

Request for Proposal

Selection of System Integrator for Implementation of e-Governance in Urban Local Bodies and Department of Local Government, Punjab

Volume III: Legal and Contractual Terms



Department of Local Government
Punjab

July 2017



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| ACRONYM | FULL FORM |
|----------------|--------------------------------|
| CCN | Change Control Note |
| COTS | Commercial off-the-shelf |
| EDI | Electronic Data Interchange |
| GCC | General Conditions of Contract |
| IT | Information Technology |
| ITB | Instructions to Bidders |
| O&M | Operation & Maintenance |
| RFP | Request for Proposal |
| SCC | Special Conditions of Contract |
| SI | System Integrator |
| SLA | Service Level Agreement |
| VAT | Value Added Tax |
| w.e.f | With effect from |

AGREEMENT

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into at Chandigarh on this, the ___ day of _____, 20XX to Supply, Design, Develop, Implement and Maintain Turnkey Solution in Urban Local Bodies (ULBs) & Department of Local Government, for Government of Punjab.

BY AND BETWEEN

Department of Local Government, Government of Punjab, (Acting through the Managing Director, Punjab Municipal Infrastructure Development Company (PMIDC) (individually and/or collectively, hereinafter referred to as "Purchaser") having its office at Punjab Municipal Bhawan, 5th Floor, Plot No. 3, Dakshin Marg, Sector 35-A, Chandigarh-160022, hereinafter referred to as "Purchaser" which expression, unless excluded by or repugnant to the context or meaning, shall be deemed to include its successors in office and assigns **OF THE FIRST PART**

AND

_____, a organisation incorporated under The Companies Act, 1956, having its registered office at _____ (and is a Prime Bidder of Consortium of Companies in case of consortium) represented by its duly authorized signatory _____ hereinafter referred to as "Supplier" or "System Integrator (SI)" which expression, unless excluded by or repugnant to the context or meaning shall be deemed to include its successors and permitted assigns **OF THE SECOND PART**

Purchaser and Supplier may hereinafter be referred to individually as "Party" and collectively as "Parties".

NOW THIS AGREEMENT WITNESSETH as follows:-

1. In this Agreement words and expression shall have same meanings as are respectively assigned to them in the General and Special Conditions of Contract hereinafter referred to.
2. The following contract documents along with all addenda thereof shall be deemed to form, and be read & construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority
 - a) This Agreement and the Annexures attached to the Agreement
 - b) Special Conditions of Contract
 - c) General Conditions of Contract

- d) Request for Proposal (including amendments made in and addendums issued to the RFP)
 - e) Letter of Award issued by the Purchaser
 - f) Letter of Acceptance by the Supplier
 - g) Consortium Agreement
 - h) Final Project Work Plan
 - i) Supplier's Proposal and original Price Schedules
3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with Purchaser to execute the Scope of Work as mentioned in **Volume I** of the RFP w.e.f. _____ as per the provision of this Agreement.
 4. Purchaser hereby covenants to pay the Supplier in consideration of the execution and completion of the Scope of Work as per **Volume I** of RFP and any corrigendum thereon, if any, the contract price of [*insert: amount of INR in words*],[*insert: amount in figures*]. The payment will be made as per the Terms of Payment Schedule provided in Annexure I of this Agreement.
 5. Being the sum stated in the letter of Award subject to such additions thereto or deductions therefrom as may be made under the provisions of contract at the times in manner prescribed by the Agreement.

IN WITNESS WHEREOF the parties hereto have signed the Agreement the day and the year first above written.

For and on behalf of the Supplier
Signature of the authorized official

For and on behalf of the Purchaser
Signature of the authorized official

Name of the Officer

Name of the Officer

Stamp/Seal of the Supplier

Stamp/Seal of the Purchaser

By the said

By the said

_____(Name on behalf of
the Supplier in the presence of):

_____(Name on behalf of
the Purchaser in the presence of

GENERAL CONDITIONS OF CONTRACT

1. DEFINITION AND INTERPRETATION

1.1. Definitions

1.1.1. In this Contract, the following terms shall be interpreted as indicated below:

a) Contract Elements

- i. "Contract" means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein (refer Clause 2 of Agreement). The Agreement and the Contract Documents shall constitute the Contract, and the term "Contract" shall in all such documents be construed accordingly.
- ii. "Contract Documents" means the documents specified in Clause 2 (Contract Documents) of the Agreement, including any Amendment(s) to these Documents.
- iii. "Agreement" means the Contract entered into between the Purchaser and the Supplier using the form of Agreement contained in the Volume III of RFP and any modifications to this form agreed to by the Purchaser and the Supplier. The date of the Agreement shall be recorded in the signed form.
- iv. "Correspondence" means any written or digital communication exchanged between the Purchaser and Supplier. Correspondences may come in the form of personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile, electronic mail, or Electronic Data Interchange (EDI).
- v. "GCC" means the General Conditions of Contract.
- vi. "SCC" means the Special Conditions of Contract.
- vii. "Request for Proposal (RFP)" refers to Volume I, Volume II, and Volume III of the Bidding Documents along with the annexures, including any addendum to and modification therein.
- viii. "Project" refers to the Supply, Design, Develop, Implement and Maintain Turnkey Solution in Urban Local Bodies (ULBs) & Department of Local Government, for Government of Punjab.
- ix. "Contract Price" means the price or prices defined in Clause 3.1 of the Agreement.
- x. "Bidding Documents" refers to the collection of documents issued by the Purchaser to instruct and inform potential Suppliers of the processes for bidding, selection of the winning proposal, and Contract formation, as well as the contractual conditions governing the relationship between the Purchaser and the Supplier.

b) Entities

- i. "Company" means a Company incorporated under the Companies Act, 1956
- ii. "Purchaser" means the Department of Local Government, Government of Punjab, (Acting through the Managing Director, Punjab Municipal Infrastructure Development Company (PMIDC), who is purchasing the Information System.
- iii. "Program Monitoring Unit" means the team to look after the overall management of the project.
- iv. "Supplier" means (Name of the Organisation), a Organisation (Prime Bidder of Consortium in case of Consortium of Companies) whose proposal to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement.

- v. "Supplier's Representative" means any person nominated by the Supplier and approved by the Purchaser in the manner provided in GCC Clause 5.1.1 (Supplier's Representative) to perform the duties delegated by the Supplier.
- vi. "Subcontractor," means any firm or vendor to whom any of the obligations of the Supplier, if and as permitted by this Agreement, is subcontracted directly or indirectly by the Supplier.
- vii. "Stakeholders" mean all the Internal and External Stakeholders of the Project who would be required to access and use the Information System.

c) Scope

- i. "Information System" also called the "System" or means all the Information Technologies, Materials, and Goods to be supplied, installed, integrated, made operational and managed (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under this Contract.
- ii. "Subsystem" means any subset of the System identified as such in this Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- iii. "Information Technologies" means all information processing and communications related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- iv. "Goods" means all equipment, machinery, furnishings, materials, and other tangible items that the Supplier is required to supply or/and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.
- v. "Services" means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, database management, network management, security management, help desk management, pre-commissioning, commissioning, maintenance, and technical support for the system.
- vi. "Service Level" means the level of service including deliverable and other performance criteria pertaining to the services provided by the Supplier.
- vii. "Service Level Agreement" (SLA) means the agreement between parties about the service levels to be provided/ maintained by the Supplier.
- viii. "Project Work Plan" means the document to be developed by the Supplier and approved by the Purchaser, pursuant to GCC Clause 5.2, based on the requirements of the Contract and the Preliminary Project Work Plan included in the Supplier's proposal. The "Final Project Work Plan" is the version of the Project Work Plan approved by the Purchaser, in accordance with GCC Clause 5.2.2. Should the Final Project Work Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- ix. "Software" means that part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations.

- x. "System Software" means Software that provides the operating and management instructions for the underlying hardware and other components, and such other Software as the parties may agree in writing to be System Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e. "firmware"), operating systems, communications, system and network management, and utility software.
- xi. "Application Software" means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and such other Software as the parties may agree in writing to be Application Software.
- xii. "Standard Software" or "COTS" means Commercial off-the-shelf (COTS) software that is ready-made and available for sale, lease, or license to the general public.
- xiii. "Custom Software" or "BESPOKE" means the software designed, developed, tested and deployed by the Supplier for the purposes of rendering the Services to the Stakeholders of the Project and includes the source code along with associated documentation, which is the work product of the development efforts involved in the Project and the improvements and enhancements effected during the term of the Project, but does not include the third party software products (except for the customization components on such products), proprietary software components and tools deployed by the Supplier and which shall be solely owned by the Purchaser.
- xiv. "Source Code" means the database structures, dictionaries, definitions, program source files, code of the applications, any Application Programming Interfaces, Dynamic Link Library's and controls etc. and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- xv. "Materials" means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Purchaser under the Contract.
- xvi. "Standard Materials" means all Materials not specified as Custom Materials.
- xvii. "Custom Materials" means Materials developed by the Supplier at the Purchaser's expense under the Contract. Custom Materials includes Materials created from Standard Materials.
- xviii. "Intellectual Property Rights" means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation to all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
- xix. "Supplier's Equipment" means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.
- xx. "Project Assets" means those Project Assets which are procured by the Supplier in the name of Purchaser for the purpose of the Project and used for delivering the services to the stakeholder. Project Assets shall also include those Project Assets which are procured by the Supplier and installed at the Offices.

- xxi. "Software Development" is a set of activities that result in the development of a software product as per the requirements specified.

d) Activities

- i. "Delivery" means the transfer of the Goods from the Supplier to the Purchaser in accordance with the conditions specified in the Contract.
- ii. "Installation" means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 5.9 (Installation of the System).
- iii. "Pre-commissioning" means the testing, checking, benchmarking and any other required activity that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 5.9 (Installation of the System).
- iv. "Commissioning" means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 5.10.1 (Commissioning), for the purpose of carrying out User Acceptance Test(s) as mentioned in Volume I of the RFP.
- v. "Operational Acceptance Tests" means the tests specified in the Volume I of the RFP to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Technical Requirements, Final Project Work Plan and System Requirement Specifications in accordance with the provisions of GCC Clause 5.10.2 (Operational Acceptance Test).
- vi. "User Acceptance Tests" means the tests specified in the Volume I of the RFP to be carried out to ascertain whether the System, or a specified Subsystem (in case where the System is to be implemented in phases), is able to attain the functional and performance requirements specified in the Technical Requirements, Final Project Work Plan.
- vii. "Operational Acceptance" means the acceptance by the Purchaser of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 5.10.3 (Operational Acceptance).
- viii. "Sign-off" means the issuance of certificate by the Purchaser for acceptance of the system/sub-system/Deliverable after ensuring that the system is meeting the entire requirement mentioned in the RFP document.
- ix. "Deliverable" means any document, output, activity, task, milestone, provision, service, which is required to be carried out or submitted or provided by the Supplier to the Purchaser for the purpose of successfully completion of the Project and including those as mentioned in the Volume I of RFP document.

e) Place and time

- i. "Purchaser's Country" is India.
- ii. "Supplier's Country" is the country in which the Supplier is legally organized, as named in the Contract i.e. India.
- iii. "Project Site(s)" means the place(s) specified in the SCC for the supply and installation of the System.
- iv. "Day" means calendar day of the Gregorian calendar.
- v. "Week" means seven (7) consecutive Days, beginning the day of the week as is customary in the Purchaser's Country.

- vi. "Month" means calendar month of the Gregorian calendar.
- vii. "Year" means twelve (12) consecutive Months.
- viii. "Effective Date" means the date of fulfillment of all the conditions mentioned below:
 - This Contract Agreement has been duly executed for and on behalf of the Purchaser and the Supplier;
 - The Supplier has submitted to the Purchaser the performance security in accordance with GCC Clause 3.3.2;

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

- ix. "Contract Period" is the time period during which this Contract governs the relations and obligations of the Purchaser and Supplier in relation to the System, as specified in the SCC.
- x. Operation & Maintenance Phase - means the phase commencing at date of the "Go Live" of the Information System, during which the Supplier is responsible for carrying out the activities specified in the Volume I of the RFP.
- xi. "The Coverage Period" mean the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available.
- xii. "Pilot Go Live" means the date on which the Purchaser issues the Sign Off of the completion of all the required acceptance testing (as mentioned in Volume I of the RFP) for the identified Project Sites for Pilot Phase I or II, as the case may be (as mentioned in Volume I of the RFP), to Supplier to that effect.
- xiii. "Go Live (Phase I)" means the date on which the Purchaser issues the Sign Off of the completion of Pilot Phase I and third party certification (as mentioned in Volume I of the RFP) of the System/ Sub-System, to Supplier to that effect.
- xiv. "Go Live (Phase II)" or "Go-Live" means the date on which the Purchaser issues the Sign Off of the completion of Pilot Phase II including third party certification to Supplier to that effect.

1.2. Contract Documents

1.2.1. Subject to Clause 2 (Order of Precedence) of the Agreement , all documents and correspondence forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Contract shall be read as a whole.

1.3. Interpretations

1.3.1. Language

1.3.1.1. All Contract Documents, all correspondence, and communications to be given shall be written in English language, except otherwise mentioned in Volume I of RFP, and the Contract shall be construed and interpreted in accordance with that language.

1.3.2. Singular and Plural

1.3.2.1. The singular shall include the plural and the plural the singular, except where the context otherwise requires.

1.3.3. Headings

1.3.3.1. The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.

1.3.4. Persons

1.3.4.1. Words importing persons or parties shall include firms, corporations, and government entities.

1.3.5. Entire Agreement

1.3.5.1. The Contract constitutes the entire Agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract.

1.3.6. Amendment

1.3.6.1. No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party to the Contract.

1.3.7. Independent Supplier

1.3.7.1. The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.

1.3.7.2. Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Purchaser.

1.3.8. Consortium

1.3.8.1. In case Supplier is a consortium, then the number of parties forming a consortium shall not exceed three (including the Prime Bidder). Further, all the parties in such Consortium shall be jointly and severally liable and bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader (Prime Bidder) with authority to bind the consortium. The composition or constitution of the consortium (as per the Consortium Agreement) shall not be altered without the prior consent of the Purchaser.

1.3.9. Non-waiver

1.3.9.1. Subject to GCC Clause 1.3.9.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

1.3.9.2. Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

1.3.10. Severability

1.3.10.1. If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.3.11. Country of Origin

1.3.11.1. "Origin" means the place where the Information Technologies, Materials, and other Goods for the System were produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, Software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplier and may be different.

1.4. Notices

1.4.1. Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent by personal delivery, airmail post, special courier, cable, , telex, facsimile, electronic mail, or Electronic Data Interchange (EDI) to the address of the relevant party as specified in the SCC, with the following provisions.

1.4.1.1. Any notice sent by cable, , telex, facsimile, electronic mail, or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

1.4.1.2. Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

1.4.1.3. Any notice delivered personally or sent by cable, , telex, facsimile, electronic mail, or EDI shall be deemed to have been delivered on the date of its dispatch.

1.4.1.4. Either party may change its postal, cable, telex, facsimile, electronic mail, or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

1.4.2. Notices shall be deemed to include any approvals, consents, instructions, orders, and certificates to be given under the Contract.

1.5. Governing Laws

1.5.1. The Contract shall be governed by and interpreted in accordance with Laws of India. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier.

1.6. Settlement of Disputes

1.6.1. Dispute Resolution

1.6.1.1. In case of any doubts about a clause of the Agreement which includes contract documents, the interpretation given by the Purchaser shall be final and binding, till the time any other interpretation is ordered in pursuance to GCC Clause 1.6.1.2 and 1.6.2.

1.6.1.2. If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation within 28 days, upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause 1.6.2 (Arbitration).

1.6.1.3. Notwithstanding anything stated in the Agreement , and while the process of resolution of differences as stated in GCC Clause 1.6.1 is underway, the Supplier shall continue to provide services under this contract without any disruption or dilution in accordance with the Service Level Agreement.

1.6.2. Arbitration

1.6.2.1. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC as per Arbitration and Conciliation (Amendment) Act, 2015 and at Chandigarh only.

1.6.2.2. Notwithstanding any reference to the arbitration in this clause, the parties shall continue to perform their respective obligations under the Contract.

1.7. Conditions Precedent

1.7.1. Conditions Precedent for Supplier

The Supplier shall have to fulfill Conditions Precedent, which are as follows:

1.7.1.1. Provide Performance Bank Guarantee to the Purchaser as specified in Volume II of the RFP;

1.7.1.2. Provide the Purchaser certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement with the Purchaser;

1.7.1.3. The Supplier shall warrant and represent to the Purchaser that it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this Agreement ;

1.7.2. Conditions Precedent for Purchaser

The Purchaser shall obtain applicable permits, if any, required by the Supplier to begin operations in accordance with this Agreement .

1.7.3. Non-fulfillment of Conditions Precedent

1.7.3.1. In the event that any of the Conditions Precedent relating to Supplier has not been fulfilled and the same has not been waived by the Purchaser fully or partially, this Agreement shall cease to have any effect as of that date.

1.7.3.2. In the event that the Agreement fails to come into effect on account of non-fulfillment of the Supplier's Conditions Precedent, the Purchaser shall not be liable in any manner whatsoever to the Supplier and the Purchaser shall forthwith forfeit the Performance Bank Guarantee.

1.7.3.3. In the event that vacant possession of any of the Project facilities and/or Project Data has been delivered to the Supplier prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement , the Supplier shall immediately revert to the Purchaser, free and clear from any encumbrances or claims.

1.7.3.4. Instead of terminating this Agreement as provided in paragraph 1.7.3.1 above, the Parties may extend the time for fulfilling the Conditions Precedent and the Term of this Agreement by mutual agreement. It is clarified that any extension of time shall be subject to imposition of penalties as per SCC 6.1.3., on the Supplier linked to the delay in fulfilling the Conditions Precedent.

2. SCOPE OF WORK

2.1. Scope of Services

2.1.1. As specified in details in Volume I of the RFP, the Supplier's obligations include the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the design, development, deployment, implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) and management of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract, and the Final Project Work Plan.

2.1.2. The Supplier shall perform all such work and/ or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and/ or items and Materials were expressly mentioned in the Contract.

2.1.3. The Supplier's obligations to provide Goods works, and Services as implied by the Financial Proposal Form of the Supplier's proposal, such as spare parts, technical services (e.g. maintenance, technical assistance, and operational support), etc. are as specified in the SCC, including the relevant terms, characteristics, and timings.

2.2. Commencement and Duration of this Contract

2.2.1. Supplier shall commence work under this Contract within the period specified in the SCC, and without prejudice to GCC Clause 6.1 (Warranties), the Supplier shall thereafter proceed in accordance with the timeline specified in Volume I of the RFP subject to timeline as per the Final Project Work Plan.

2.2.2. The Supplier shall achieve all milestones within the time specified in Volume I of the RFP subject to timeline as per the Final Project Work Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 8.2.

2.3. Supplier's Responsibilities

2.3.1. The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, help desk facility and other related services, or in accordance with best industry practices. In particular, the Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

2.3.2. The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the relevant data and information provided by the Purchaser and on the basis of information that the Supplier could have obtained from a visual inspection of the relevant offices (if any access to the offices was available). The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.

2.3.3. The Supplier shall be responsible for timely provision of all resources, information, and decision making that is necessary to reach a mutually agreed and Final Project Work Plan (pursuant to GCC

Clause 5.2.2) within the timeline specified in the Volume I of the RFP. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 8.3.2.

2.3.4. Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the Purchaser's Country that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Purchaser under GCC Clause 2.4.4 and that are necessary for the performance of the Contract.

2.3.5. The Supplier shall comply with all laws in force in the Purchaser's Country. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Purchaser 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 Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 2.4.1. The Supplier shall not indemnify the Purchaser to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Purchaser.

2.3.6. The Supplier shall comply with the Government Order(s)/ Instructions issued by the Purchaser in respect of the mechanism for collection and deposit of transaction and other charges recovered by the Supplier from the users/ citizens for delivering the services under the Project.

2.3.7. The Supplier shall permit the Purchaser to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Purchaser, if so required by the Purchaser.

2.3.8. Other Supplier responsibilities, if any, are as stated in the SCC.

2.4. Purchaser's Responsibilities

2.4.1. The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser to the Supplier, except when otherwise expressly stated in the Contract.

2.4.2. The Purchaser shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Final Project Work Plan (pursuant to GCC Clause 5.2.2) within the timeline specified in Volume I of the RFP.

2.4.3. The Purchaser shall be responsible for acquiring and providing legal and physical possession of the Project Site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.

2.4.4. If requested by the Supplier, the Purchaser might assist the Supplier in obtaining 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 Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.

2.4.5. In such cases where the responsibilities of specifying and acquiring or upgrading communications and/or electric power services falls to the Supplier, as specified in the Volume I of the RFP or SCC, Final Project Work Plan, or other parts of the Contract, the Purchaser shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.

2.4.6. The Purchaser shall be responsible for timely provision of all resources (including hosting facility for Data Centre, Near Disaster Recovery Data Centre and Disaster Recovery Data Centre), access, and information necessary for the Installation and User Acceptance and Operational

Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Final Project Work Plan.

2.4.7. As agreed upon by the Purchaser and the Supplier, the Purchaser shall provide sufficient, properly qualified operating and technical personnel, to facilitate properly carrying out development, deployment and operations & maintenance activities for System at or before the time specified in the Volume I of the RFP and the Final Project Work Plan.

2.4.8. Other Purchaser responsibilities, if any, are as stated in the SCC.

3. PAYMENT

3.1. Contract Price

3.1.1. The Contract Price shall be as specified in SCC 3.1 of the Agreement.

3.1.2. The Contract Price shall be a firm lump sum inclusive of all applicable taxes and exclusive of Service Tax (including Swachh Bharat and Krishi Kalyan Cess), Sales Tax, VAT and GST. Contract Price shall not be subject to any alteration, except GCC Clause 3.1.4 or in the event of a Change in the System pursuant to GCC Clause 8.1, or other clauses in the Contract;

3.1.3. The Supplier shall have to satisfy 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.

3.1.4. Purchaser reserves the right to procure the goods and/ or services, in whole or in part or in excess, as listed by the Supplier in its financial proposal/Bid. The Contract Price shall be adjusted based on the price, inclusive of taxes applicable and exclusive of Service Tax (including Swachh Bharat and Krishi Kalyan Cess), Sales Tax, VAT and GST, provided by the Supplier in its Financial Proposal/Bid.

3.1.5. No adjustment of the Contract Price shall be made on account of any variations in costs of labor and materials or any other cost component affecting the total cost in fulfilling the obligations under the Contract.

3.2. Terms of Payment

3.2.1. The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Accepted, and by documents submitted pursuant to GCC Clause 5.5.5 and upon fulfillment of other obligations stipulated in the Contract.

3.2.2. No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser for the System or any Subsystem(s).

3.2.3. Supplier shall raise the invoice and submit to the Purchaser on completion of all concerned activities /tasks, the payment of which shall be made within forty five (45) days from date of receipt of invoice.

3.2.4. All payments shall be made in Indian Rupees only, pursuant to GCC Clause 3.1.

3.2.5. In consideration of the Services and subject to the provisions of this Contract and of the SLA, Purchaser shall pay the Supplier for the Services rendered in pursuance of this Contract, in accordance with the Terms of Payment Schedule provided in Annexure I to this Contract.

3.2.6. Purchaser shall not be required to make any payments in respect of the Services other than those covered by the terms of payment as stated in the Terms of Payment Schedule.

3.2.7. All the payments to the Supplier shall be subject to the satisfactory accomplishment / completion/submission of the concerned activities / tasks/documents as approved by competent authority of Purchaser.

3.2.8. No payment shall be made directly to any third party except the release of payment to Supplier as per the provisions of this Contract.

3.2.9. Subject to Clause 5.10: 'Commissioning and Operational Acceptance', Supplier's deliverable should be deemed to have been accepted if Purchaser:

(a) Communicates the Supplier for acceptance of that deliverable in written;

(b) Fails to communicate the acceptance of that deliverable within 15 working days from deliverable submission and Purchaser does not notify the Supplier in that time of any feedback/comment on that deliverable.

3.3. Securities

3.3.1. Issuance of Securities

3.3.1.1. The Supplier shall provide the securities specified below in favor of the Purchaser at the times and in the amount, manner, and form specified below.

3.3.2. Performance Security

3.3.2.1. The Supplier shall, within Twenty Eight (28) working days of the date of letter of Award issued by the Purchaser, provide a security for the due performance of the Contract in the amount and currency specified in the GCC Clause 3.3.2.3.

3.3.2.2. The security shall be in the form of a Performance Bank Guarantee, as per the form provided in the Annexure I Volume II of the RFP or in form of Demand Draft / Fixed deposit from a nationalized Bank.

3.3.2.3. The Performance Bank Guarantee will be for an amount of 10% of the total value of contract in Indian Rupees. All incidental charges whatsoever such as premium, commission etc. with respect to the Performance Bank Guarantee shall be borne by the Supplier. The Performance Bank Guarantee shall be valid for a period of sixty days beyond the date of completion of all contractual obligations, including warranty obligations if any.

3.3.2.4. In the event of the Supplier being unable to service the Agreement for whatever reason, the Purchaser would have the right to invoke the Performance Bank Guarantee. Notwithstanding and without prejudice to any rights whatsoever of the Purchaser under the Agreement in the matter, the proceeds of the Performance Bank Guarantee shall be payable to the Purchaser as compensation for the Supplier's failure to perform/comply with its obligations under the Agreement. The Purchaser shall notify the Supplier in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Supplier is in default.

3.3.2.5. The security shall become null and void after sixty days beyond the date of completion of all the obligations of the Supplier under the Contract, including, but not limited to, any obligations during the Operation & Maintenance Phase and any extensions to the period. The security shall be returned to the Supplier no later than thirty (30) days after its expiration.

3.4. Taxes and Duties

3.4.1. For goods and services supplied, the Supplier shall pay for all applicable taxes, duties, license fees or levies in connection with this Agreement, excluding sales tax, value-added tax, service tax (including Swach Bharat and Krishi Kalyan Cess), and goods and services tax. For purposes of this Agreement, taxes, duties or levies shall include taxes, duties or levies incurred on transactions between and among the Purchaser, the Supplier and third party subcontractors.

3.4.2. The Bidder in the financial proposal shall quote the price inclusive of all applicable taxes and duties and excluding sales tax, value-added tax, service tax (including Swachh Bharat and Krishi Kalyan Cess), and goods and services tax.

3.4.3. Service Tax (including Swachh Bharat and Krishi Kalyan Cess), Sales Tax, VAT and GST will be paid by Purchaser as applicable. Any increase or decrease in Service Tax (including Swachh Bharat and Krishi Kalyan Cess), Sales Tax, VAT and GST during the contract period will be adjusted accordingly and will be paid on actual basis.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. Copyright

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

4.1.2. The Purchaser agrees to restrict use, copying, or duplication of the Standard Software and Standard Materials in accordance with GCC Clause 4.2, except that additional copies of Standard Materials may be made by the Purchaser for use within the scope of the project of which the System is a part, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.

4.1.3. The Purchaser's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred except in accordance with the relevant license agreement or as may be otherwise specified in the SCC.

4.1.4. Subject to the SCC, the Intellectual Property Rights in all Custom Software and Custom Materials specified in format 3.9 of Annexure I of Volume II of RFP shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest with the Purchaser. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Purchaser may consider necessary or desirable to protect the right, title, and interest of the Purchaser in and to those rights.

4.1.5. For all Custom Software and Custom Materials, the Supplier shall relinquish to the Purchaser the source code along with adequate detailed documents (from the testing phase onwards). The source code with version control system should be submitted in DVD(s) to the Purchaser. No copy of such source code shall be retained by the Supplier in any form.

4.1.6. The Supplier shall indemnify, defend and hold harmless the Purchaser and its respective officers, employees, successors and assigns, from and against any and all losses arising from claims by third parties that any Deliverable (or the access, use or other rights thereto) created by Supplier pursuant to this Agreement, the SLA or any equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) provided by Supplier or sub-contractors to the Supplier pursuant to this Agreement and/or the SLA (i) infringes a copyright enforceable in India, (ii) infringes a patent issued in India, or (iii) constitutes misappropriation or unlawful disclosure or use of another Party's trade secret under the laws of the India (collectively, "Infringement Claims"); provided, however, that this will not apply to any Deliverable (or the access, use or other rights thereto) created by (A) Purchaser; (B) third parties (i.e., other than Supplier or Supplier's sub-contractors) at the direction of the Purchaser.

4.1.7. The Purchaser shall have no liability or obligation to Supplier or any other Party under Section 4.1.6 above to the extent the Infringement Claim is based upon any use of the equipment, software, information, methods of operation or other intellectual property (or the access, use or other rights thereto) for the benefit of any Party (including any use by Supplier or its nominees outside the scope of the Services) other than for Project.

4.1.8. The parties shall enter into such escrow arrangements in relation to the source code of the custom software designed, developed, deployed and tested by the bidder for this project. The contract shall allow the purchaser to use the source code in case of the purchaser renew the contract with supplier or awarded the contract to other supplier as per the terms & conditions of the agreement. Contractor should specify the type of software which are proposed in the bid i.e. whether it is Custom Software or Standard Software.

4.2. Software License Agreements

4.2.1. Except to the extent that the Intellectual Property Rights in the Software vest with the Purchaser, the Supplier hereby grants to the Purchaser (including all Stakeholders) license to access and use the Software relating to Information System, including all inventions, designs, and marks embodied in the Software. Such license to access and use the Software shall

a) be:

- i. nonexclusive;
- ii. fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 8.3.1);

and

b) permit the Software to be:

- i. used or copied for use on or with the computer(s) for which it was acquired (if specified in the Volume I of the RFP and/or the Supplier's proposal), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during transitional period when use is being transferred between primary and backup;
- ii. as specified in the SCC, used or copied for use on or transferred to a replacement computer(s), (and use on the original and replacement computer(s) may be simultaneous during transitional period) provided that, if the Volume I of the RFP and/or the Supplier's proposal specifies a class of computer to which the license is restricted and unless the Supplier agrees otherwise in writing, the replacement computer(s) is(are) within that class;
- 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 internet or intranet or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
- iv. reproduced for safekeeping or backup purposes;
- v. customized, adapted, or combined with other computer software for use by the Purchaser, 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. as specified in the SCC, disclosed to, and reproduced for use by, support service suppliers and their subcontractors, (and the Purchaser may sublicense such persons to use and copy for use of the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and
- vii. disclosed to, and reproduced for use by, the Purchaser and by such other persons as are specified in the SCC (and the Purchaser may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract.

- viii. used by any other supplier appointed by the Purchaser in case first Supplier leaves the contract mid-way.

4.3. Confidential Information

4.3.1. The Purchaser may permit the Supplier to come into possession of confidential public records/information as per the needs of the project and the Supplier shall maintain the highest level of secrecy, confidentiality and privacy with regard thereto.

4.3.2. Additionally, the Supplier shall keep confidential all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/facilities. Without the prior written consent of Purchaser, the Supplier and its Personnel shall not at any time communicate to any person or entity any confidential records/information pertaining to the project.

4.3.3. The Purchaser shall retain all rights to prevent, stop and if required take the necessary punitive action against the Supplier regarding any forbidden disclosure.

4.3.4. The Supplier shall ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the Purchaser, with respect to this Project.

4.3.5. The aforesaid provisions shall not apply to the information:

- a) already in the public domain; and
- b) which has been received from a third party who had the right to disclose the aforesaid information; and
- c) Disclosed to the public due to a court order.

4.3.6. The provisions of this GCC Clause 4.3 shall survive the termination, for whatever reason, of the Contract for Six years Six months (6.5 Years).

4.3.7. The Purchaser may furnish the source code and other relevant information of the project to a new supplier coming on board in case the contracted supplier is terminated or leaves the project before meeting the contractual liabilities.

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

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

5.1. Representative

5.1.1. Supplier's Representative

5.1.1.1. The Supplier shall appoint the Supplier's Representative (either Project Manager or Team Leader) and shall request the Purchaser in writing to approve the person so appointed. The request must be accompanied by detailed curriculum vitae for the nominee. If the Purchaser objects to the appointment, then the Supplier shall appoint a replacement within fourteen (14) days of such objection in accordance with this Clause.

5.1.1.2. The Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the Information System or arising from the Contract. The Supplier's Representative shall give to the Purchaser all the Supplier's notices, instructions, information, and all other communications under the Contract.

5.1.1.3. All notices, instructions, information, and all other communications given by the Purchaser to the Supplier under the Contract shall be given to the Supplier's Representative except as otherwise provided for in this Contract.

5.1.1.4. The Supplier shall not revoke the appointment of the Supplier's Representative without the Purchaser's prior written consent. If the Purchaser consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative, pursuant to the procedure set out in GCC Clause 5.1.1.1.

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

5.1.1.6. The Supplier's Representative may, subject to the approval of the Purchaser, at any time delegate to any person any of the powers, functions, and authorities vested in him or her or revoke them. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier'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 a copy of such a notice has been delivered to the Purchaser.

5.1.1.7. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 5.1.1.6 shall be considered an act or exercise by the Supplier's Representative.

5.1.1.8. Personnel assigned by Supplier to perform the Services shall be employee(s) of Supplier, and under no circumstances will such personnel be considered employee(s) of the Purchaser. Supplier shall have the sole responsibility for supervision and control of its personnel and for payment of such personnel's entire compensation, including salary, withholding of income tax, social security/welfare taxes, provident fund, superannuation fund, worker's compensation, employee and disability benefits and the like and shall be responsible for all employer obligations under all applicable laws.

5.1.1.9. Any replacement by the Supplier of any of the personnel assigned for performance of the Services, shall be made by appointment of personnel with equal or superior qualifications, to be duly approved by the Purchaser.

5.1.2. Objections and Removals

5.1.2.1. The Purchaser may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the opinion of the Purchaser, may have behaved inappropriately, be incompetent, or be negligent.

5.1.2.2. If any representative or person employed by the Supplier is objected by the Purchaser as mentioned in GCC Clause 5.1.2.1, the Supplier shall, where required, promptly appoint a replacement, of equal or superior qualifications, to be duly approved by the Purchaser.

5.2. Project Work Plan

5.2.1. In close cooperation with the Purchaser and based on the Preliminary Project Work Plan provided in Volume I of the RFP and also in the Supplier's proposal, the Supplier shall develop a Project Work Plan encompassing the activities specified in the Contract. The contents of the Project Work Plan shall at least include the items as specified in the under Project Implementation Strategy as provided in Volume I of the RFP.

5.2.2. The Supplier shall formally present to the Purchaser and the Purchaser shall approve the Project Work Plan in accordance with the procedure specified in the SCC, if any. The approved Project Work Plan shall be referred to as the Final Project Work Plan.

5.2.3. The Supplier shall undertake to Supply, Design, Develop, Implement and Maintain Turnkey Solution in accordance with the Final Project Work Plan and the Contract.

5.2.4. The Progress report and other reports, specified in the SCC and/or Volume I of the RFP, shall be prepared by the Supplier and submitted to the Purchaser in the specified format and frequency.

5.3. Subcontracting

5.3.1. With the prior approval of the Purchaser, Supplier may be allowed to sub-contract Project activities relating to LAN setup, O&M support (excluding key positions), Digitization and training only. Supplier shall be responsible and liable for the subcontracted scope of work.

5.4. Technical Design and Architecture

5.4.1. Technical Specifications and Drawings

5.4.1.1. The Supplier shall execute the basic and 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 practices.

5.4.1.2. The Supplier 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 Purchaser or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.

5.4.1.3. The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Purchaser, by giving a notice to the Purchaser.

5.4.2. Codes and Standards

5.4.2.1. 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 the due date of Proposal submission shall apply. During Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with GCC Clause 8.1(Changes to the System)

5.4.3. Approval/Review of Technical Documents by Purchaser

5.4.3.1. The Supplier shall prepare and furnish to the Purchaser the documents as specified in the SCC for the Purchaser's approval or review.

5.4.3.2. Any part of the System covered by or related to the documents to be approved by the Purchaser shall be executed only after approval of these documents by the Purchaser.

5.4.3.3. GCC Clauses 5.4.3.2 through 5.4.3.6 shall apply to those documents requiring the Purchaser's approval, but not to those furnished to the Purchaser for its review only.

5.4.3.4. The Purchaser shall either return one copy of the document to the Supplier with its approval endorsed (each page signed by the Authorized Signatory) on the document or shall notify the Supplier in writing of its disapproval of the document.

5.4.3.5. The Purchaser 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.

5.4.3.6. If the Purchaser disapproves the document, the Supplier shall modify the document and resubmit it for the Purchaser's approval in accordance with GCC Clause 5.4.3.

5.4.3.7. If the Purchaser approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be approved by the Purchaser on the modifications made, subject to GCC Clause 5.4.3.5. The procedure set out in GCC Clauses 5.4.3.2 through 5.4.3.4 shall be repeated, as appropriate, until the Purchaser approves such documents.

5.4.3.8. The Purchaser's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract.

5.4.3.9. The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Purchaser an amended document and obtained the Purchaser's approval of the document, pursuant to the provisions of this GCC Clause 5.4.3. If the Purchaser requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 8.1 (Changes to the System) shall apply to such request.

5.5. Procurement, Delivery, and Transport

5.5.1. Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.

5.5.2. Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Volume I of the RFP subject to the Final Project Work Plan.

5.5.3. Early or partial deliveries require the explicit written consent of the Purchaser.

5.5.4. Transportation

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

5.5.4.2. The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with terms and conditions as laid down in RFP Vol-1.

5.5.5. The Supplier will provide the Purchaser with shipping and other documents, as specified below:

5.5.5.1. For Goods supplied from outside the Purchaser's Country:

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

- a) two copies of the Supplier's invoice showing the description of the Goods, quantity, unit price, government levies and taxes, and total amount;
- b) usual transportation documents;
- c) insurance certificate;
- d) certificate(s) of origin; and
- e) estimated time and point of arrival in the Purchaser's Country and at the Project Site(s).

5.5.5.2. For Goods supplied locally (i.e., from within the Purchaser's country):

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

- a) two copies of the Supplier's invoice showing the Goods' description, quantity, unit price, government levies and taxes, and total amount;
- b) delivery note, railway receipt, or truck receipt;
- c) certificate of insurance;
- d) certificate(s) of origin; and
- e) estimated time and point of arrival at the Project Site(s).

5.6. Product Upgrades

5.6.1. At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its proposal and still to be delivered, the Supplier shall be obligated to offer to the Purchaser 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 8.1 (Changes to the System).

5.6.2. At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Purchaser improved and/or additional support and facilities that it offers to other clients of the Supplier in the Purchaser's Country, pursuant to GCC Clause 8.1 (Changes to the System).

5.6.3. During performance of the Contract, the Supplier shall offer to the Purchaser 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 Supplier to other clients of the Supplier in the Purchaser's Country, and no later than three (3) months after they are released in the country of origin. In no case will the prices for this Software exceed those quoted by the Supplier in its Financial Proposal.

5.6.4. The Purchaser shall introduce all new versions, releases or updates of the Software within three (3) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Supplier 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 Supplier stop supporting or maintaining a version or release of the Software.

5.6.5. The Supplier shall provide an Annual certificate that all patches/ upgrades/ service releases have been properly installed at the end of each year. Also, at the time of completion of the project and before the handover of the System to the Purchaser, the Supplier must certify that all patches/ upgrades/ service released up to the time of completion date have been properly installed.

5.7. Implementation, Installation, and Other Services

5.7.1. The Supplier shall provide all Goods, works and Services specified in the Contract, Volume I of RFP and Final Project Work Plan in accordance with the highest standards of professional competence and integrity.

5.8. Inspections and Tests

5.8.1. The Purchaser shall have the right to inspect and/or test any components of the System by himself or may nominate its representative, if required, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.

5.8.2. The Purchaser or their designated representatives shall be entitled to attend any such inspections and/or tests of the components, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection representative's fees, travel, and related expenses. However this will not include the expenses incurred on testing.

5.8.3. Should the inspected or tested components fail to conform to the Contract, the Purchaser may reject the component(s), and the Supplier shall either replace the rejected component(s), or make alterations as asked for by the Purchaser so that it meets the Contract requirements free of cost to the Purchaser.

5.8.4. The Purchaser may require the Supplier to carry out any inspection and/or test not specified in the Contract. If such inspection and/or test impede the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance can be made in respect of the Time for Achieving User Acceptance and Operational Acceptance and the other obligations so affected.

5.8.5. If any dispute or difference of opinion 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 the Supplier will carry out the alterations as asked by the Purchaser. If such alterations have, in the opinion of Supplier, any cost implications and issues regarding it cannot be settled amicably within a

maximum period of 30 days only, failing which, either party may invoke the process pursuant to GCC Clause 1.6 (Settlement of Disputes).

5.9. Installation of the System

5.9.1. As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and made ready for Commissioning and User Acceptance Testing in accordance with the Volume I of the RFP and Final Project Work Plan, the Supplier shall so notify the Purchaser in writing.

5.9.2. The Purchaser after receipt of the Supplier's notice under GCC Clause 5.9.1, either issue an Installation Certificate in the form prescribed in the Annexure I Format 2, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified in the Contract), has achieved Installation by the date of the Supplier's notice under GCC Clause 5.9.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Purchaser has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Subsystem and, when in the Supplier's opinion the System or Subsystem is ready for Commissioning and User Acceptance Testing, notify the Purchaser in writing, in accordance with GCC Clause 5.9.1. The procedure set out in this GCC Clause 5.9.2 shall be repeated, as necessary, until an Installation Certificate is issued.

5.10. Commissioning and Operational Acceptance

5.10.1. Commissioning

5.10.1.1. Commissioning of the System or Subsystem shall be commenced by the Supplier:

- a) immediately after the Installation Certificate is issued by the Purchaser, pursuant to GCC Clause 5.9.2; or
- b) as otherwise specified in the Technical Requirements in Volume I of the RFP and/ or the Final Project Work Plan; or
- c) immediately after Installation has occurred.

5.10.1.2. The Purchaser shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning. However the responsibility of Commissioning of the System or Subsystem shall be entirely on the Supplier.

5.10.1.3. Production or use of the Subsystem(s) or System shall not commence prior to the start of 'Go Live (Sub-Phase I)', respectively, as per the Project Work Plan.

5.10.2. Operational Acceptance Tests

5.10.2.1. The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Supplier and shall be conducted with the full cooperation of the Purchaser during or after Commissioning of the System (or Subsystem[s]), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Project requirements including but not restricted to the standard of performance quoted in the Supplier's proposal and the functional and technical requirements as per Volume I of the RFP. The Operational Acceptance Tests will be conducted as specified in the Volume I of the RFP and/or the Final Project Work Plan.

5.10.2.2. At the Purchaser'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 User Acceptance Testing of the System.

5.10.3. Operational Acceptance

5.10.3.1. Subject to GCC Clause 5.10.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when the Operational Acceptance Tests, as specified in the Volume I of the RFP and/or the Final Project Work Plan have been successfully completed

5.10.3.2. At any time after the event set out in GCC Clause 5.10.3.1 has occurred, the Supplier may request the Purchaser to issue an Operational Acceptance Certificate as per the Format Provided in Annexure I Format 3.

5.10.3.3. After consultation with the Supplier and reviewing the Deliverables, the Purchaser shall:

- a) issue an Operational Acceptance Certificate; or
- b) notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests

5.10.3.4. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Purchaser has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Purchaser, and the Purchaser, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Purchaser of its request for Operational Acceptance Certification, in accordance with GCC Clause 5.10.3.3. the Purchaser shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 5.10.3.3, or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 5.10.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.

5.10.3.5. If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 5.10.2, then either:

- a) the Purchaser may consider terminating the Contract, pursuant to GCC Clause 8.3.2.2; or
- b) the Supplier shall fulfill its obligations with respect to the relevant technical and functional aspects of the Contract.

5.10.4. Partial Acceptance

5.10.4.1. As specified in the Contract, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System and also as specified in SCC. 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.

5.10.4.2. The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 5.10.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as a whole (as specified in the Contract) once all major components and Subsystems have been supplied, installed, tested, and commissioned.

5.10.4.3. In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Purchaser may issue an Operational Acceptance Certificate after the fittings and/or furnishings

have been delivered and/or installed or the site works have been completed. The Supplier shall have to remedy any defects or deficiencies in such minor components detected by the Purchaser or Supplier, within 10 days of communication regarding the defects by Purchaser.

6. PROTECTION AND LIMITATIONS

6.1. Warranties

6.1.1. The Supplier warrants and represents to the Purchaser that:

- (i) it has full capacity and authority and all necessary approvals to enter into and to perform its obligations under this Agreement ;
- (ii) this Agreement is executed by a duly authorized representative of Supplier;
- (iii) the Supplier is experienced in managing and providing works similar to the Services and that it will perform the Services with all due skill, care and diligence so as to comply with the requirements of the RFP;
- (iv) the Services will be provided and rendered by appropriately qualified, trained and experienced personnel;
- (v) Supplier has and will have all necessary licenses, approvals, consents of third parties and all necessary technology, hardware and software to enable it to provide the Services;
- (vi) the Services will be supplied in conformance with all applicable laws, enactments, orders and regulations;
- (vii) if Supplier uses in the course of the provision of the Services components, equipment, software and hardware manufactured by any third party which are embedded in the Deliverables or are essential for the successful use of the Deliverables, it will pass through third party manufacturer's warranties relating to those components, equipment, software and hardware to the extent possible. In the event that such warranties cannot be enforced by the Purchaser, the Supplier will enforce such warranties on behalf of the Purchaser and pass on to the Purchaser, the benefit of any other remedy received in relation to such warranties.
- (viii) The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the warranty period and with all reasonable speed, repair or replace the defective systems, without costs to the Purchaser and within the time specified and acceptable to Purchaser.
- (ix) During the comprehensive warranty period, the Supplier will provide all product(s) and documentation updates, patches/ fixes, and version upgrades within 15 days of their availability and should carry out installation and make operational the same at no additional cost to the Purchaser.

6.1.2. Defect Liability

6.1.2.1. The Supplier 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 provided in Volume I of the RFP or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.

6.1.2.2. The Supplier 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 provided in Volume I of the RFP.

6.1.2.3. In addition, the Supplier warrants that: (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines and (ii) they have been previously released to the market,

6.1.2.4. The Warranty Period shall commence from the date of 'Go Live' System and shall extend for the length of time specified in the SCC.

6.1.2.5. If during the Warranty Period any defect as described in GCC Clause 5.4.1.2. 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 Supplier, the Supplier shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier 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 Supplier shall remain the property of the Supplier.

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

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

6.1.2.7. The Supplier's obligations under GCC Clause 6.1.3. shall not apply to:

- (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
- (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Purchaser or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 5.4.1.3.

6.1.2.8. The Purchaser shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect any such defect. The Purchaser shall afford the Supplier all necessary access to the System and the site to enable the Supplier to perform its obligations under this GCC Clause 6.1.3.

6.1.2.9. The Supplier may, with the consent of the Purchaser, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Purchaser may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.

If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.

6.1.2.10. If the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period specified in the SCC, the Purchaser may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Purchaser in connection with such work shall be paid to the Purchaser by the Supplier or may be deducted by the Purchaser from any monies due to the Supplier or claimed under the Performance Security.

6.1.2.11. If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Purchaser because of such defect and/or making good of such defect.

6.1.2.12. 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.

6.1.2.13. At the request of the Purchaser and without prejudice to any other rights and remedies that the Purchaser may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Purchaser to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Goods included in the System, including without limitation assignment or transfer in favor of the Purchaser of the benefit of any warranties given by such producers or licensors to the Supplier.

6.1.3. Notwithstanding what has been stated elsewhere in this Agreement and the Annexures attached herein, in the event the Supplier is unable to meet the obligations pursuant to the Development/Customization, Procurement and Deployment and Operation & Maintenance of the Project and any related scope of work as stated in this Agreement and the Annexures attached herein, the Supplier shall pay to the Purchaser liquidated damages at the rate specified in the SCC as a percentage of the Contract Price. Liquidated damages payable under this Contract shall not limit, however, any other rights or remedies the Purchaser may have under the Contract for other delays. However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

6.2. Intellectual Property Rights Warranty

6.2.1. The Supplier hereby represents and warrants that:

- (i) the System as supplied, installed, tested, and accepted;
- (ii) use of the System in accordance with the Contract; and
- (iii) copying of the Software and Materials provided to the Purchaser in accordance with the Contract

do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Purchaser to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier 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.

6.3. Intellectual Property Rights Indemnity

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

- (i) installation of the System by the Supplier or the use of the System, including the Materials, in the country where the site is located;
- (ii) copying of the Software and Materials provided by the Supplier in accordance with the Agreement ; and
- (iii) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Purchaser's breach of GCC Clause 6.3.2

6.3.2. 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 Supplier, where the infringement arises because of such association or combination and not because of use of the System in its own right.

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

- (i) is asserted by a parent, subsidiary, or affiliate of the Purchaser's organization;
- (ii) is a direct result of a design mandated by the Purchaser's Functional & Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Proposal; or
- (iii) results from the alteration of the System, including the Materials, by the Purchaser or any persons other than the Supplier or a person authorized by the Supplier.

6.3.4. If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Clause 6.3.1, the Purchaser shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf, at the expense of the Supplier.

6.3.5. The Purchaser shall indemnify and hold harmless the Supplier 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 Supplier 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 Supplier in connection with this Contract by the Purchaser or any persons (other than the Supplier) contracted by the Purchaser, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GCC Clause 6.3.1.

6.3.6. Such indemnity shall not cover 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, or any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Purchaser or any other person contacted by the

Purchaser, 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.

6.3.7. Such indemnities shall also not apply:

- (i) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Supplier's organization;
- (ii) to the extent that any claim of infringement caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials provided to the Supplier by the Purchaser or any persons contracted by the Purchaser.

6.3.8. If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GCC Clause 6.3.5, the Supplier shall promptly give the Purchaser notice of such proceedings or claims, and the Purchaser may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Supplier shall, at the Purchaser's request, afford all available assistance to the Purchaser in conducting such proceedings or claim and shall be reimbursed by the Purchaser for all reasonable expenses incurred in so doing.

6.4. Limitation of Liability

6.4.1. Provided the following does not exclude or limit any liabilities of Supplier in ways not permitted by applicable law:

- (i) the Supplier shall not be liable to the Purchaser, 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 Supplier to pay liquidated damages to the Purchaser; and
- (ii) the aggregate liability of the Supplier to the Purchaser, 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 Supplier to indemnify the Purchaser with respect to intellectual property rights infringement and the liability as mentioned in GCC clause 7.4.2.

6.5. Mechanism For 'Redressal of Grievances'

6.5.1. Any complaint regarding provision of services (covered under the Project) from the stakeholder shall be taken very seriously by the Purchaser. Onus to prove such complaint is invalid, would lie with the Supplier. In case where any such complaint is found true and reasonable, the Supplier may be penalized by the Purchaser (depending on the facts and seriousness of complaint).

7. RISK DISTRIBUTION

7.1. Ownership

7.1.1. All the procurement relating to goods, works, services, information technologies, etc. shall be done in the name of Purchaser. All the goods, works, services, information technologies, etc. procured under the Project shall remain under the custody of Supplier and/ or Purchaser throughout the Project. The goods, works, services, information technologies, etc. which are under the custody of the Supplier shall be transferred, in the working condition and in a proper manner, to the Purchaser at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Agreement .

7.1.2. Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 4.1 (Copyright) and any elaboration made in the Volume I of the RFP.

7.1.3. Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

7.1.4. Renewal of the Operation and Maintenance services with the existing Supplier or handover to the Purchaser/ any other vendor by the Purchaser shall be as mentioned in SCC.

7.2. Insurance to be taken out by Supplier

7.2.1. The Supplier (a) shall take out and maintain, and shall cause any Subcontractor to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Purchaser, comprehensive insurance (including Risk Including theft, fire, earthquake, flooding etc.) against the risks in the name of Purchaser, and for the coverage, as shall be specified in the SCC; and (b) at the Purchaser's request, shall provide evidence to the Purchaser showing that such insurance has been taken out and maintained and that the current premiums have been paid.

7.3. Care of the System

7.3.1. The Supplier shall be responsible for the care and custody of the System or Subsystems upon their Delivery. The Supplier 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 and throughout the contract period.

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

7.4.1. The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Purchaser's Country.

7.4.2. Notwithstanding anything contained in this Contract, the Supplier shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Purchaser 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 Supplier or its Subcontractors, or their employees, officers or agents, except any

injury, death, or property damage caused by the negligence of the Purchaser, its contractors, employees, officers, or agents.

7.4.3. If any proceedings are brought or any claim is made against the Purchaser that might subject the Supplier to liability, the Purchaser shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf and at the expense of the Supplier. Unless the Supplier has so failed to notify the Purchaser within thirty (30) days period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

7.4.4. The party entitled to the benefit of an indemnity under this GCC Clause 7.4 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.

7.5. Force Majeure

7.5.1. "Force Majeure" shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is not foreseeable, is unavoidable, and not brought about by or at the instance of the Party claiming to be affected by such events and which has caused the non-performance or delay in performance, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, without limitation, the following:

- (i) war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- (ii) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
- (iii) 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;
- (iv) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- (v) 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;
- (vi) failure, by the Supplier, to obtain the necessary export permit(s) from the governments of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier's Equipment provided that the Supplier 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.

7.5.2. 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.

7.5.3. 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 timelines of milestones shall be extended in accordance with GCC Clause 8.2 (Extension of Timelines).

7.5.4. 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 7.5.6.

7.5.5. No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:

- (i) constitute a default or breach of the Contract;
- (ii) (Subject to GCC Clauses 7.5.3, and 7.5.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance; if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

7.5.6. 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.

7.5.7. In the event of termination pursuant to GCC Clause 7.5.6, the rights and obligations of the Purchaser and the Supplier shall be as specified in GCC Clauses 8.3.1.2 and 8.3.1.3.

7.5.8. Notwithstanding GCC Clause 7.5.5, Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier under this Contract.

7.5.9. Force Majeure shall not include:

(1) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Contractors or agents or employees, nor

(2) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Agreement, and avoid or overcome in the carrying out of its obligations hereunder.

7.6. Audit Rights

7.6.1. The Purchaser shall have the right to audit and inspect Suppliers, agents and third party facilities, data centres, documents, records, procedures and systems relating to the provision of the services, but only to the extent that they relate to the provision of the services, as shall be reasonably necessary to verify:

- (i) The security, integrity and availability of all Project data processed, held or conveyed by the Supplier on behalf of the Purchaser and documentation related thereto;
- (ii) That the actual level of performance of the services equals what is specified in the SLA;

- (iii) That the Supplier has complied with the relevant technical standards, and has adequate internal controls in place; and
- (iv) The compliance of the Supplier with any other obligation under this Agreement and SLA.
- (v) Subject to GCC clause 5.3, the Supplier has not subcontracted any of the activities under the Project to third party.

7.6.2. For the avoidance of doubt, the audit rights under this clause shall not include access to the Supplier's profit margins or overheads associated with any obligation under this Agreement.

7.6.3. The Supplier shall provide to the Purchaser reasonable access to employees or other stakeholders as directed by the Purchaser to documents, records and systems reasonably required for audit and shall provide all such persons with routine assistance in connection with the audits and inspections. The Purchaser shall have the right to copy and retain copies of any relevant records as per its record retention schedule. The Supplier shall make every effort to co-operate with them.

7.6.4. Inspection and audits under the Contract shall be conducted during normal working hours and upon minimum 7 days advance written notice to Supplier. Purchaser and its auditors will: (i) comply with Supplier's reasonable security and confidentiality requirements when accessing locations, facilities or other resources owned or controlled by Supplier; and (ii) cooperate with Supplier to minimize any disruption to Supplier's business activities.

8. CHANGES IN CONTRACT ELEMENTS

8.1. Changes to the System

8.1.1. The Purchaser and the Supplier recognize that for providing better and improved services frequent change is an inevitable part of delivering services and that a significant element of this change can be accomplished by re-organizing processes and responsibilities without an effect on the cost. A change may involve, but is not restricted to the submission of updated information technologies and related services in accordance with GCC clause 5.6. (Product upgrades). The Supplier will endeavour, wherever reasonably practicable, to effect change without an increase in the terms of payment as stated in the Payment Schedule and the Purchaser will work with the Supplier to ensure that all changes are discussed and managed in a constructive manner.

8.1.2. Change Control Note (CCN):

8.1.2.1. Change requests in respect of this Agreement will emanate from the authorized representative of either the Purchaser or the Supplier, who will be responsible for obtaining approval for the change and who will act as its sponsor throughout the Change Control Process and will complete Part A of the CCN attached in Annexure I Format 4. CCNs will be presented to the other Party's authorized representative who will acknowledge receipt by signature of the CCN.

8.1.2.2. The Supplier and the Purchaser, while preparing the CCN, shall consider the change in the context of the following parameter, namely whether the change is beyond the scope of Services including ancillary and concomitant services required for the project (including but not restricted to requirements specified in Volume I of the RFP) and is suggested & applicable only after the Operational Acceptance as set out in this Agreement.

8.1.2.3. It is hereby also clarified that the payment for the changes brought in after the Operational Acceptance may be calculated on the basis of blended man-month rate as agreed between Purchaser and Supplier (in accordance with the procedure specified in Volume II of RFP and estimated man-month effort to be submitted by the Supplier prior to taking up the change of control event and accepted by the Purchaser.

8.1.2.4. The Supplier shall assess the Change Control Note (CCN) and complete Part B of the CCN. In completing Part B of the CCN the Supplier shall provide as a minimum:

- (i) a description of the change;
- (ii) options available for implementing change and evaluation thereon
- (iii) a list of Deliverables required for implementing the change;
- (iv) a timetable for implementation;
- (v) an estimate of any proposed change;
- (vi) any relevant acceptance criteria;
- (vii) an assessment of the value of the proposed change;
- (viii) material evidence to prove that the proposed change is not already covered within the scope of the project, SLA, or Agreement.

8.1.2.5. Prior to submission of the completed CCN to the Purchaser, or its nominated agencies, the Supplier will undertake its own internal review of the proposal and obtain all necessary internal approvals. As a part of this internal review process, the Supplier shall consider the materiality of the proposed change in the context of this Agreement and the total effect that may arise from implementation of the change.

8.1.2.6. Each Party shall be responsible for its own costs incurred in the quotation, preparation of CCNs and in the completion of its obligations described in this process provided the Supplier meets the obligations as set in the CCN. In the event the Supplier is unable to meet the obligations as defined in the CCN then the cost of getting it done by third party will be borne by the Supplier.

8.1.2.7. Change requests and CCNs will be reported monthly by the Supplier to facilitate effective change review and control.

8.1.2.8. The Supplier shall be obliged to implement any proposed changes once approval in accordance with Clause above, with effect from the date agreed for implementation.

8.2. Extension of Timelines

8.2.1. The timelines for milestones specified in the Volume I of RFP subject to Final Project Work Plan shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (i) any Change to the System as provided in GCC Clause 8.1 (Changes to the System);
- (ii) any occurrence of Force Majeure as provided in GCC Clause 7.5 (Force Majeure);
- (iii) default of the Purchaser; or
- (iv) any other matter specifically mentioned in the Contract

8.2.2. Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Purchaser a notice of a claim for an extension of the time for submitting Deliverables, 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 after receipt of such notice and supporting particulars of the claim, the Purchaser and the Supplier shall agree upon the period of such extension.

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

8.3. Termination

8.3.1. Termination for Purchaser's Convenience

8.3.1.1. The Purchaser may at any time terminate the Contract for any reason by giving the Supplier a 30 days' notice of termination.

8.3.1.2. Upon receipt of the notice of termination under GCC Clause 8.3.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination:

- (i) cease all further work, except for such work as the Purchaser 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;
- (ii) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Clause 8.3.1.2 (iv) (b) below;
- (iii) remove all Supplier's Equipment from the site, repatriate the Supplier's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- (iv) in addition, the Supplier, subject to the payment specified in GCC Clause 8.3.1.3, shall

- a. deliver to the Purchaser the parts of the System executed by the Supplier up to the date of termination;
- b. to the extent legally possible, assign to the Purchaser all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors;
- c. deliver to the Purchaser all non- proprietary drawings, specifications, source code for all Custom Software or elements of the Custom Software, software licenses, sub-licenses, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

8.3.1.3. In the event of termination of the Contract under GCC Clause 8.3.1.1, the Purchaser shall pay to the Supplier

- a. all charges for Services Supplier provides and any Deliverables and/or system (or part thereof) Supplier delivers through termination as determined by Purchaser;
- b. the Contract Price, properly attributable to the parts of the System executed by the Supplier as on the date of termination;
- c. the costs reasonably incurred by the Supplier in the removal of the Supplier's equipment from the site/office and in the repatriation of the Supplier's and its Subcontractors' personnel;
- d. any amount to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;
- e. costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 8.3.1.1; and
- f. the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by above Clauses 8.3.1.3 point a.

8.3.2. Termination for Supplier's Default

8.3.2.1. The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a 30 days' notice of termination and its reasons therefore to the Supplier:

- (i) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a company, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt; or
- (ii) if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 8.4 (Assignment); or
- (iii) if the Supplier, in the judgment of the Purchaser, has engaged in corrupt or fraudulent or unfair trade practices in competing for or in executing the Contract, including but not limited to wilful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract; or

- (iv) Time is the essence of the contract and in the event, for reasons attributable to the Supplier, if there is a delay of more than 10 weeks in completing any of the task of the respective Phase of the Project or in submission of the Deliverables of the Project or milestones of the Project, with no justifiable explanation being offered by the Supplier, the Purchaser may terminate this Agreement. Further, the Purchaser may also invoke the Performance Bank Guarantee of the Supplier.

For the purposes of this Clause:

“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.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practices among Supplier(s) (prior to or after proposal submission) designed to establish proposal prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

“Unfair trade practices” means supply of goods (computer hardware, printers, networking equipment, etc.) different from what is mentioned in the proposal documents, and includes change of parts/ components, use of refurbished / repaired / sub-standard / duplicate parts instead of genuine new parts or change the specifications and/or make of the company for which the supply order was given by Purchaser.

8.3.2.2. If the Supplier:

- (i) has abandoned or repudiated the Contract;
- (ii) has without valid reason failed to commence work on the System promptly;
- (iii) 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;
- (iv) refuses or is unable to provide sufficient Materials, Services, or labour to execute and complete the System in the manner specified in the Final Project Work Plan furnished under GCC Clause 5.2 at rates of progress that give reasonable assurance to the Purchaser that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended;
- (v) exits the Project before the end of Contract period

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 8.3.2.

8.3.2.3. Upon receipt of the notice of termination under GCC Clauses 8.3.2.1 or 8.3.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

- (i) cease all further work, except for such work as the Purchaser 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;
- (ii) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to GCC Clause 8.3.2.3 (iv) below;

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

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

8.3.2.5. If there is any sum due on Supplier, the Purchaser shall deduct the same accruing prior to the date of termination from the amount to be paid to the Supplier under this Contract.

8.3.2.6. If the Purchaser needs to complete the System, the cost of completing the System by the Purchaser shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 8.3.2.5, plus the reasonable costs incurred by the Purchaser in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 8.3.2.5, the Supplier shall pay the balance to the Purchaser, and if such excess is less than the sums due the Supplier under GCC Clause 8.3.2.5, the Purchaser shall pay the balance to the Supplier. The Purchaser and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid. The Performance Bank Guarantee shall be invoked in case of termination under clause 8.3.2.

8.3.3. Termination by Supplier on Purchaser's Material Breach

8.3.3.1. In the event that Supplier believes that the Purchaser is in Material Breach of its obligations under this Agreement, Supplier may terminate this Agreement upon giving a one month's notice for curing the Material Breach to the other Party. In case the Material Breach continues, after the notice period, the Supplier will have the option to terminate the Agreement. Any notice served pursuant to this Clause shall give reasonable details of the Material Breach.

8.3.3.2. If Material Breach by the Purchaser or its nominated agencies results in not providing support for effecting data migration or not providing the certification of User Acceptance then the Implementation Agency will give a one month's notice for curing the Material Breach to the Purchaser. After the expiry of such notice period, the Supplier will have the option to terminate the Agreement.

8.3.3.3. The termination provisions set out in this Clause shall apply *mutatis mutandis* to the SLA.

8.3.3.4. If there is any sum due on Supplier, the Purchaser shall deduct the same accruing prior to the date of termination from the amount to be paid to the Supplier under this Contract.

8.3.3.5. If the Purchaser needs to complete the System, the cost of completing the System by the Purchaser shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 8.3.2.5, plus the reasonable costs incurred by the Purchaser in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 8.3.3.4, the Supplier shall pay the balance to the Purchaser, and if such excess is less than the sums due the Supplier under GCC Clause 8.3.3.4, the Purchaser shall pay the balance to the Supplier. The Purchaser and the Supplier shall agree, in writing, on the computation

described above and the manner in which any sums shall be paid. The Performance Bank Guarantee shall be invoked in case of termination under clause 8.3.3.

8.4. Assignment

8.4.1. Neither the Purchaser nor the Supplier shall, without the express prior written consent of the other, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or there under, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

9. SERVICE LEVEL AGREEMENTS

9.1. General Conditions of SLA

9.1.1. SLA Supervision

9.1.1.1. Purchaser will review the performance of the Supplier against the SLA at any given time or duration. The supervision report about the performance of any Services pursuant to this SLA by the Supplier or any other agency as appointed by Purchaser shall form the basis for imposing Damages/ penalties for breach of contract. The results of said review will be shared by Purchaser with the Supplier. Purchaser reserves the right to appoint a third party auditor/ agency to validate the Deliverables under this SLA. Based on the instructions of the Purchaser, the findings of the third party auditor/ agency shall be accepted and addressed by the Supplier with the consultation of the Purchaser.

9.1.2. Reporting Procedures

9.1.2.1. The Supplier's representative will prepare and distribute SLA performance reports in the format prescribed by Purchaser in consultation with the Supplier by the first working day of every month for the entire term (including renewal, if any, thereof) of the contract. These reports shall include "actual versus target" SLA performance, a variance analysis and discussion of appropriate issues or significant events. Supplier will design the SLA reporting formats (daily, weekly, monthly and quarterly) and get sign off on these formats from the Purchaser.

9.1.3. Issue Management Procedures

9.1.3.1. General

The issue management process for resolution of any issues arising under this SLA during the entire term (including renewal, if any, thereof) of the Contract shall be as set forth in Clause 9.1.3.2. It is expected that this pre-defined process will only be used on an exception basis if issues are not resolved at lower management levels. All damages mentioned in this SLA are independent of each other and will have cumulative effect.

9.1.3.2. Issue Management Process

The issue management process under this SLA, briefly stated, would be as under:

- i. Either the Supplier or Purchaser may document any issue(s) which arises/ noticed at any time during the performance of this SLA (the "Issue(s)") and communicate the same to the other Party hereto within 7 days of it arising;
- ii. The document referred to in sub-clause (i) above shall contain an objective summary of the Issue(s), the viewpoints of both Supplier and Purchaser and possible solutions thereof;
- iii. Project Steering Committee (as described in Volume I of the RFP) will act as the issue resolution authority to resolve the Issue(s);
- iv. A meeting will be conducted between the Parties and the issue resolution authority to resolve the Issue(s) in a timely manner. The documented Issue(s) will be distributed to the participants at least 24 hours prior to the discussion if the Issue(s) is not of an emergent nature requiring immediate attention;
- v. The selected issue resolution authority will resolve the Issue(s) and communicate the same to the Parties; and
- vi. In the event any significant business Issue(s) is still unresolved, either Party may have recourse to the Dispute Resolution Procedure set forth in GCC Clause 1.6. of the Contract.

9.1.4. Management Escalation Procedures

9.1.4.1. The purpose of this escalation process is to provide a quick and orderly method of notifying both parties that an Issue is not being successfully resolved at the lowest possible management level. Implementation of this procedure will ensure that Purchaser and Supplier are communicating at the appropriate levels. It is agreed that escalation should take place on an exception basis and only if successful Issue resolution cannot be achieved in a reasonable time frame

9.1.4.2. All Issues would be raised to the Purchaser, which will be completely responsible for the day to day management of the implementation of Services and Deliverables under the Contract including this SLA. The Program Monitoring Unit team shall classify the Issues based on their severity level and resolve them within appropriate timelines ensuring that there are no delays in provision of Services.

9.1.4.3. If the Program Monitoring Unit is unable to resolve an issue, the Issue would be escalated to the Project Steering Committee and further to Empowered Committee with options/ risks detailed for decision. The Purchaser will make decisions based on the options/ risks presented by the Program Monitoring Unit

9.1.4.4. Supplier's Escalation Mechanism <<.....>> (to be provided by the Supplier as part of the technical proposal).

9.1.5. This SLA is supplemental to and not in derogation of the Contract and shall be construed accordingly and in the event of any conflict between provisions of this SLA and the Contract, the provisions of this SLA will prevail only with respect to the Services pursuant to SLA and save and except as aforesaid the provisions of the Contract will prevail.

9.2. Development and Procurement & Deployment Phase

9.2.1. The Development and Procurement & Deployment Phase shall commence from the Effective date of sign of contract as per GCC Clause 1.1.1 e (viii), and certified in accordance with the terms of this Contract and shall run for a period of 18 months or the period specified by the Supplier in its proposal, whichever is lower, unless terminated as provided herein.

9.2.1.1. Any breach of this SLA shall be deemed to be a breach of the Contract and accordingly may result in liquidated damages/ penalty (as defined in SCC 6.1.3.) or termination of this Contract.

9.2.1.2. Without prejudice to Clause 9.2.1.1., in the event of the Supplier being in breach of this SLA including failure to meet any of its obligation under this SLA for a continuous period of 14 days affecting adversely the operations of Purchaser or progress of the project, and fails to remedy the same and the effects thereof within 21 days of the date of issue of notice in this behalf from Purchaser (the "Notice"), the same shall constitute a breach of this SLA and shall entitle Purchaser to take, without prejudice to the rights and remedies which Purchaser may have under the Contract or otherwise, the following actions:

9.2.1.3. Require the Supplier to reply to the Notice by return email / post / fax within 24 hours of the issue thereof but in no event later than 7 days of the date of issue thereof by Purchaser to the Supplier, setting out in detail the reasons therefore, and

- i. If (A) the Supplier fails to reply to the above referred Notice within the period set forth in GCC Clause 9.2.1.3., or (B) the Purchaser is not satisfied with the reply of the Supplier to the Notice, then Purchaser may in its sole and absolute discretion terminate the Contract and all SLA's (including this SLA) and to have the breach remedied / rectified at the risk and cost of the Supplier.

9.2.1.4. The delay or default by the Supplier in meeting its obligations under its SLA if solely due to

- i. delay of Purchaser in execution and/or approval, if any required, from Purchaser, and/or
- ii. Occurrence of a Force Majeure Event

shall not be deemed to be a breach of this SLA by the Supplier provided the Supplier had advised Purchaser in writing, immediately upon occurrence of any such delay by Purchaser and/or occurrence of a Force Majeure Event and before the issue of notice pursuant to clause 9.2.1.2. above, the consequences of any such delay on the part of Purchaser and/or occurrence of a Force Majeure Event.

9.2.1.5. The Purchaser's right of termination set forth in this SLA is in addition to and not in derogation of the right of termination which Purchaser has under the Contract as per GCC Clause 8.3.

9.3. Operation & Maintenance (O&M) Phase

9.3.1. The O&M for each Phase/sub-phase/module shall commence from the date of Go Live of that phase/sub-phase/module; and certified in accordance with the terms of this Contract and shall run for a period of five (5) years from date of go-live of sub-phase 1 unless terminated as provided herein.

9.3.2. The Supplier's representative will prepare and distribute SLA performance reports in the format prescribed by Purchaser in consultation with the Supplier by the first of every month for the entire month. These reports will include "actual versus target" SLA performance, a variance analysis and discussion of appropriate issues or significant events.

9.3.3. Monthly entitlement of the Supplier will be calculated for the services provided during the month based upon the performance against SLAs agreed in the Agreement . Entitlements for the month will be made in consultation and agreement with the Purchaser.

9.3.4. Quarterly Entitlement will be the sum total of the monthly entitlements for that quarter.

9.3.5. Payment of the Operation and Maintenance Services will be made by the Purchaser to the Supplier against quarterly invoice and would be subject to deduction, if any, on account performance level below than prescribed, if any, as per SLAs.

10. EXIT MANAGEMENT

10.1. Purpose

10.1.1. This clause sets out the provisions, which will apply on expiry or termination of this Agreement .

10.1.2. In the case of termination of the Contract the Parties shall agree at that time whether, and if so during what period, the provisions of Exit Management Clause shall apply.

10.1.3. The Parties shall ensure that their respective associated entities (which, in any manner, are involved, in execution of the Project) carry out their respective obligations set out in Exit Management Clause.

10.2. Transfer of Project Assets

10.2.1. The Purchaser shall be entitled to serve notice in writing on the Supplier at any time during the exit management period as detailed hereinabove requiring the Supplier and/or its sub-contractors to provide the Purchaser with a complete and up to date list of the Project Assets within 30 days of such notice. The Purchaser shall then be entitled to serve notice in writing on the Supplier at any time prior

to the date that is 30 days prior to the end of the exit management period requiring the Supplier to transfer/handover of the Project Assets to the Purchaser or at its nominated agencies, as appointed by it.

10.2.2. Upon service of a notice in accordance with GCC clause 10.2.1, the following provisions shall apply:

- a) Until last date of the exit management period, all risks shall lie with the Supplier for loss of or damage to the whole or part of any Project Asset. All risk in the Project Assets to be transferred to the Purchaser shall be transferred to the Purchaser, on the last day of the exit management period.

10.3. Cooperation and Provision of Information

10.3.1. During the exit management period:

- a) the Supplier will allow the Purchaser and/or its nominated agencies access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable the Purchaser to assess the existing services being delivered;
- b) on request by the Purchaser, the Supplier shall promptly provide access to and copies of all information held or controlled by them which they have prepared or maintained in accordance with this Contract (whether provided by the Supplier or sub-contractors appointed by the Supplier). The Purchaser shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered, performance data, etc. The Supplier shall permit the Purchaser and/or its nominated agencies to have reasonable access to its employees and facilities as reasonably required by the Purchaser to understand the methods of delivery of the services employed by the Supplier and to assist appropriate knowledge transfer.

10.4. Confidential Information, Security and Data

10.4.1. On the commencement of the exit management period, the Supplier will promptly supply to the Purchaser the following:

- a) information relating to the current services rendered performance data relating to the performance of sub-contractors, if any, in relation to the services;
- b) documentation relating to Project's Intellectual Property Rights;
- c) Project data and confidential information;
- d) documentation relating to sub-contractors;
- e) all current and updated Project data as is reasonably required for purposes of Project;
- f) all other information (including but not limited to documents, source code, licenses, sub-licenses records and agreements) relating to the services reasonably necessary to enable the Purchaser or its nominated agencies, to carry out due diligence in order to transition the provision of the Services to the Purchaser or its nominated agencies.

10.4.2. Before the expiry of the exit management period, the Supplier shall deliver to the Purchaser all new or up-dated materials from the categories set out in GCC Clause 10.4.1 above and shall not retain

any copies thereof, except that the Supplier shall be permitted to retain one copy of such materials for archival purposes only.

10.4.3. Before the expiry of the exit management period, unless otherwise provided under this Agreement, the Purchaser shall deliver to the Supplier all forms of Supplier confidential information, which is in the possession or control of the Purchaser or its users.

10.5. Transfer of Certain Agreements

10.5.1. On request by the Purchaser, the Supplier shall effect such assignments, transfers, licenses and sub-licenses as the Purchaser may require in favour of the Purchaser, or its nominated agencies in relation to any equipment lease, software, maintenance or service provision agreement between Supplier and third party lessors, vendors, and which are related to the services and reasonably necessary for the carrying out of replacement services by the Purchaser or its nominated agencies.

10.6. Rights of Access to Premises

10.6.1. At any time during the exit management period, where Project Assets are located at the Supplier's premises, the Supplier will be obliged to give reasonable rights of access to (or, in the case of Project Assets located on a third party's premises, procure reasonable rights of access to) the Purchaser, and/or its nominated agencies in order to make an inventory of the Project Assets.

10.6.2. The Supplier shall also give the Purchaser or its nominated agencies right of reasonable access to the Supplier's premises and shall procure the Purchaser or its nominated agencies rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of this Contract as is reasonably necessary to migrate the services to the Purchaser or its nominated agencies.

10.7. Capacity Building

10.7.1. The Supplier shall design a comprehensive team/organization structure for the Purchaser to manage the system.

10.7.2. The Supplier shall carry out an analysis of the skill set requirement for the Purchaser to manage system and carry out the training & knowledge transfer required to manage system.

10.8. Project Documents and other artifacts & Standard Operating Procedures

10.8.1. The Supplier shall complete updating of all the project documents including Standard Operating Procedures and other artifacts and handover the same to Purchaser before transition.

10.9. General Obligations of the Supplier

10.9.1. The Supplier shall provide all such information as may reasonably be necessary to effect as seamless a handover as practicable in the circumstances to the Purchaser or its nominated agencies and which the Supplier has in its possession or control at any time during the exit management period.

10.9.2. For the purposes of GCC Clause on General Obligations of the Supplier, anything in the possession or control of any Supplier, associated entity, or subcontractor is deemed to be in the possession or control of the Supplier.

10.9.3. The Supplier shall commit adequate resources to comply with its obligations under the GCC Clauses on Exit Management.

10.10. Exit Management Plan

10.10.1. The Supplier shall provide the Purchaser with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to this Contract as a whole.

- a) a detailed program of the transfer process including details of the means to be used to ensure continuing provision of the services throughout the transfer process and till the time the proper arrangements are made by the Purchaser for provision of services to the stakeholders;
- b) plans for the communication with such of the Supplier's subcontractors, staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on Project's operations as a result of undertaking the transfer;
- c) (if applicable) proposed arrangements for the segregation of the Supplier's networks from the networks employed by the Purchaser and identification of specific security tasks necessary at termination;
- d) plans for provision of contingent support to the Purchaser and/or its nominated agencies for a reasonable period after transfer.

10.10.2. The Supplier shall re-draft/ update the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.

10.10.3. Each Exit Management Plan shall be presented by the Supplier to and approved by the Purchaser or its nominated agencies annually.

10.10.4. In the event of termination or expiry of this Contract, each Party shall comply with the Exit Management Plan.

10.10.5. During the exit management period, the Supplier shall use its best efforts to deliver the services.

10.10.6. Payments during the Exit Management period shall be made in accordance with the Terms of Payment Schedule.

10.10.7. This Exit Management plan shall be furnished in writing to the Purchaser or its nominated agencies within 90 days from the Effective Date of this Contract by the Supplier.

SPECIAL CONDITIONS OF CONTRACT

| 1.CONTRACT AND INTERPRETATION | |
|---|---|
| 1.1 Definitions | |
| GCC1.1.1 (e) (iii) | The Project Site(s) is/are the project site(s) or offices or departments or locations as mentioned in the Volume I of the RFP. |
| GCC1.1.1 (e) (ix) | <p>Contract Period is 5 years from the Go-Live of Phase I.</p> <p>The Contract shall continue in force until the Project and all the Services have been provided, as agreed in the contract, unless the Contract is terminated earlier in accordance with the terms set out in the Contract.</p> |
| 1.4 Notices | |
| GCC 1.4.1 | <p>Notices to Purchaser shall be addressed to: <u>Department of Local Government, Government of Punjab, (Acting through the Managing Director, Punjab Municipal Infrastructure Development Company (PMIDC)</u></p> <p>Notices to Supplier shall be addressed to: _____</p> <p>_____</p> <p>_____</p> |
| 1.6 Settlement of Disputes | |
| GCC 1.6.2.1 | <p>The rules of procedure for arbitration proceedings are:</p> <p>"All disputes and differences arising out of, or in any way touching or concerning this agreement (except those the decision whereof is otherwise hereinbefore provided for) shall be referred to the arbitration of It will be no objection to any such appointment that the arbitrator so appointed is a Government Servant, that he had to deal with the matter to which this agreement relates, and that in the course of his duties as such Government Servants, he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final and binding on the parties to the agreement."</p> <p>Arbitration proceedings will be held as per Arbitration and Conciliation (Amendment) Act, 2015 and at Chandigarh only.</p> |
| 2.SUBJECT MATTER OF CONTRACT | |
| 2.1 Scope of Services | |
| GCC 2.1.3 | The Supplier's obligations under the Contract will include all items required for successful implementation of the Project. |
| 2.2 Commencement and Duration of this Contract | |
| GCC 2.2.1 | Supplier shall commence work under this Contract from the effective date of this |

| | |
|---|--|
| | Contract |
| 2.4 Purchaser's Responsibilities | |
| GCC 2.4.5 | For detailed communication and power related specifications: Refer Volume I of the RFP |
| 3.PAYMENT | |
| 3.1 Contract Price | |
| GCC3.1.1 | The Contract price shall be INR.....only. |
| 3.2 Terms of Payment | |
| GCC3.2.4 | All payments shall be made by the Purchaser to the Supplier in Indian Rupees (INR) only |
| 4.INTELLECTUAL PROPERTY RIGHTS | |
| 4.1 Copyright | |
| GCC4.1.3 | <p>The Purchaser may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the Supplier's prior written consent, under the following circumstances:</p> <ul style="list-style-type: none"> a) to alleviate or otherwise address a natural or manmade disaster or epidemic that affects a large proportion of the citizens under the Government Punjab b) to assist the Department of Local Government, Government of Punjab, in making a transition from its existing system (s) to the new system (s) where such a transition would substantially disrupt the financial operations of the State Government in a way that is considered unacceptable by Department of Local Government (Government of Punjab) c) if directed, in writing, by the Government of India or any statutory agency to comply with any audit, legal or special investigative proceedings that may arise |
| GCC4.1.4 | <p>The Purchaser's and Supplier's rights and obligations with respect to Custom Software or elements of the Custom Software are as follows :</p> <ul style="list-style-type: none"> a) The Purchaser will hold the Intellectual Property Right and the Source code for all Custom Software or elements of the Custom Software. The Purchaser shall have the right to provide the software, free of cost, to any other State Government or Autonomous bodies like boards, corporations, Public Sector Units, Urban Local Bodies, etc. b) The Supplier's rights in relation to the Custom Software or elements of the Custom Software can be extended to commercial exploitation by re-licensing to third-party customers. |
| 4.2 Software License Agreements | |

| | |
|---|---|
| GCC4.2.1 (b) (ii) | The Software license shall permit the Software to be used or copied for use or transferred in case of replacement of computer |
| GCC4.2.1 (b) (vi) | The Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by support service suppliers or their subcontractors, exclusively for such suppliers or subcontractors in the performance of their support service contracts, subject to the same restrictions set forth in this Contract. |
| GCC 4.2.1 (b) (vii) | In addition to the persons specified in GCC Clause 4.2.1 (b) (vi), the Software may be disclosed to, and reproduced for use by, including but not limited to, the Urban Local Bodies (ULBs) in the State of Punjab, Department of Local Government, Government of Punjab, its subordinate and concerned Offices, Citizens, Employees Pensioners, Suppliers, Vendors, Contractors, etc. subject to the same restrictions as are set forth in this Contract. |
| 5. Supply, Installation, Testing, Commissioning and Acceptance of the System | |
| 5.2. Project Work Plan | |
| GCC5.2.2 | Within One week from the Effective Date of the Contract, the Supplier shall present a Detailed Project Work Plan to the Purchaser. The Purchaser shall, inform the Supplier of any issues in respects of which it considers that the Project Work Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Functional & Technical Requirements and/or the SCC (in this Clause 5.2.2 called "non-conformities" below). The Supplier shall, within three (3) days of such notification, correct the Project Work Plan and resubmit to the Purchaser. The Purchaser shall inform the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Work Plan is free from non-conformities. When the Project Work Plan is free from non-conformities, the Purchaser shall provide confirmation in writing to the Supplier. This approved Project Work Plan ("Final Project Work Plan") shall be contractually binding on the Purchaser and the Supplier. |
| GCC5.2.4 | The Supplier shall submit to the Purchaser the reports as mentioned in Volume I of the RFP. |
| 5.4. Technical Design and Architecture | |
| GCC5.4.2 | The Contract shall be executed in accordance with the edition or the revised version of all referenced codes and standards current at the date as specified in the GCC |
| GCC5.4.3.1 | The Supplier shall prepare and furnish to the Purchaser for review and approval/ sign-off all the documents/ Deliverables as provided in Volume I of the RFP. |
| 5.7. Implementation, Installation, and Other Services | |

| | |
|--------------------------------------|--|
| GCC 5.7 | Implementation, Installation and Other Services shall be delivered by the Supplier as defined in Volume I of the RFP subject to Final Project Work Plan. |
| 5.8. Inspections & Tests | |
| GCC 5.8 | <p>Inspections and tests shall be conducted by the Supplier as defined in Volume I of the RFP.</p> <p>Additionally the Supplier is also required to provide CERT-IN empanelled third party agency's testing certificates for the application developed. Supplier needs to get the approval of the Purchaser over the appointment of Third Party Testing Agency</p> <p>Purchaser at its own cost may also engage any third party agency and get the application tested.</p> |
| 5.10.4. Partial Acceptance | |
| GCC 5.10.4.1 | In addition to what has been prescribed in the Contract, Operational Acceptance Tests (or Partial Acceptance) would also include the criteria as provided in the Volume I of the RFP. Accordingly to obtain the Operational Acceptance for the Sub-System (including the activities to be carried out in Phase I and/or Phase II), Supplier has to ensure meeting out the all the criteria as provided in this Contract and activities as detailed out in Volume I of the RFP. |
| 6. Protection and Limitations | |
| 6.1. Warranties | |
| GCC 6.1.2.4 | The Warranty Period shall begin from the date of Go Live of the Phase-1 of System and extend for 5 (five) years |
| GCC 6.1.2.10 | During the Warranty Period, the Supplier must commence the work necessary to remedy defects or damage within Three (3) days of notification. |
| GCC6.1.3. | <p>Liquidated damages/ Penalty shall be assessed and imposed at 0.05% percent of the Contract Price per week of delay on account of the following:</p> <ul style="list-style-type: none"> a) Delays in submission of any Deliverable to the Purchaser as envisaged in Volume I of RFP subject to timelines as agreed and mentioned in Final Project Work Plan. b) Any activity/ work which is either not complete or not completed satisfactorily as per the timeline (as mentioned in Final Project Work Plan) or the quality of Deliverable. c) Not assigning adequate and required resources in required time as per the Final Project Work Plan. d) Not engaging resources on a dedicated basis, even when required. <p>If the delay is beyond 10 weeks for any of the above then the Purchaser may rescind the Contract and shall be free to get it done from other Supplier at the risk and costs of the appointed Supplier.</p> |

| | |
|---|---|
| | <p>The maximum Liquidated damages/ Penalty on account of the above only would be limited to Ten (10%) percent of the Contract Price, or relevant part of the Contract Price if the Liquidated damages/ Penalty apply to a Subsystem.</p> <p>However the above limit of 10% would not include any deductions for the Service Levels for Operation & Maintenance (O&M) Phase, which have been provided separately in Annexure I to this Contract.</p> |
| 7. Risk Distribution | |
| 7.1. Ownership | |
| GCC7.1.4 | <p>(a) At the end of the specified O&M period, the Purchaser may exercise its option to renew the O&M services with the existing Supplier or decide to undertake these activities on its own. In case the Purchaser decides to continue with the existing Supplier, Purchaser will have the option to renew the contract for O&M Services every year for a maximum of 3 (three) years or as per the mutually agreed terms at an appropriate time.</p> <p>(b) If Hand over is required to the Purchaser/any other vendor at the end of the existing O&M period or otherwise, the Supplier would be responsible for handing over the complete know-how, documentation records, software logs, source code and all such relevant items that maybe necessary for the transition process</p> |
| 7.2. Insurance to be taken by Supplier | |
| GCC 7.2.1 | <p>The risks and the coverage shall be as follows:</p> <p>(a.) professional liability insurance, with a minimum coverage of <i>an amount not less than the contract price</i>;</p> <p>(b.) employer's liability and workers' compensation insurance in respect of the Personnel of the Supplier and of any Subcontractor, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(c.) "Maximum value of the software developed by the Supplier, hardware infrastructure components (computing equipment, network equipment, etc.) procured in the name of Purchaser or Supplier for the risk including theft, fire, lightning, explosion/implosion, earthquake, flooding, storm, cyclone, typhoon, tempest, hurricane, tornado, subsidence, landslide, riot strike, malicious damage etc.</p> |

ANNEXURE I- FORMATS

1. Terms of Payment schedule

a) The following shall be the payment schedule for the Supplier based on actual delivery:

Table 1: Payment Schedule

| S. No. | Payment Milestones | % of Respective Category Amount as agreed in Contract | Reference for Category Amount – “Format 5.4.4 Category Wise Summary C1” |
|---|--|---|---|
| (1) Supply and Installation of Hardware | | | ‘C10’ |
| 1 | Installation and commissioning of Hardware | 80% | |
| | • Sub-milestone 1- DC (50%) | | |
| | • Sub-milestone 2-NDR (30%) | | |
| 2 | On Operational Acceptance-pilot of sub-phase-I | 20% | |
| (2) Supply and Installation of Software | | | ‘C11’ |
| 3 | Standard software/ System software excluding application software/COTS (On successful installation and configuration) | 100% | |
| | • Sub-milestone 1- DC (70%) | | |
| | • Sub-milestone 2-NDR (30%) | | |
| (3) Implementation Services | | | ‘C9’+ ‘C12’ |
| 4 | Advance against Bank Guarantee (2% to be adjusted in each of next 5 payments) | 10% | |
| 5 | On Approval of Design Document (Including FRS, SRS, overall solution architecture, deployment architecture, network & Security architecture, Integration architecture, data migration methodology, etc.) | 20% | |
| 6 | Pilot (Module, location wise payment) | 28% | |
| 7 | Phase-I (Module, location wise payment) | 26% | |
| 8 | Phase-II (Module, location wise payment) | 26% | |
| (4) Operation & Maintenance Services | | | ‘C22’ |
| 9 | Operational & Maintenance for Phase-I (Year 2 to Year 6) | 60% • Sub-phase 1 -20% - in 20 quarters equally • Sub-phase 2 -20% - in 19 quarters equally • Sub-phase 3 -10% - in 18 quarters equally • Sub-phase 4 -10% - in 16 quarters equally | |

| S. No. | Payment Milestones | % of Respective Category Amount as agreed in Contract | Reference for Category Amount – “Format 5.4.4 Category Wise Summary C1” |
|--|--|---|---|
| 10 | Operational & Maintenance for Phase-II (Year-3 to Year 6) | 40% 16 Equal Quarterly Payments | |
| (6) Digitization | | | |
| 11 | Payment against digitization will be made quarterly based on actual no. of records digitized | Quarterly Payments based on actual work approved by Purchaser | ‘C13’ |
| <i>Note: Supplier shall ensure that sum of C10+C11 (S. No. 1, 2 and 3) must not exceed 25% of total cost of project. In case of non-compliance of this condition, Purchaser reserves the right to disqualify the bid</i> | | | |

- b) Details of payment calculation related S. No. 6, 7, and 8 of above table
- i. Considering the case when any module (or modules) could not implemented due to unavoidable circumstances, Supplier shall be paid on basis of module implemented. Percentage wise weightage is given in table below:

Table 2: Details of Payment related to S. No. 6, 7, and 8

| S. No. | Module | Locations/offices | | | | Total Payment for all locations | | |
|--------|----------------------------|-------------------|-------|---------|----------|---------------------------------|---------|----------|
| | | Total | Pilot | Phase-I | Phase-II | Pilot | Phase-I | Phase-II |
| 1 | Birth & Death Certificates | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 2 | Water Supply & Sewerage | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 3 | Licenses & Permits | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 4 | Sanitation & Public Health | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 5 | Rent & Fee Collection | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 6 | Fire Safety Services | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 7 | Advertisement & Hoardings | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 8 | Property Tax | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 9 | Transport | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 10 | Library Management | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 11 | Miscellaneous Functions | 165 | 5 | 9 | 151 | 1.0% | 1.0% | 1.0% |
| 12 | Land Acquisition | 28 | 1 | 4 | 23 | 1.0% | 1.0% | 1.0% |
| 13 | Sale of Plots / Flats | 28 | 1 | 4 | 23 | 1.0% | 1.0% | 1.0% |
| 14 | Property/Asset Management | 28 | 1 | 4 | 23 | 1.0% | 1.0% | 1.0% |
| 15 | Works Management | 28 | 1 | 4 | 23 | 1.0% | 1.0% | 1.0% |
| 16 | Secretarial Functions | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 17 | Legal Matters | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 18 | RTI | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 19 | RTS | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 20 | MIS and Dashboard | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |

| S. No. | Module | Locations/offices | | | | Total Payment for all locations | | |
|--------------|---|-------------------|-------|---------|----------|---------------------------------|--------------|--------------|
| | | Total | Pilot | Phase-I | Phase-II | Pilot | Phase-I | Phase-II |
| 21 | Finance & Accounts | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 22 | Budget Management | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 23 | Employee Services | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 24 | Payroll & Pension | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 25 | Complaints & Grievances | 193 | 6 | 13 | 174 | 1.0% | 1.0% | 1.0% |
| 26 | Management Functions at Secretariat & Headquarter | 2 | 2 | 0 | 0 | 2.0% | 0.0% | 0.0% |
| 27 | Management Functions at Regional DDR offices | 6 | 1 | 2 | 3 | 1.0% | 1.0% | 1.0% |
| Total | | | | | | 28.0% | 26.0% | 26.0% |

- ii. Further, there may be another case when a module (or modules) couldn't be implemented at particular ULBs/locations. In such cases Supplier shall be paid on pro-rata basis for no. of locations implemented by Supplier.
- iii. Illustration for payment calculation for S. No. 6, 7 and 8 of Table 1:
- Illustration 1: If Supplier gets Operational Acceptance from Purchaser for pilot implementation of module "Water Supply and Sewerage" in 4 locations out of 5 pilot locations then he would be paid for an amount equal to
 - = Percentage of payment belonging to module for pilot X No. of locations of implementation/ total no. of pilot locations
 - = $1 \times 4 / 5$
 - = 0.8% of total cost of Implementation Services
 - Illustration 2: If Supplier gets Operational Acceptance from Purchaser for 7 phase-I locations for module "Water Supply and Sewerage" out of total 9 phase –I locations then he would be paid for an amount equal to
 - = Percentage of payment belonging to module for Phase-I X No. of locations of implementation/total no. of Phase-I locations
 - = $1 \times 7 / 9$
 - = 0.778 % of total cost of Implementation Services
- c) Details of payment calculation related to Operation & Maintenance (S. No. 9 of Table 1):
Payment related to Operation & Maintenance phase has been divided into two components:
- Operation & Maintenance Phase-I (60% of total Operation & Maintenance Cost):
 - Operation & Maintenance Phase-II (40% of total Operation & Maintenance Cost)
- i. Operation & Maintenance Phase-I (60% of total Operation & Maintenance Cost)
- This has further sub-categorised into 4 sub-phases:

- a. Sub-Phase-1: 20% of total Operation & Maintenance Cost will be paid over a period of 20 quarters of operation & maintenance phase. Each quarter will have equal weightage i.e. $=20/20=1\%$
 - b. Sub-Phase-2: 20% of total Operation & Maintenance Cost will be paid over a period of 19 quarters of operation & maintenance phase. Each quarter will have equal weightage.
 - c. Sub-Phase-3: 10% of total Operation & Maintenance Cost will be paid over a period of 18 quarters of operation & maintenance phase. Each quarter will have equal weightage.
 - d. Sub-Phase-4: 10% of total Operation & Maintenance Cost will be paid over a period of 19 quarters of operation & maintenance phase. Each quarter will have equal weightage.
- No. of quarters are calculated based on timelines as given in the RFP. In case of any delay in operational acceptance of sub-phases due to Supplier, payment of delayed period would not be paid. For example, in case of delay of 2 quarters in operational acceptance of sub-phase-2:
 - a. due to Supplier- Supplier shall be paid for remaining 17 quarters. Payment of 2 quarter will not be paid.
 - b. not due to Supplier- Supplier shall be paid 20% of total operation & maintenance cost over a period of remaining 17 quarters equally. Payment of 2 quarters shall be adjusted equally in remaining 17 quarters.
- ii. Operation & Maintenance Phase-II (40% of total Operation & Maintenance Cost): This amount will be paid in 16 quarters equally (i.e. From year 3 to Year 6). In case of delay in rolling out the application into rest of the State:
 - a. due to Supplier- Supplier shall be paid for remaining quarters of operation & maintenance period (i.e. till 5 years of operational acceptance of sub-phase-1 pilot). Payment of delayed period will not be paid.
 - b. not due to Supplier- Supplier shall be paid 40% of total operation & maintenance cost over a period of remaining quarters equally subject to Purchaser's satisfaction that Supplier has made all its effort towards rolling out the application in the State.

2. Installation Certificate Form

Date: [*insert: date*]

Contract: ***"Implementation of e-Governance in Urban Local Bodies (ULBs) and Department of Local Government, Punjab"***

To:[*insert: name and address of Supplier*]

Dear Sir or Madam:

Pursuant to GCC Clause 5.9 (Installation of the System) of the Contract entered into between yourselves and the [*insert: name of Purchaser*] (hereinafter the "Purchaser") dated [*insert: date of Contract*], relating to the [*insert: brief description of the Project*], where by notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component: [*insert: description*])
2. Date of Installation: [*insert: date*]

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve User Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the
Purchaser

Signed:

Date:

In the capacity of: [*state: "Project Manager" or state the title of a higher level authority in the Purchaser's organization*]

3. Operational Acceptance Certificate Form

Date:[*insert: date*]

Contract: ***"Implementation of e-Governance in Urban Local Bodies (ULBs) and Department of Local Government, Punjab"***

To:[*insert: name and address of Supplier*]

Dear Sir or Madam:

Pursuant to GCC Clause 5.10 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the [*insert: name of Purchaser*](hereinafter the "Purchaser") dated [*insert: date of Contract*], relating to the [*insert: brief description of the Project*], we here by notify you that the System(or the Subsystem or major component identified below) has successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Purchaser hereby takes over the System (or the Subsystem or major component identified below) on the date mentioned below.

1. Description of the System (or Subsystem or major component): [*insert: description*]
2. Date of Operational Acceptance: [*insert: date*]

This letter shall not relieve you of your remaining performance obligations under the Contract of your obligations during the Warranty Period.

For and on behalf of the
Purchaser

Signed:

Date:

In the capacity of: [*state: "Project Manager" or higher level authority in the Purchaser's organization*]

4. Change Order Procedure and Form

Date: [*insert: date*]

Contract: ***"Implementation of e-Governance in Urban Local Bodies (ULBs) and Department of Local Government, Punjab"***

CONTENTS

General

Change Order Log

Change Form

General

This section provides samples of procedures and forms for carrying out changes to the System during the performance of the Contract in accordance with GCC Clause 8.1 (Changes to the System) of the Contract.

Change Order Log

The Supplier shall keep an up-to-date Change Order Log to show the current status of Change Requests and Changes Orders authorized or pending. Changes shall be entered regularly in the Change Order Log to ensure that the log is kept up-to-date. The Supplier shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Purchaser.

Change Form

| CHANGE CONTROL NOTE | | CCN NUMBER: |
|---------------------|--|-------------|
| Part A: Initiation | | |
| Title: | | |

| | | |
|---|--|----------------|
| Originator: | <u>Name and Designation of the Person</u> | |
| 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 Supplier/ Purchaser | Date: | |
| Name and Designation : | | |
| Signature: | | |
| Received by the Supplier/ Purchaser | Date: | |
| Name and Designation: | | |
| Signature: | | |
| CHANGE CONTROL NOTE | | NUMBER: |
| Part B : Evaluation | | |
| (Identify any attachments as B1, B2, and B3 etc.) | | |
| Changes to Services, charging structure, payment profile, documentation, training, service levels and component working arrangements and any other contractual issue. | | |
| Brief Description of Solution: | | |
| Impact: | | |

| | |
|--|---------------------|
| | |
| Deliverables: | |
| | |
| Timetable: | |
| | |
| Charges for Implementation (if any): (including a schedule of payments) | |
| Other Relevant Information: (including value-added and acceptance criteria) | |
| Authorized by the Supplier/ Purchaser | Date: |
| Name: | |
| Signature: | |
| CHANGE CONTROL NOTE | CCN NUMBER : |
| Part C : Authority to Proceed | |
| Implementation of this CCN as submitted in Part A, in accordance with Part B is: (tick as appropriate) | |
| Approved | |
| Rejected | |

| | |
|---|-------------------------|
| Requires Further Information (as follows, or as Attachment 1 etc.) | |
| For the Purchaser | For the Supplier |
| Signature | Signature |
| Name | Name |
| Title | Title |
| Date | Date |

5. Final Scope of Work

(Final Scope of Work shall be provided here)

6. Service Level Requirements

(Final Service Level Requirements shall be provided here)