) (b) arises.
- (iv) The MSI shall use all reasonable endeavours to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the MSI of. Once such remedies have been made by the MSI, the MSI shall notify ASCL, and ASCL, with the full cooperation of the MSI, shall use all reasonable endeavours to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the MSI shall notify ASCL of its request for Operational Acceptance Certification, in accordance with GCC Clause 69.3 (iii). ASCL shall then issue to the MSI the Operational Acceptance Certification in accordance with GCC Clause 69.3 (i)(a), or shall notify the MSI of further defects,

deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 69.3 (iv) shall be repeated, as necessary, until an Operational Acceptance Certificate is issued;

- (v) If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 69.2, then either: (a) ASCL may consider terminating the Contract, pursuant to GCC Clause 29.1 (Termination); or (b) if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of ASCL to fulfill its obligations under the Contract, then the MSI shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clause 75.3 shall not apply.
- (vi) If within fourteen (14) days after receipt of the MSI's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the MSI in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the MSI's said notice.

69.4 Partial Acceptance

- (i) If so specified in the SCC for GCC Clause 69.2 (i), Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 69.4 (ii);
- (ii) The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 69.4 (i) shall not relieve the MSI of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole once all major components and Subsystems have been supplied, installed, tested, and commissioned;
- (iii) In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The MSI shall, however, use all reasonable endeavours to promptly remedy any defects or deficiencies in such minor components detected by the ASCL or MSI.



I. EXIT MANAGEMENT AFTER OPERATIONAL ACCEPTANCE

70. Exit Management Plan

70.1 An Exit Management plan shall be furnished by MSI in writing to ASCL within 90 days from the date of signing 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.
- e) Exit Management plan in case of termination of MSI

70.2 Exit Management plan at the minimum should adhere to the following:

- a) Three (3) months of the support to Replacement Service Provider post termination of the Contract
- b) Complete handover of the Planning documents, bill of materials, functional requirements specification, technical specifications of all equipment's, change requests if any, source codes, wherever applicable, reports, documents and other relevant items to the Replacement Service Provider/ASCL
- c) Certificate of Acceptance from authorized representative of Replacement Service Provider issued to MSI on successful completion of handover and knowledge transfer

70.3 In the event of termination or expiry of the contract, Project Implementation, or Service Level monitoring, both Bidder and ASCL shall comply with the Exit Management Plan.

70.4 During the exit management period, MSI shall use its best efforts to deliver the services.

71. Under Contract Completion

71.1 Before 6 months prior to the contract ending, the MSI shall fully train ASCL's staff for any other agency designated by ASCL who is designated to take over the maintenance of the System.

71.2 The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ ASCL to carry out the requisite functions.

71.3 All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to ASCL at least 3 months before contract completion.

71.4 ASCL shall release the performance security to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.

71.5 The Parties may, if mutually agreed, extend the contract in accordance with the terms and conditions as specified in the SCC.

72. Under Termination upon MSI's Default / ASCL's Convenience

72.1 After termination notice by ASCL, the MSI shall as soon as possible and within 90 days (of Termination Period) fully train ASCL's staff or any other agency designated by ASCL who is designated to take over the maintenance of the System.

72.2 The MSI shall be responsible for continuing the maintenance as per the scope of the contract during the Termination period as per the SLA's in the RFP.

72.3 The MSI shall be responsible for transferring all the knowledge regarding the Systems, technically and operationally to enable the new agency/ ASCL to carry out the requisite functions.

72.4 All latest operations & technical manuals, configuration files, software, licenses, as-built drawings etc. shall be handed over to ASCL within 1 month after termination notice.

72.5 ASCL shall release the requisite payments to the MSI pursuant to the GCC Clause 29 to the MSI only after satisfactory Exit Management is achieved as part of the project and MSI is obligated to perform all required additional functions to facilitate the same for a smooth transfer of the duties.

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J. GUARANTEES AND LIABILITIES

73. Operational Acceptance Time Guarantee

73.1 The MSI guarantees that it shall complete the supply, Installation, Integration, Commissioning, and achieve Operational Acceptance of the System within the time periods specified in the Implementation Schedule in the Terms of Reference Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 39.2, or within such extended time to which the MSI shall be entitled under GCC Clause 74 (Extension of Time for Achieving Operational Acceptance).

73.2 If the MSI fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Terms of Reference or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 74 (Extension of Time for Achieving Operational Acceptance), the MSI shall pay to ASCL liquidated damages at the rate specified in the SCC as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the SCC ("the Maximum"). Once the Maximum is reached, ASCL may consider termination of the Contract, pursuant to GCC Clause 29.1.

73.3 Unless otherwise specified in the SCC, liquidated damages payable under GCC Clause 73.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Terms of Reference and/or Agreed and Finalized Project Plan. This Clause 73.3 shall not limit, however, any other rights or remedies ASCL may have under the Contract for other delays.

73.4 If liquidated damages are claimed by ASCL for the System (or Subsystem), the MSI shall have no further liability whatsoever to ASCL in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the MSI from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

74. Extension of Time for Achieving Operational Acceptance

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74.1 The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the MSI is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a) Any Change in the System as provided in GCC Clause 23 (Change in the Information System);
- b) Any occurrence of Force Majeure as provided in GCC Clause 83 (Force Majeure);
- c) Default of ASCL; or
- d) Any other matter specifically mentioned in the Contract. By such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the MSI.

74.2 Except where otherwise specifically provided in the Contract, the MSI shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, ASCL and the MSI shall agree upon the period of such extension. In the event that the MSI does not accept ASCL's estimate of a fair and reasonable time extension, the MSI shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 31.

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

75. Defect Liability

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

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

75.3 In addition, the MSI warrants that: (i) all Goods components to be incorporated into the System form part of the MSI's and/or Subcontractor's current product lines, (ii)



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they have been previously released to the market, and (iii) those specific items identified in the SCC (if any) have been in the market for at least the minimum periods specified in the SCC.

75.4 The Defect Liability (Warranty) Period shall commence from the date of Operational Acceptance of the System and shall extend for the length of time specified in the SCC.

75.5 If during the Defect Liability (Warranty) Period any defect as described in GCC Clause 75.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the MSI, the MSI shall promptly, in consultation and agreement with ASCL regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the MSI shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the MSI shall remain the property of the MSI.

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

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

75.7 The MSI's obligations under this GCC Clause 75 shall not apply to:

- a) (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
- b) (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of ASCL or any matters for which the MSI has disclaimed responsibility, in accordance with GCC Clause 63.1 (ii) .

75.8 ASCL shall give the MSI a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. ASCL shall afford all reasonable opportunity for the MSI to inspect any such defect. ASCL shall afford the MSI all necessary access to the System and the site to enable the MSI to perform its obligations under this GCC Clause 75.

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- 75.9 The MSI may, with the consent of ASCL, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, ASCL may give the MSI notice requiring that tests of the defective part be made by the MSI immediately upon completion of such remedial work, whereupon the MSI shall carry out such tests. If such part fails the tests, the MSI shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by ASCL and the MSI.
- 75.10 If the MSI fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period specified in the SCC, ASCL may, following notice to the MSI, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by ASCL in connection with such work shall be paid to ASCL by the MSI or may be deducted by ASCL from any monies due the MSI or claimed under the Performance Security.
- 75.11 If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by ASCL because of such defect and/or making good of such defect.
- 75.12 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.
- 75.13 At the request of ASCL and without prejudice to any other rights and remedies that ASCL may have against the MSI under the Contract, the MSI will offer all possible assistance to ASCL to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favour of ASCL of the benefit of any warranties given by such producers or licensors to the MSI.

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76. Functional Guarantees

- 76.1 The MSI guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to ASCL's requirements set forth in the Terms of Reference and it conforms to all other aspects of the Contract. The MSI acknowledges that GCC Clause 69 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.
- 76.2 If, for reasons attributable to the MSI, the System does not conform to the Terms of Reference or does not conform to all other aspects of the Contract, the MSI shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Terms of Reference and meet all functional and performance standards. The MSI shall notify ASCL upon completion of the necessary changes, modifications, and/or additions and shall request ASCL to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.
- 76.3 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, ASCL may consider termination of the Contract, pursuant to GCC Clause 29.1, and forfeiture of the MSI's Performance Security in accordance with GCC Clause 15.1 in compensation for the extra costs and delays likely to result from this failure.

77. Intellectual Property Rights Warranty

77.1 The MSI hereby represents and warrants that:

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

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

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78. Intellectual Property Rights Indemnity

- 78.1 The MSI shall indemnify and hold harmless ASCL and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that ASCL or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:
- a) installation of the System by the MSI or the use of the System, including the Materials, in the country where the site is located;
 - b) copying of the Software and Materials provided the MSI in accordance with the Agreement; and
 - c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of ASCL's breach of GCC Clause 78.2.
- 78.2 Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied by the MSI, where the infringement arises because of such association or combination and not because of use of the System in its own right.
- 78.3 Such indemnities shall also not apply if any claim of infringement:
- a) (a) is asserted by a parent, subsidiary, or affiliate of ASCL's organization;
 - b) (b) is a direct result of a design mandated by the ASCL's Terms of Reference and the possibility of such infringement was duly noted in the MSI's Bid; or
 - c) (c) results from the alteration of the System, including the Materials, by ASCL or any persons other than the MSI or a person authorized by the MSI.
- 78.4 If any proceedings are brought or any claim is made against ASCL arising out of the matters referred to in GCC Clause 78.1, ASCL shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in ASCL's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the MSI fails to notify ASCL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then ASCL shall be free to conduct the same on its own behalf. Unless the MSI has so failed to notify ASCL within the twenty-eight (28) days, ASCL shall make no admission that may be prejudicial to the defence of any such proceedings or claim. ASCL shall, at the MSI's request, afford all available assistance to the MSI in conducting such

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proceedings or claim and shall be reimbursed by the MSI for all reasonable expenses incurred in so doing.


- 78.5 ASCL shall indemnify and hold harmless the MSI and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the MSI or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the MSI in connection with this Contract by ASCL or any persons (other than the MSI) contracted by ASCL, except to the extent that such losses, liabilities, and costs arise as a result of the MSI's breach of GCC Clause 78.8.
- 78.6 Such indemnity shall not cover: (a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract; (b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by ASCL or any other person contracted by ASCL, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.
- 78.7 Such indemnities shall also not apply: (a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the MSI's organization; (b) to the extent that any claim of infringement is caused by the alteration, by the MSI, or any persons contracted by the MSI, of the design, data, drawing, specification, or other documents or materials provided to the MSI by ASCL or any persons contracted by ASCL.
- 78.8 If any proceedings are brought or any claim is made against the MSI arising out of the matters referred to in GCC Clause 78.5, the MSI shall promptly give ASCL notice of such proceedings or claims, and ASCL may at its own expense and in the MSI's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If ASCL fails to notify the MSI within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the MSI shall be free to conduct the same on its own behalf. Unless ASCL has so failed to notify the MSI within the twenty-eight (28) days, the MSI shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The MSI shall, at ASCL's request, afford all available assistance to the ASCL in

conducting such proceedings or claim and shall be reimbursed by ASCL for all reasonable expenses incurred in so doing.

79. Limitation of Liability

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

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


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K. RISK DISTRIBUTION

80. Transfer of Ownership

80.1 MSI must transfer all titles to the assets and goods procured for the purpose of the project to ASCL at the time of Acceptance of System. This includes all licenses, titles, source code, certificates, hardware, devices, equipment's etc. related to the system designed, developed, installed and maintained by MSI. MSI is expected to provide source code, transfer IPR and ownership right of only those solutions which would be customized by bidder for use of ASCL. For any pre-existing work, MSI & ASCL shall be jointly responsible and its use in any other project by MSI shall be decided on mutual consent.

80.2 Forthwith upon expiry or earlier termination of the Contract and at any other time on demand by ASCL, MSI shall deliver to ASCL all Documents provided by or originating from ASCL and all Documents produced by or from or for MSI in the course of performing the Services, unless otherwise directed in writing by ASCL at no additional cost. MSI shall not, without the prior written consent of ASCL store, copy, distribute or retain any such Documents.

81. Care of the System

81.1 ASCL shall become responsible for the care and custody of the System or Subsystems upon their Delivery. ASCL shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 69 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the MSI, its employees, or subcontractors.

81.2 If any loss or damage occurs to the System or any part of the System by reason of:

- a) (insofar as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 83;
- b) any use not in accordance with the Contract, by the ASCL or any third party;
- c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of ASCL, or any such matter for which the MSI has

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disclaimed responsibility in accordance with GCC Clause 63.1 (ii). ASCL shall pay to the MSI all sums payable in respect of the System or Subsystems that have achieved Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If ASCL requests the MSI in writing to make good any loss or damage to the System thereby occasioned, the MSI shall make good the same at the cost of ASCL in accordance with GCC Clause 23. If ASCL does not request the MSI in writing to make good any loss or damage to the System thereby occasioned, ASCL shall either request a change in accordance with GCC Clause 23, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, ASCL shall terminate the Contract pursuant to GCC Clause 29.1.

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

82. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

82.1 The MSI and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in India.

82.2 Subject to GCC Clause 82.3, the MSI shall indemnify and hold harmless ASCL and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that ASCL or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the MSI or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of ASCL, its contractors, employees, officers, or agents.

82.3 If any proceedings are brought or any claim is made against ASCL that might subject the MSI to liability under GCC Clause 82.2, ASCL shall promptly give the MSI notice of such proceedings or claims, and the MSI may at its own expense and in ASCL's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the MSI fails to notify ASCL within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then ASCL shall be free to conduct the same on its own behalf. Unless the MSI has so

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failed to notify ASCL within the twenty-eight (28) day period, ASCL shall make no admission that may be prejudicial to the defence of any such proceedings or claim. ASCL shall, at the MSI's request, afford all available assistance to the MSI in conducting such proceedings or claim and shall be reimbursed by the MSI for all reasonable expenses incurred in so doing.

82.4 ASCL shall indemnify and hold harmless the MSI and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the MSI or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of ASCL, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the MSI.

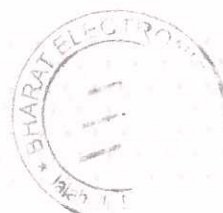
82.5 If any proceedings are brought or any claim is made against the MSI that might subject ASCL to liability under GCC Clause 82.4, the MSI shall promptly give the ASCL notice of such proceedings or claims, and ASCL may at its own expense and in the MSI's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If ASCL fails to notify the MSI within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the MSI shall be free to conduct the same on its own behalf. Unless ASCL has so failed to notify the MSI within the twenty-eight (28) days, the MSI shall make no admission that may be prejudicial to the defence of any such proceedings or claim. The MSI shall, at ASCL's request, afford all available assistance to the ASCL in conducting such proceedings or claim and shall be reimbursed by ASCL for all reasonable expenses incurred in so doing.

82.6 The party entitled to the benefit of an indemnity under this GCC Clause 82 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

83. Force Majeure

83.1 "Force Majeure" shall mean any event beyond the reasonable control of ASCL or of the MSI, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

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- a) War, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- b) Rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
- c) Confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national government authority;
- d) Strike, sabotage, lockout, embargo, import restriction, port congestion, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- e) Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- f) Failure, by the MSI, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or MSI's Equipment provided that the MSI has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.

83.2 If either Party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

83.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 74 (Extension of Time for Achieving Operational Acceptance).

83.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Clause 83.6.

83.5 Delay or non-performance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:

- a) constitute a default or breach of the Contract;

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b) (subject to GCC Clauses 81.1, 81.3, and 81.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or non-performance.

if, and to the extent that, such delay or non-performance is caused by the occurrence of an event of Force Majeure.

83.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the time period covered by the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.

83.7 In the event of termination pursuant to GCC Clause 83.6, the rights and obligations of ASCL and the MSI shall be as specified in GCC Clauses 18 a and b.

83.8 Notwithstanding GCC Clause 83.5, Force Majeure shall not apply to any obligation of ASCL to make payments to the MSI under this Contract.

84. Representation and Warranties

84.1 ASCL's Representations and Warranties: ASCL makes the following representations and warranties to the MSI:

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

84.2 MSI's Representations and Warranties: The MSI makes the following representations and warranties to ASCL:

- a) It has been incorporated/registered as a company/firm under the laws of [Insert country of incorporation/registration] and is validly existing under those laws;
- b) It has power to enter into this Contract and comply with its obligations under it;
- c) This Contract and the transactions under it do not contravene its constituent documents or any applicable law of its jurisdiction or obligation by which it is

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- bound or to which any of its assets are subject or cause a limitation of powers or the powers of its directors to be exceeded;
- d) It has in full force and effect the authorizations necessary for it to enter into this Contract and the transactions under it;
 - e) Its obligations under this Contract are valid and binding and are enforceable against it in accordance with the terms of this Contract;
 - f) It is not in breach of any Applicable Law in a way which may result in a material adverse effect on its business or financial condition;
 - g) There is no pending or threatened proceeding affecting the MSI or any of its assets that would affect the validity or enforceability of this Contract, the ability of the MSI to fulfill its commitments under this Contract, or that could have a material adverse effect on the business or financial condition of the MSI;
 - h) It has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under the Contract;
 - i) It has the necessary skill and experience to perform the Services in accordance with this Contract;
 - j) It owns or has the right to use and license to ASCL all Intellectual Property Rights in relation to the Services and the Deliverables to be provided under this Contract;
 - k) The performance of the Services shall not infringe the Intellectual Property Rights of any third party and that the MSI has not received notice of any claim, and is not aware of any facts or circumstances that may give rise to such claim;
 - l) It will perform its obligations under the Contract and conduct its business with a high level of integrity which is reasonably expected of an international contractor of similar size and profile, conducting a similar line of business, and will not engage in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practices; and
 - m) Without prejudice to any express provision contained in the Contract, the MSI acknowledges that prior to the execution of the Contract, the MSI has after a complete and careful examination made an independent evaluation of the Technical Requirements and any information provided by or on behalf of ASCL and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the MSI in the course of performance of its obligations hereunder.

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85. Warranty

- 85.1 A comprehensive warranty applicable on goods supplied under this contract shall be provided for the period of contract from the date of acceptance of respective system by ASCL, which shall be valid and effective for the entire duration of the contract.
- 85.2 Technical Support for Software applications shall be provided by the respective OEMs for the period of contract. The Technical Support should include all upgrades, updates and patches to the respective Software applications.
- 85.3 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.
- 85.4 MSI warrants that at the time of delivery the goods supplied under this contract shall be of highest grade, 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.
- 85.5 MSI further warrants at the time of delivery that the Goods supplied under this 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 ASCL'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 Centre / Disaster Recovery Sites.
- 85.6 ASCL shall promptly notify the MSI in writing of any claims arising under this warranty.
- 85.7 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 ASCL may have against the MSI under the Contract.
- 85.8 If the MSI, having been notified, fails to remedy the defect(s) within the warranty period, ASCL 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 ASCL may have against the MSI under the Contract.

85.9 Any OEM specific warranty terms that do not conform to conditions under this Contract shall not be acceptable

86. Term and Extension of the Contract

86.1 Contract period shall commence from the date of signing of contract, whichever is earlier, and shall remain valid for 60 Months from the date of Go Live of the system

86.2 If the delay occurs due to circumstances beyond control of MSI such act of god, strikes, lockouts, fire, accident, defective materials, delay in approvals or any cause whatsoever beyond the reasonable control of MSI, a reasonable extension of time shall be granted by ASCL.

86.3 ASCL shall reserve the sole right to grant any extension to the term abovementioned 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. The decision to grant or refuse the extension shall be at ASCL's discretion and such extension of the contract, if any, shall be as per terms agreed mutually between ASCL and MSI.

86.4 Where ASCL is of the view that no further extension of the term be granted to MSI, ASCL 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, until such reasonable time beyond the Term of the Contract within which, ASCL shall either appoint an alternative agency/MSI or create its own infrastructure to operate such Services as are provided under this Contract.

87. Time is the essence

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

88. Delivery

88.1 MSI shall bear the cost for packing, transport, insurance, storage and delivery of all the goods for implementation of Smart City Solutions for Agra city at all locations identified by ASCL in Agra, Uttar Pradesh.

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88.2 Goods and manpower supplied under this 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 ASCL.

89. Liquidated Damages

89.1 If MSI fails to supply, install or maintain any or all of the goods as per the contract, within the time period(s) specified, ASCL without prejudice to its other rights and remedies under the Contract, deduct from the Contract price (without GST), as liquidated damages, a sum equivalent to 1 % per week of undelivered Goods and Services of balance portion of the contract value (without GST).

89.2 The deduction shall not in any case exceed 10% of undelivered Goods and Services of balance portion of the contract value (without GST).

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

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

90. Indemnity and Limitation of Liability

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

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

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

- a) breach of ASCL's representations and warranties under the Contract; or
- b) any non-compliance or violation of Applicable Laws or any ASCL's applicable permits or consents by ASCL.

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

90.4 The Indemnifying Party agrees and acknowledges that it shall fully indemnify the Indemnified Party for all amounts paid and/or costs incurred by the Indemnified Party in accordance with this Clause 90.

90.5 Unless otherwise specified in the Contract, neither Party shall be liable to the other Party for any kind of indirect, punitive or consequential loss or damage or for any economic loss, loss of profit, loss of revenue, loss of use or business interruption which may be suffered by the other Party in connection with this Contract, except for losses caused by the fraud or willful misconduct of the Party.

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90.6 The Party entitled to the benefit of an indemnity under this Clause 90 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

90.7 The obligation to indemnify stipulated in this Clause 90 is:

- a) continuing, separate and independent obligation of the Parties from their other obligations and shall survive the termination of this Contract; and
- b) shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied to reduce claims made against the affected Party.

90.8 For the purpose of this Clause 90: (i) "claim" means any claim, liability, proceeding, cause of action, action, suit, demand at law or in equity, in each case brought against either Party (including by any third party); and (ii) "loss" means all losses (excluding consequential losses, indirect losses and loss of profit), damages, liabilities, fines, interest, awards, penalties, costs (including, reasonable legal costs, lawyers' and arbitrators' fees), charges and expenses of whatever nature or howsoever occasioned including any of the above suffered by the non-defaulting Party or a third party as a result of any act or omission in the course of or in connection with the performance, non-performance or deficiency in the performance of obligations under this Contract.

91. Ownership and Retention of Documents

91.1 ASCL shall own the Documents, prepared by or for MSI arising out of or in connection with the Contract.

91.2 Forthwith upon expiry or earlier termination of this Contract and at any other time on demand by ASCL, MSI shall deliver ASCL all documents provided by or originating from ASCL and all documents produced by or for MSI in the course of performing the Services, unless otherwise directed in written by ASCL at no additional cost. MSI shall not, without the prior written consent of ASCL store, copy, distribute or retain any such documents.

92. Information Security

92.1 MSI shall not carry any written/printed document, layout diagrams, CD, hard disk, storage tapes, other storage devices or any other goods/material proprietary to ASCL into / out of any location without written permission from ASCL.

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- 92.2 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 ASCL.
- 92.3 All documentation and media at any location shall be properly identified, labelled and numbered by MSI. MSI shall keep track of all such items and provide a summary report of these items to ASCL whenever asked for.
- 92.4 Access to ASCL's data and systems, Internet facility by MSI at any location shall be in accordance with the written permission by the MSI. ASCL shall allow MSI to use facility in a limited manner subject to availability. It is the responsibility of MSI to prepare and equip himself in order to meet the requirements
- 92.5 MSI must acknowledge that ASCL's business data and other ASCL proprietary information or materials, whether developed by ASCL or being used by ASCL pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to ASCL; 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 that used by MSI to protect its own proprietary information. MSI recognizes that the goodwill of ASCL 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 ASCL, and that by reason of MSI's duties hereunder. 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 shall limit access thereto to employees with a need to such access to perform the services required by this agreement. MSI shall use such information only for the purpose of performing the said services.
- 92.6 MSI shall, upon termination of this agreement for any reason, or upon demand by ASCL, whichever is earliest, return any and all information provided to MSI by ASCL, including any copies or reproductions, both hard copy and electronic.
- 92.7 By virtue of the Contract, MSI team may have access to personal information of ASCL and/or a third party. ASCL has the sole ownership of and the right to use, all such data in perpetuity including any data or other information pertaining to the citizens that may be in the possession of MSI team in the course of performing the Services under the Contract

93. Records of contract documents

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93.1 MSI shall at all-time make and keep sufficient copies of the process manuals, operating procedures, specifications, Contract documents and any other documentation for him to fulfil his duties under the Contract.

93.2 MSI shall keep on the Site at least three copies of each and every specification and Contract Document, in excess of his own requirement and those copies shall be available at all times for use by ASCL's Representative and by any other person authorized by ASCL's Representative.

94. Security and Safety

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

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

95. Confidentiality

95.1 MSI shall not, either during the term or after expiration of this Contract, disclose any proprietary or confidential information relating to the Services/Contract and/or ASCL's business/ operations, information, Application/software, hardware, business data, architecture schematics, designs, storage media and other information / documents without the prior written consent of ASCL.

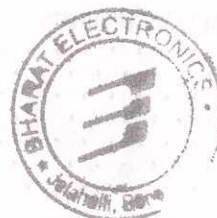
95.2 ASCL reserves the right to adopt legal proceedings, civil or criminal, against MSI in relation to a dispute arising out of breach of obligation by MSI under this clause.

95.3 MSI shall do everything reasonably possible to preserve the confidentiality of the Confidential Information including execution of a confidentiality agreement with ASCL to the satisfaction of ASCL.

95.4 MSI shall notify ASCL promptly if it is aware of any disclosure of the Confidential Information other than as permitted by the Contractor with ASCL of ASCL.

95.5 MSI shall be liable to fully recompense ASCL for any loss of revenue arising from breach of confidentiality.

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L. SERVICE LEVELS

96. Purpose

96.1 The purpose is to define the levels of service provided by MSI to ASCL for the duration of the contract. The benefits of this are:

- Start a process that applies to ASCL and MSI attention to some aspect of performance, only when that aspect drops below the threshold defined by ASCL
- Help ASCL control the levels and performance of MSI's services

96.2 The Service Levels are between ASCL and MSI

97. Service Level Agreements & Targets

97.1 This section is agreed to by ASCL and MSI as the key performance indicator for the project. This may be reviewed and revised according to the procedures detailed in Clause 103 SLA Change Control.

97.2 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.

97.3 The procedures in Clause 103 shall be used if there is a dispute between ASCL and MSI on what the permanent targets should be.

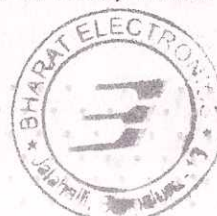
98. General Principles of Service Level Agreements

98.1 Service Level Agreement: SLA would be applicable in operations and maintenance phase of the project. The penalties shall be applicable on Operations & Maintenance cost of the project calculated quarterly.

99. Service Levels Monitoring

99.1 Service Level parameters defined in Clause 100 shall be monitored on a periodic basis, as per the individual parameter requirements. MSI shall be responsible for providing appropriate web based online SLA measurement and monitoring tools and it is also proposed to have an independent technical auditor, third party appointed by ASCL for monitoring the Service levels. MSI shall be expected to take immediate corrective action for any breach in SLA. In case issues are not rectified to the complete satisfaction of ASCL, within a reasonable period of time defined in this RFP, then ASCL

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shall have the right to take appropriate penalizing actions, or termination of the contract.

100. Penalties for Non/Under Performance

100.1 A maximum level of performance penalties is established and described in this section

Severity Level	Penalty as a percentage of applicable payment milestone
9	Event of default and termination as per Clause 29 of this section of RFP respectively and the consequences as provided in Clause 31 of this section of RFP
8	5.0%
7	2.0%
6	1.0%
5	0.5%
4	0.4%
3	0.3%
2	0.2%
1	0.1%
0	No Penalty

100.2 Performance Penalty for not meeting a measurement parameter for any two months in consecutive quarters shall result in twice the penalty percentage of that respective measurement parameter in the third quarter for all the three months

100.3 Maximum Penalty applicable for any quarter shall not exceed 10% of the 'applicable fees' for the respective quarter (without GST).

100.4 Three consecutive quarterly deductions of 10 % of the applicable fee (without GST) on account of any reasons shall be deemed to be an event of default and termination as provided in Clause 29 and the consequences as provided in Clause 31 of this section of RFP shall follow.

100.5 The payment to the agency shall be on Quarterly basis however the penalty shall be calculated on monthly basis as per the SLAs stated in the RFP.

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100.6 Measurement & Targets

100.6.1 Implementation phase related performance levels

Sr. No.	Measurement	Definition	Target	Penalty
Commencement of Work				
1.	Team Mobilization and Commencement of Work	MSI is expected to mobilize project team for commencement of work Commencement of work would mean reporting and availability of MSI's resources (90% Key Personnel as per the RFP requirement) at ASCL's office for the project within defined period of 21 days and remaining 10% in next 15 days)	Within 21 days of issuance of Lol or contract agreement, whichever is earliest	Delay beyond 21 calendar days = 0.2% of the contract value (without GST) Delay between 15 to 30 calendar days = 0.5% of the contract Value (without GST) Delay beyond 30 days may lead to Termination of the Contract at the discretion of ASCL

100.6.2 Data Centre (DC) / Disaster Recovery (DR) Centre

Sr. No.	Measurement	Definition	Target	Severity Level
1	Network - <ul style="list-style-type: none"> ▪ Wired & Wireless Networks ▪ Covering routers & switches ▪ Storage 	DC/DR components (availability for a month is defined as total time (in minutes) in a month less total down time (in minutes) in a month excluding planned data centre downtime.	99.98%	> 99.98 = 0 < 99.98 to 97 = 5 < 97 = 9



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	<ul style="list-style-type: none"> Backup drives VMware IOT platform Enterprise network firewalls/Intrusion Prevention System Modular Servers 	<p>DC/DR is considered available when all the services in full capacity are functional.</p> <p>DC/DR Availability (%) = (Total minutes during the month – Planned downtime - Downtime minutes during the month)*100 / Total minutes during the month</p> <p>Total Time shall be measured 24x7 basis for DC/DR depending upon functional requirement.</p> <p>Planned data centre Downtime refers to unavailability of data centre services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure. Details related to such planned outage shall be agreed with ASCL and data center Measurement Tool: Reports from EMS</p>		
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100.6.3 Network related performance levels

Sr. No.	Measurement	Definition	Target	Severity Level
1.	Network Availability for all field level	Network components (availability for a month is defined as total time (in minutes) in a month less total down	> 98.5% up time measured on a monthly	0

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	devices to CCC/ OCC & DC/DR-MSI to take network as a service to ISP	time (in minutes) in a month excluding planned network downtime. Network is considered available when all services in full capacity are available. Network Availability (%) = (Total minutes during the month - Planned downtime - Downtime minutes during the month) *100 / Total minutes during the month Total Time shall be measured 24x7 basis. Planned Network Component Downtime refers to unavailability of network services due to infrastructure maintenance activities such as configuration changes, upgradation or changes to any supporting infrastructure Details related to such planned outage shall be agreed with ASCL. Measurement Tool: Reports from EMS	basis	
			≤98.5% to >97.0% up time measured on a monthly basis	4
			≤97.0% to >95.0% up time measured on a monthly basis	5
			≤95.0% to >93.0% up time measured on a monthly basis	7
2.	Network Quality of Service	Quality of Service (QoS) refers to the capability of a network to provide traffic engineering to selected network traffic from a. Field Level Infrastructure and Access Point b. Access point to DC/ DR and CCC /OCC switch and optical fibre c. - Leased Line between Switch at	< 93.0% up time measured on a monthly basis	8
			99% throughput of minimum stipulated bandwidth during 24*7 hours	0
			≥97% and <99%	5

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		CCC/OCC and DC / DR.	<97%	6
		The primary goal of QoS is to provide priority including dedicated bandwidth, controlled jitter, latency and improved loss characteristics. Measurement Tool: Reports from EMS	Average Packet loss exceeding 0.5% over a month (at Data Centre and LAN/WAN level)	4
			Latency Delay > 150 ms (every instance) (at Data Centre and LAN/WAN level)	4

100.6.4 Service Level for ICT Solutions

Sr. No.	Measurements	Definitions	Target	Severity Level
1	Availability of various Application Software for/at: 1) Command Control Centre (CCC) for City and Police <ul style="list-style-type: none"> Video Management System Video Analytics System RLVD Application System ANPR Application System No Helmet Detection Face Recognition System 	Uptime = $\{1 - \frac{\text{(Application downtime - maintenance downtime)}}{\text{(Total Time - maintenance downtime)}}\}$ Application Downtime shall be measured from the time the equipment becomes unavailable	Minimum 98% uptime measured on monthly basis ≥96% to < 98% uptime measured on monthly basis	0 5



<ul style="list-style-type: none"> Wrong Way Detection Illegal Car Parking Object Detection eChallan System Adaptive Traffic Management System GIS Map for Agra City Variable Messaging Signboard Management system Public Address Management System Emergency Box/ Panic Box Management System Mobile Surveillance Vehicle Management System Applications & Systems for Solid Waste Management Applications & Systems for Smart Transport & Smart Bus Stops Applications & Systems for management of Wi-Fi hotspots Applications & Systems for Management of Digital Display Signages Applications & Systems for Management of Biometric Attendance System Applications & Systems for Management for IP Telephony System Meragra Citizen Mobile 	<p>(due to any reasons whatsoever attributable to MSI) for Business processing to the end user to the time it becomes fully available. Any downtime for maintenance shall be with prior written intimation to ASCL. Please note that continuous downtime of every 2 hours (from 7am to 12 midnight) would raise the severity by one level. e.g. the severity level will raise from 0 to 1</p> <p>Please note that continuous downtime of every 4 hours (from midnight to 7am) would raise the severity by one level. e.g. the severity level will raise from 0 to 1</p> <p>Measurement Tool: Reports from EMS</p>	≥93% to < 96% uptime measured on monthly basis	7
		< 93% uptime measured on monthly basis	9

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	Application			
	▪ Applications & Systems for Integration & Management of other smartcomponents			
2	Availability of other software including: <ul style="list-style-type: none"> ▪ Anti-virus ▪ SLA, helpdesk & EMS ▪ Virtualization software ▪ IBMS 	Uptime = $\{1 - \frac{\text{(Application downtime-maintenance downtime)}}{\text{(Total Time - maintenance downtime)}}\}$ Application Downtime shall be measured from the time the equipment becomes unavailable (due to any reasons whatsoever attributable to the Bidder) for Business processing to the end user to the time it becomes fully available. Any downtime for maintenance shall be with prior written intimation to ASCL. Please note that continuous downtime of every 2 hours (from 7am to 12midnight) would raise the severity by one level. e.g. the	Minimum 97% uptime measured on monthly basis ≥96% to < 97% uptime measured on monthly basis ≥95% to < 96% uptime measured on monthly basis < 95% uptime measured on monthly basis	0 4 6 7

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		<p>severity level will raise from 0 to 1</p> <p>Please note that continuous downtime of every 4 hours (from midnight to 7am) would raise the severity by one level. e.g. the severity level will raise from 0 to 1</p> <p>Measurement Tool: Reports from EMS</p>		
3	<p>Availability of Command and Control Centre (CCC) including</p> <ol style="list-style-type: none"> 1. Work Stations 2. Video Wall 3. Cameras 4. Phones 5. Biometric Access Control System 6. UPS/DG sets 7. Air Conditioner 	<p>Uptime = $\frac{\{1 - (\text{Equipment downtime} - \text{maintenance downtime}) / (\text{Total Time} - \text{maintenance downtime})\}}{1}$</p>	Minimum 99% uptime measured on monthly basis	0
		<p>Equipment Downtime shall be measured from the time the equipment becomes unavailable (due to any reasons whatsoever attributable to the Bidder) for Business processing to the end user to the time it becomes fully available.</p>	≥96% to < 97% uptime measured on monthly basis	4
			≥95% to < 96% uptime measured on monthly basis	6
		<p>Any downtime for maintenance shall be</p>	< 95% uptime measured	7

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		<p>with prior written intimation to ASCL.</p> <p>Please note that continuous downtime of every 2 hours (from 7am to 12midnight) wouldraise the severity by one level. e.g. the severity level will raise from 0 to 1</p> <p>Please note that continuous downtime of every 4 hours (from midnight to 7am) wouldraise the severity by one level. e.g. the severity level will raise from 0 to 1</p> <p>Measurement Tool: Reports from EMS</p>	on monthly Basis	
4	Fire Detection and Suppression system uptime	<p>Availability of fire detection and suppression system in the CCC/COC. Periodic audits would be done by the agency to check the availability of these system</p> <p>Measurement Tool: Random Check</p>	<p>100% Availability Measured Periodically</p> <p>Any incident of non-Compliance</p>	<p>0</p> <p>5</p>

5	Availability of field infrastructure including: <ul style="list-style-type: none"> ▪ CCTV Cameras & including poles ▪ GPS/GSM Unit ▪ Public Address System - Loudspeakers ▪ GPS based handheld/ Mobile Device ▪ Environmental Sensors ▪ Smart Traffic Detectors, Sensors & Controllers ▪ Variable Message Signboard ▪ Wi-Fi access points & related infrastructure ▪ GPS device on vehicle ▪ RFID Tags / RFID Readers ▪ Digital Display Signages ▪ Passenger Information System – Display units ▪ Smart Bus Stops including all the other infrastructure at the bus stops ▪ Electricity supply to all field devices ▪ UPS at all field devices ▪ IP Phones ▪ Biometric Attendance devices (fixed & mobile) ▪ All sensors & IoT devices 	Uptime = {1 - (Equipment downtime - maintenance downtime) / (Total Time - maintenance downtime)}	Minimum 97% uptime measured on monthly basis	0
		Equipment Downtime shall be measured from the time the equipment becomes unavailable (due to any reasons whatsoever attributable to the Bidder) for Business processing to the end user to the time it becomes fully available.	≥96% to < 97% uptime measured on monthly basis	4
		Any downtime for maintenance shall be with prior written intimation to ASCL. Please note that continuous downtime of every 2 hours (from 7am to 12midnight) would raise the severity by one level. e.g. the severity level will raise from 0 to 1	≥95% to < 96% uptime measured on monthly basis	6
		Please note that continuous downtime	< 95% uptime measured on monthly basis	7

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		of every 4 hours (from midnight to 7am) would raise the severity by one level. e.g. the severity level will raise from 0 to 1 Measurement Tool: Reports from EMS		
5	Battery Replacement for all equipment/devices procured	Replacement of various equipment batteries. This excludes the regular maintenance of the UPS and its Batteries Measurement Tool: SLA Monitoring Tool for inventory Management.	Batteries to be replaced every 3rd Year.	5
6	Repair/replacement of field/CCC/OCC/DC/DR infrastructure including but not limited to: <ul style="list-style-type: none"> ▪ CCTV Cameras & including poles ▪ GPS/GSM Unit ▪ Public Address System - Loudspeakers ▪ GPS based handheld/ Mobile Device ▪ Environmental Sensors 	Bidder should keep minimum 10% spare at any given point of project execution. Infrastructure equipment should be replaced or repaired after complaint login from ASCL officials Measurement Tool:	Within 4 hours of logging compliant 2 to 4 business days of logging compliant	0 5



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	<ul style="list-style-type: none"> Smart Traffic Detectors, Sensors & Controllers Variable Message Signboard Wi-Fi access points & related infrastructure GPS device on vehicle RFID Tags/RFID Readers Digital Display Signages Passenger Information System – Display units Smart Bus Stops including all the other infrastructure at the bus stops Equipment for electricity supply UPS IP Phones Biometric Attendance devices (fixed & mobile) All sensors & IoT devices Servers, active & passive devices Other equipment 	System Generated Call Log at Help Desk	More than 4 days of logging compliant	7
7	Asset/Inventory Management	Provide Monthly MIS of Asset Inventory to check Asset Inventory level Measurement Tool: SLA Monitoring Tool for Inventory Management	≥ 95% of the minimum required inventory level should be available measured	0

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			on monthly Basis	
			<95% of the Minimum Required Inventory Level	3 (Severity level would increase by 1 for every 5% drop in inventory level)
		Conduct Annual Physical Asset verification once in a year and give report within 2 months from the date of verification	100% Management approval Of Physical Asset Verification Report	5

Note: During post-implementation period, in case the pole /outdoor cabinets or any other field equipment is damaged by a vehicular accident (or due to any other reason outside the control of MSI) and needs repair/replacement, then the corresponding equipment to be replaced by Bidder as per the SLAs defined in this section. In such cases, damages are to be borne by MSI through proper comprehensive insurance for all the equipment (in the field or at CCC/OCC/DC/DR) during contract period.

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100.6.5 Help Desk / Extension of UP Dial 100

Service	Parameter	SLA	Validation	Penalty	Tools used
Help Desk Availability	Help Desk should be available and all incidents/ events raised with the IT Help Desk shall; be logged into the system and service ticket number should be provided to the employee	100% calls to be logged and service ticket no, shall be generated	Reports generated from ticket logging system	95%-99% calls are logged and ticket is generated: Penalty of 2% of O&M Charges	Automated Monitoring Tool
				90%-95% calls are logged and ticket is generated: Penalty of 5% of O&M Charges	
	Resolution of ticket logged as per the severity definition chart	99%	Reports generated from ticket logging system	95%-99% calls resolved in specified time: Penalty of 2% of O&M Charges	Automated Monitoring Tool
				90%-95% calls resolved in specified time: Penalty of 5% of	

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				O&M Charges	
				< 90% calls resolved in specified time: Penalty of 10 % of O&M Charges	
Problem Management	Supplier shall analyze all the incidents and provide a root cause report every month if there are more than 10 incidents of the same type.	100% timely submission covering all incidents logged in that month	Root cause report	5% penalty on monthly of O&M charges of that project area, if the supplier does not submit a Problem report for that month	
			Incident Report stating problems faced by the User	5% penalty on monthly of O&M charges of that project area if the supplier does not submit a problem report for	

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100.6.6 Camera feed and quality wherever installed

Sr. No.	Measurements	Definitions	Target	Severity Level
1	Ratio of Live cameras v/s Total Cameras at any point of time (To be measured every 1 hour)	Number of live working cameras divided by total number of cameras Measurement Tool: Log from VMS tools wherein alerts to the control room shall be generated on non-functioning of camera	≥98%	0
			≥95 % to <98%	3
			< 95%	5
2	Average Frame rate maintained for viewing	Average frame rate is 25 FPS to be maintained by all cameras calculated on a Monthly Basis Measurement tool: Log from VMS	≥90%	0
			≥85 % to <90%	3
			< 85%	4
3	Average Frame rate maintained for Recording	Average frame rate is 12.5 FPS to be maintained by all cameras calculated on a Monthly Basis Measurement tool: Log from VMS	≥95%	0
			≥90 % to < 95%	3
			< 90%	4
4	Video stream Latency	Time required for transmission of video feed from one point to another Measurement tool: Report from EMS	≤40ms	0
			>40ms to ≤60ms	3
			>60ms	4
5	Change of Screen from one camera Source to another	Time required for transmission of screen from one camera source to another	≥2s	0
			>2s to ≤5s	3
			>5s	4

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		Measurement tool: Log from VMS		
6	Video Feed Query	Time taken for receiving response to a	≤10s	0
	Retrieval Response	query raised for video feed	>10s to ≤20s	3
	Time	Measurement tool: Log from VMS	>20s	4

101. Reporting Procedures

101.1 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 ASCL management personnel as directed by ASCL. Also, MSI may be required to get the Service Level performance report audited by a third-party Auditor appointed by ASCL.

102. Issue Management Procedures

102.1 **General:** 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 ASCL and MSI.

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.

102.2 Issue Management Process

- Either ASCL 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.
- 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 them, 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 within 30 days of reference to them shall try to resolve the issue/dispute.

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- c) If Steering 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 31 of this section of RFP.

103. Service Level Change Control

103.1 General: It is acknowledged that this Service levels may change as ASCL's business needs evolve over the course of the contract period. As such, this document also defines the following management procedures:

- A process for negotiating changes to the Service Levels
- An issue management process for documenting and resolving particularly difficult issues.
- ASCL and Bidder management escalation process to be used in the event that an issue is not being resolved in a timely manner by the lowest possible level of management.
- Any changes to the levels of service provided during the term of this Agreement shall be requested, documented and negotiated in good faith by both parties. Either party can request a change.

103.2 Service Level Change Process: The parties may amend Service Level by mutual agreement in accordance. Changes can be proposed by either party. Unresolved issues shall also be addressed. MSI's representative shall maintain and distribute current copies of the Service Level document as directed by ASCL. Additional copies of the current Service Levels shall be available at all times to authorized parties.

103.3 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.

M. SPECIAL CONDITIONS OF CONTRACT (SCC)

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC Clause 1.32 Definition	The post warranty service period (AMC Phase) is: 60 months (5 years), starts after Defect Liability Period, and shall include Comprehensive Annual Maintenance Contract (AMC).
GCC Clause 20.1 Commencement	Commencement of Contract: The number of days shall be 30 (Thirty) Days from issuance of LOA.

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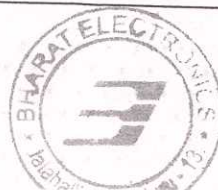
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GCC Clause 75.4 Defect Liability Period	The Defect Liability Period shall begin from the date of Operational Acceptance of the System and extend for 12 months.
GCC Clause 75.4 Expiration of Contract	Expiration of Contract: The term of the Contract shall be Eighty (72) months, which may be extended on mutually agreed terms and conditions, subject to satisfactory performance of the Services by the MSI. If the term of the Contract is extended pursuant to the Clause 22 of the GCC, then the MSI shall also extend the validity of the Performance Security for an equivalent period.
GCC Clause 35.3 Conflict of Interest	ASCL reserves the right to determine on a case-by-case basis whether the MSI should be disqualified pursuant to GCC Clause 35.3.
GCC Clause 36 Liability of the MSI	Exclusions of Liability of MSI: No exclusions.
GCC Clause 37.1c) Insurance to be taken by the MSI	The MSI shall obtain Third-Party Liability Insurance in the amount of INR 10 crores. The Insurance shall cover the entire Contract Period.
GCC Clause 37.1e) Insurance to be taken by the MSI	<p>i. The MSI shall meet ASCL's liability and workers' compensation insurance in respect of its personnel of the MSI including subcontractors if any, in accordance with the relevant provisions of various labour laws as applicable, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate;</p> <p>ii. The MSI while employing the man-power required for the Maintenance of the project shall be responsible for following all the required mandates as per the prevailing laws of the land.</p> <p>Ex: Income Tax rules, Labour Laws, Employee benefits, employee related insurances etc.;</p> <p>iii. Insurance against loss of or damage to (a) equipment purchased in whole or in part with funds provided under this Contract, (b) the sub- systems that have been accepted by the ASCL (c) any documents (software of the IT systems) prepared by the MSI in the performance of the Services with a minimum coverage of two times the value of the contract. The insurance shall cover the entire contract period</p>

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	commencing from the date of the signing of the contract till the effective date of the expiry of the contract. The MSI shall maintain standard forms of comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc. The certificates of insurance shall indicate that the insurance company will notify ASCL if, for any reason, the insurance coverage lapses.
GCC Clause 39.2	The MSI shall commence work on the System within: 30 days from the date of signing of the Contract.
GCC Clause 39.2	Operational Acceptance will occur on or before: T+12 months, where T is the Effective Date or date of signing of contract
GCC Clause 51	This Performance Bank Guarantee of 10% shall be valid only up to the completion of the period of 'Go- Live' and it will be reduced by 2.5% after all components have completed 'Go-Live' till the end of the O&M contract of 60 Months. On satisfactory performance and completion of the order in all respects and duly certified to this effect by the Project Coordinator, Contract Completion Certificates shall be issued. The remaining 7.5 percents shall be released to the MSI only after successful completion of the Post Warranty Service Period/Operation & Maintenance (AMC) Phase.
GCC Clause 52	Payments shall be done in below account of the MSI: insert account details viz., (i) account name; (ii) account number; (iii) bank name and branch; and (iv) IFSC Code
GCC Clause 50	The interest rate is: SBI Base rate.
GCC Clause 56.4	ASCL's and MSI's rights and obligations with respect to Custom Software or elements of the Custom Software are as follows: i. The MSI shall hand over the source code for software, database, and executable to ASCL which shall correspond 100% to the operational module and shall be verified and certified by an independent agency as

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	<p>identified by ASCL. This is limited to all custom software and its subsystems provided by the MSI;</p> <p>ii. ASCL may duplicate and use the software on different equipment, such as for back-ups, additional computers, replacements, upgraded units, etc.</p>
GCC Clause 56.5	<p>Certified Software escrow contract is required for the execution of the Contract in case the MSI is not willing to handover the source code to ASCL limited to the systems as defined in SCC 56.4 (ii). All costs associated with such Escrow Account shall be borne by the MSI. If ASCL intends to continue the Escrow account services after completion of the contract period, the ASCL can pay the fee for Escrow account services.</p>
GCC Clause 58.7	<p>The provisions of this GCC Clause 58.7 shall survive the termination, for whatever reason, of the Contract for the period specified in the GCC.</p>
GCC Clause 60	<p>Chapters in the Project Plan shall address the following subjects:</p> <ul style="list-style-type: none"> (a) Project Organization and Management Plan; (b) Delivery and Installation Plan; (c) Training Plan; (d) Pre-commissioning and Operational Acceptance Testing Plan; (e) Maintenance support Service Plan; (f) Task, Time, and Resource Schedules; (g) Technical Support Plan. <p>Any other submission relevant to the project as required by the ASCL or its Project Manager post contract award.</p>
GCC Clause 60.2	<p>Within twenty (20) days from the Effective Date of the Contract, the MSI shall present a Project Plan to ASCL. ASCL shall, within fourteen (14) days of receipt of the Project Plan, notify the MSI of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 46.2 called</p>

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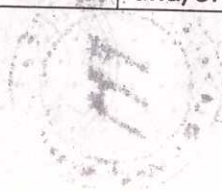
"non-conformities" below). The MSI shall, within five (5) days of receipt of such notification, correct the Project Plan and resubmits to the ASCL. ASCL shall, within five (5) days of resubmission of the Project Plan, notify the MSI of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from nonconformities, ASCL shall provide confirmation in writing to the MSI. This approved Project Plan ("the Agreed and Finalized Project Plan") shall be contractually binding on ASCL and the MSI. In case of any deviation (which affects the project timelines and deliverables) from the finalized project plan during the course of the project, the MSI is required to update the same within 5 days of such deviation and notify ASCL and get the approval as per the timelines mentioned above

GCC Clause 60.5

The MSI shall submit to ASCL the following reports during the Contract period:

- (a) Monthly progress reports, summarizing:
 - (i) results accomplished during the prior period;
 - (ii) cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan;
 - (iii) corrective actions to be taken to return to planned schedule of progress; proposed revision to planned schedule;
 - (iv) other issues and outstanding problems; proposed actions to be taken;
 - (v) resources that the MSI expects to be provided by ASCL and/or actions to be taken by ASCL in the next reporting period;
 - (vi) other issues or potential problems the MSI foresees that could impact on project progress and/or effectiveness.

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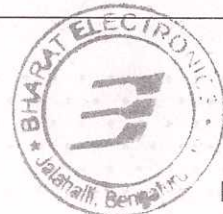
	<p>(b) inspection and quality assurance reports;</p> <p>(c) system failure or fault reports;</p> <p>(d) monthly log of service calls and problem resolutions.</p> <p>Any other report as required by ASCL which is related to the present procurement.</p>
GCC Clause 63.3 (i)	<p>The MSI shall prepare and furnish to the Project Manager all the necessary documents for which the MSI must obtain the Project Manager's approval before proceeding with work on the System or any Sub-system covered by the documents. The following is an indicative but not an exhaustive list of documentation and the Project Manager can request for additional submissions during the course of the project:</p> <ul style="list-style-type: none"> i. System detailed design; ii. System Operation manuals; iii. Project Organization and Management Plan; iv. Delivery and Installation Plan; v. Training Plan; vi. Pre-commissioning Plan; vii. Prototype Approval Tests and Plan; viii. Factory Acceptance Tests and Plan; ix. Pilot Tests and Plan; x. Burn-in Tests and Plan; xi. System Acceptance Tests and Plan; xii. Maintenance Support Service Plan; xiii. Task, Time, and Resource Schedules; xiv. Technical Support Plan; xv. Preventive Maintenance Plan; xvi. Exit Management Plan.
GCC Clause 69.2 (i)	<p>Operational Acceptance Testing shall be conducted in accordance with System, Sub-systems, tests, test procedures, and the required results for acceptance</p>

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GCC Clause 73.2	Liquidated damages shall be assessed at 1.0 percent per week of undelivered Goods and Services of the balance portion of the Contract Value during implementation and Defect Liability Period phase. The maximum liquidated damages are 10 percent of the undelivered Goods and Services of the balance portion of the Contract Value during the implementation and Defect Liability Period phase of the project.											
GCC Clause 73.3	<p>Liquidated damages shall also be applicable to the Milestones as defined in Project Schedule</p> <p>Liquidated damages shall be assessed at 1.0 percent per week of the undelivered Goods and Services of the balance portion of the Contract value. Maximum liquidated damages shall be 10 percent of the undelivered Goods and Services of the balance portion of the Contract value.</p> <p>Liquidated damages shall also be applicable in case of any delay in providing services by MSI during AMC Phase (Post Warranty Service Period).</p> <p>Liquidated damages during the AMC Phase (Post Warranty Service Period) of the Project shall be capped at 1.0 percent of the undelivered portion of the AMC amount to be paid during AMC phase</p>											
GCC Clause 75.3(iii)	<p>The MSI warrants that the following items have been released to the market for the following specific minimum time periods: specific types of technologies and specific minimum time periods as mentioned below.</p> <table><tr><th>Sr. No.</th><th>Equipment Name</th><th>Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere</th></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table> <p>The MSI shall provide proven products, successfully working under the Environmental conditions similar to that of this Project, for the equipment's listed in the table above - satisfying the commercial operations periods. The hardware functionality of all the equipment is specified in Volume II – Scope of Work of RFP document. Software customization to meet the technical and functional requirements</p>			Sr. No.	Equipment Name	Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere						
Sr. No.	Equipment Name	Minimum time in market and under full satisfactory operational condition in a similar nature of project elsewhere										

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Specified in **Volume II – Scope of Work** of RFP document is allowed.

GCC Clause 75.2 The Defect Liability Period shall begin from the date of Operational Acceptance of the System and extend for 12 months.

GCC Clause 75.10 During the Maintenance Period, MSI must commence work necessary to remedy defects/damage within 2 hours of notification. Service level to which the MSI shall adhere to are specified in clause

GCC Clause 51.1 Performance Security:

- (i) The Performance Security shall be for 10% of the Total Contract Value/Price;
- (ii) The Performance Security shall be issued by a Scheduled Commercial bank in India and acceptable to ASCL. The Performance Security shall be valid until 60 days beyond the issuance of the Completion Certificate;
- (iii) ASCL shall not make a claim under the Performance Security, except for amounts to which ASCL is entitled under the Contract in the event of:
 - (a) failure by the MSI to extend the validity of the Performance Security on extension of the validity of the Contract, in which event ASCL may claim the full amount of the Performance Security;
 - (b) failure by the MSI to pay ASCL an amount due, as either agreed or determined pursuant to the dispute resolution process specified in the Contract, within forty two (42) days after determination of the dispute;
 - (c) failure by the MSI to pay any damages due to the ASCL under the Contract;
 - (d) failure by the MSI to pay any amounts that are due to ASCL on termination of the Contract;
 - (e) the MSI engaging in any corrupt, fraudulent, coercive, collusive, undesirable or restrictive practice.
- (iv) If the Performance Security is or becomes invalid for any reason during the term of the Contract, the MSI shall immediately notify ASCL and provide ASCL with a replacement Performance Security (as per

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specified format) within five (5) days of the earlier Performance Security becoming invalid;

(v) If the validity period of the Performance Security is less than the period specified in sub-clause (ii) above, then not later than thirty (30) days before the expiry of the Performance Security, the MSI shall obtain an extension of the validity of such Performance Security and provide the ASCL with a copy of the renewed security. If the MSI fails to extend the Performance Security, ASCL shall be entitled to draw on and claim the un-drawn amount thereunder, provided that the amount so received shall be treated as a cash security and to the extent that there are no outstanding claims, shall be released upon submission of a new Performance Security acceptable to ASCL;

(vi) The provision, maintenance or renewal of the Performance Security by the MSI in accordance with the terms of the Contract, shall be a condition precedent to any payment by ASCL to the MSI. On completion of the contractual obligations under the Contract by the MSI, ASCL shall return the Performance Security within twenty one (21) days of the last payment made to the MSI under the Contract.

GCC Clause 62.1

Sub-Contracting allowed for following services:

Sr. No.	Name of Supply and Services sub contracted	Approved sub-contractors

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N. ANNEXURES

104. 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 ASCL 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 ASCL	Date

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Name	
Signature	
Change Control Note	CCN Number:
Part C: ASCL 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 ASCL and its nominated agencies	For MSI

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