Request for Proposal for Selection of System Integrator for Implementation of Intelligent Transit System (ITS) Solutions in Jabalpur

Volume 3 – Draft Master Service Agreement

RFP Ref. No – JSCL/2018/299/ADM/113
Date – 28 March 2018

JABALPUR
SMART CITY LIMITED

AGREEMENT

BETWEEN

JABALPUR SMART CITY LIMITED (JSCL)

AND

[NAME OF ITS SYSTEM INTEGRATOR]

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This agreement ("Agreement") is entered into on the _____ day of _____*(Month)*, Two Thousand and Eighteen,

BETWEEN

Jabalpur Smart City Limited, having its registered office at Jabalpur Smart City Limited, Smart City Office, Manas Bhawan, Wright Town, Jabalpur , Madhya Pradesh, 482002, India (hereinafter referred to as "**JSCL**" which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the **First Part**;

AND

_____, a company registered under the _____, having its registered office at _____ (hereinafter referred to as "**ITS System Integrator**" which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the **Second Part**.

WHEREAS

A. JSCL intends to implement Intelligent Transit System solutions in Jabalpur;

B. JSCL had invited proposals for Implementation of Intelligent Transit System solutions in Jabalpur, vide Request for Proposal ("RFP") dated _____;

C. M/s _____, among others, had submitted its proposal in response to the aforesaid RFP and emerged as Successful Bidder after evaluation of proposals, as per the procedure specified in the RFP;

D. JSCL has accepted the proposal of M/s _____ ("ITS System Integrator") and has issued Letter of Acceptance dated _____ in favour of the ITS System Integrator;

E. The Parties have now agreed to enter into this Agreement to record their entire understanding with regard to the subject matter hereof, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Article 1 – Definitions

1.1. Definitions:

In this Agreement, the following words and expressions shall have the meaning hereinafter respectively ascribed to them hereunder:

"Agreement" or **"Contract"** shall mean this agreement including the Appendices hereto and any amendments made thereto in accordance with the provisions contained in this agreement.

"Agreement Date" shall mean the date of signing of this Agreement by the Parties.

"**Applicable Laws**" shall mean all laws, promulgated or brought into force and effect by the Government of India and/or Government of Madhya Pradesh including regulations and rules, notifications made thereunder, and any judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"**Applicable Permits**" shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with discharging Scope of Work during the subsistence of this Agreement.

"AMC Charges" shall mean the charges specified in Schedule C, payable to the ITS System Integrator for discharging its AMC Services in accordance with this Agreement.

"Automatic Fare Collection System" or "AFCS" shall mean the electronic ticketing system and other payment system to be provided by the ITS System Integrator in accordance with the terms of this Agreement, and shall be deemed to include all Devices, Software, System Documents, System Data, Firmware, Spares Inventory, Rotables

Inventory, infrastructure, hardware, equipment, systems and other components as modified or added from time to time, in accordance with this Agreement, as may be necessary or required to undertake and provide such electronic ticketing and payment systems.

"Bus Depot" or **"Depot"** shall mean the bus depots to be covered under the Project, as determined by JSCL, from time-to-time.

"Buses" shall mean buses operated by or on behest of JCTSL.

"Cardholder" shall mean a person who has been issued with a Smartcard.

"Contract Period" shall have the meaning ascribed to the term in Article 3 of this Agreement.

"**Cure Period**" shall mean period of 60 (Sixty) days or such further period as may be allowed by the aggrieved Party to the Party in breach of this Agreement for curing the breach and shall commence from the date on which a notice is delivered by the aggrieved Party to the Party in breach asking the latter to cure the breach(s) specified in such notice.

"**Default Charges**" shall have the meaning ascribed thereto in Article

"Device & Software IP" shall have the meaning ascribed to the term in Article 4.1 (c) of this Agreement.

"Encumbrances" shall mean any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Agreement.

"Expiry" shall mean the expiry of the Agreement by efflux of time.

"Expiry Date" shall mean date on which this Agreement expires by efflux of time.

"Firmware" shall mean a set of coded instructions embedded within a Device or component of a Device that performs functions or provides data to enable the Device to operate in a specified manner.

"**GOI**" shall mean Government of India.

"**GOMP**" shall mean the Government of Madhya Pradesh.

"Go-Live" shall mean

   i. Successful deployment, commissioning and UAT of the ITS application modules implemented

   ii. Procurement, deployment and commissioning of the hardware items and desired connectivity at the identified locations required to support the functioning of ITS modules

   iii. Acceptance/Sign-off from Purchaser or its constituted committees or representatives

"**Governmental Agency**" shall mean GOI, GOMP or any Ministry, Department, Commission, Board, JSCL, instrumentality or agency, under the control of GOI or GOM having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of Parties under or pursuant to this Agreement.

"**INR, Re. or Rs.**" shall mean the lawful currency of the Republic of India.

"**Intellectual Property**" or "**IP**" shall mean any and all industrial and intellectual property rights of whatever nature, in India and throughout the world, whether registrable or not, and whether now known or devised in the future, including rights in respect of or in connection with:

(a) patents, copyright, registered or unregistered trademarks or service marks, trade names, business names, brand names, indications of source or appellations of origin, designs and commercial names and designations, circuit layouts and database rights;

(b) ideas, processes, methodologies, concepts, techniques, inventions, discoveries, trade secrets, know-how, confidential information and scientific, technical and product information; and

(c) any rights to apply for or renew the registration of any such rights.

"**ITS Solutions**" or "**ITS Components**" shall mean the smart intelligent transit system solutions or components as described in Section 2 of RFP Volume 2.

"**ITS System Integrator**" shall mean the the entity selected by JSCL for implementation, operation and maintenance of the Project pursuant to competitive bidding process.

"**ITS System Integrator's Event of Default**" shall have the meaning ascribed to the term in Article 8.1 of this Agreement.

"**Material Adverse Effect**" shall mean, when used in connection with a Party to this Agreement,, any change or effect that is materially adverse to the business, financial condition or results of operations of such entity and its Affiliates, taken as a whole. For the purposes of this definition, "Affiliates" shall mean any company, existing now or in the future, owning or owned by, either directly or indirectly, or controlling, controlled by or under common control with either Party.

"**Project**" shall mean Implementation of Intelligent Transit System solutions in Jabalpur.

"**Request for Proposal**" or "**RFP**" shall mean the request for proposal document dated _____ issued by JSCL for Implementation of Intelligent Transit System solutions in Jabalpur.

"**Site**" shall mean the sites and Vehicles where any aspect of the Scope of Services is discharged.

"**Smartcard**" or "**Smart Card**" shall mean an electronic contactless media used to interact with the AFCS.

"ITS Application" shall mean the applications, the operating system and associated components to be developed for Smartcards and other ITS components as described in RFP Document by or on behalf of the ITS System Integrator in terms of this Agreement.

"Software" shall mean a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

"Source Code" shall mean each item of the Software, expressed in human readable language which is reasonably necessary for understanding, maintaining, correcting and enhancing each such item.

"**Scope of Work**" or **"Scope of Services"** shall have the meaning ascribed to the term in Article 2.3 of this Agreement.

"Standards of Performance" shall mean the minimum standards to be adhered to by ITS System Integrator, as set out in Schedule E during the Contract Period.

"System" shall mean Intelligent Transit System or ITS.

"Payments to ITS System Integrator" shall mean the payment charges specified in Schedule C, payable to the ITS System Integrator for Implementation of Intelligent Transit System solutions in Jabalpur in accordance with this Agreement.

"Technical Proposal" shall mean the technical proposal submitted by the ITS System Integrator as a part of the RFP process.

"Technical Specification" shall mean the specification of Hardware/Software items and Software specified in RFP Volume 2.

"Termination" shall mean the termination of this Agreement prior to the expiry of the Contract Period in accordance with the provisions of the Agreement.

"Termination Date" shall mean the effective date of Termination as mentioned and contained in the Termination Notice in accordance with the provisions of Article 8.4.

"Termination Notice" shall mean the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.

1.2.   Interpretations

In this Agreement, unless the context otherwise requires,

   (a) the words importing singular shall include plural and vice versa;

   (b) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

   (c) the words "include" and "including" are to be construed without limitation;

   (d) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;

(e) In case of ambiguities or discrepancies in this Agreement, the following shall apply, unless otherwise decided by JSCL:

    i.   between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;

    ii.   between the Articles/Clauses and the Schedules, the Articles/Clauses shall prevail;

    iii.   between any value written in numerals and that in words, the latter shall prevail.

2. Article 2 – Award of Contract & Scope of Work

2.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, JSCL hereby awards the Contract to ITS System Integrator and ITS System Integrator hereby accepts the award.

2.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, ITS System Integrator shall be obliged to undertake the following in accordance with the Applicable Laws and the Applicable Permits:

(a) Discharge services as set forth in Article 2.3 during the Contract Period; and

(b) Perform and fulfil all of ITS System Integrator's obligations in accordance with this Agreement.

2.3. Scope of Work

Subject to and in accordance with the terms and conditions set forth in this Agreement, ITS System Integrator accepts and agrees to provide the services as set out in Schedule A ("Scope of Work") and elsewhere envisaged under this Agreement.

2.4. Change of Scope

JSCL may require ITS System Integrator to undertake additional works including but not limited to upgrading the hardware etc. and to provide services which are beyond the Scope of Work as contemplated and provided for in this Agreement ("Additional Work"). In the event JSCL requires ITS System Integrator to carry out Additional Work, ITS System Integrator shall in the first instance submit to JSCL the charges that it proposes for undertaking such Additional Work along with other terms and conditions, if any. The ITS System Integrator shall carry out the Additional Work in accordance with the terms and conditions mutually agreed upon.

Notwithstanding the above, it is clarified that any incidental activities/components required for implementation of Scope of Work will have to be carried out by ITS System Integrator at no extra cost.

3. Article 3 - Contract Period

3.1. This Agreement shall come into effect on execution hereof and, unless terminated earlier or extended in accordance with the provisions hereof, shall be valid for five years from the date of Go-Live;

Provided that in the event of the Contract being extended beyond the aforesaid period in accordance with the provisions hereof, the Contract Period shall include the period/ aggregate period by which the Contract is so extended;

Provided further that in the event of Termination, the Contract Period shall mean and be limited to the period commencing from the Agreement Date and ending on the Termination Date.

The Contract may be renewed by JSCL, at its sole and absolute discretion, on mutually agreed terms and conditions.

4. Article 4 – Obligations of Parties

4.1. Obligations of ITS System Integrator

ITS System Integrator shall observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the obligations set forth in this Article:

(a) To perform the Scope of Work as set out in Article 2, for implementing the System;

(b) To be responsible for compliance with Applicable Laws;

(c) To procure, as required, the appropriate proprietary rights, licences, agreements and permissions for, *inter alia*, materials, methods, processes, software, operating systems, designs, trademarks, documents and systems used or incorporated into the ITS Components such as ETM devices, On-board Card Validators, Smart Cards and accessories, PIS display, PA system, Software Development Kit and ITS Applications ("**Device & Software IP**");

(d) The ITS System Integrator shall grant to JSCL, a non-exclusive, irrevocable, perpetual and royalty-free right to use the Device & Software IP for the Project, commencing on the Agreement Date or on the date the same get supplied by ITS System Integrator, whichever is earlier.

(e) To provide Performance Security in the form of Bank Guarantee to JSCL, in accordance with Article 7;

(f) To carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and to observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods;

(g) To keep sufficient accessories, spares, parts, etc., while discharging Scope of Work;

(h) To provide onsite support for the ITS solutions;

(i) To provide necessary information and reports including those pertaining to problems relating to ITS Components to JSCL and the entities authorised by JSCL;

(j) To be responsible and liable for the security of the ITS Components while the same are in possession and/or custody of ITS System Integrator for repair and maintenance. The ITS System Integrator shall bear the costs of repair or replacement of ITS Components in such cases;

(k) To reasonably cooperate with JSCL and other stakeholders concerned in relation to the matters covered under this Agreement; and

(l) Any service agreement or sub-contract by the ITS System Integrator may be entered into by ITS System Integrator, only with prior approval of JSCL. However, the responsibility to meet Standards of Performance will continue to be that of the ITS System Integrator.

4.2. Obligations of JSCL

4.2.1. JSCL shall observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the obligations set forth in this Article:

(a) To release payments to ITS System Integrator in accordance with the Agreement

(b) To bear the costs of repair or replacement of ITS Components for any damage or loss that is not attributable to the ITS System Integrator; and

(c) To reasonably cooperate with the ITS System Integrator to enable it to render its services in terms of the Agreement.

5. Article 5 – Personnel

5.1. The ITS System Integrator shall deploy such qualified and experienced personnel as may be required to carry out its Scope of Work.

5.2. It is expressly understood and agreed by ITS System Integrator that no employee or worker of the ITS System Integrator or its sub-contractor(s) shall be considered to be an employee of JSCL for any purpose whatsoever. ITS System Integrator shall be solely responsible for all such employees and workers, their wages, statutory payments, taking out and maintaining ESIC/ other insurance etc. and furnish to JSCL evidence of its compliance from time-to-time as required by them. JSCL shall not be liable for any payment or claim or compensation (including but not limited to compensation on account of injury or death or termination) of any nature to such employees or workers at any point of time during the currency of this Agreement or after its Termination.

5.3. In the event that any of the personnel deployed by or at the behest of ITS System Integrator is reasonably determined by JSCL to be incompetent, guilty of misbehaviour or misconduct or incapable in discharging the assigned responsibilities, JSCL may request the ITS System Integrator to forthwith provide a replacement of such personnel with personnel having suitable qualifications and experience for the assigned responsibilities and the ITS System Integrator shall deploy a suitable replacement as soon as possible.

The ITS System Integrator shall have no claim for additional costs arising out of or incidental to any removal and/ or replacement of personnel.

6. Article 6 – Payments to ITS System Integrator

6.1. Subject to Article 6.2 hereunder and other terms of this Agreement and during the Contract Period, JSCL shall make payments to the ITS System Integrator, as specified in Schedule C of this Agreement.

6.2. ITS System Integrator shall be responsible for adhering to the minimum Standards of Performance while performing its Scope of Work, failing which it shall be liable for deduction of default charges from its payment as specified in Schedule E ("Default Charges").

6.3. **Payment of CAPEX charges:**

ITS System Integrator shall be entitled to invoice JSCL at the time of completion of each Milestone as described on Payment Milestones as per Section 4 of RFP Volume 1. The Payment for each invoice shall be due and payable to the ITS System Integrator within 30 (thirty) days from the date of receipt of invoice, subject to deduction of liquidated damages, if any, as set out in Schedule E of this Agreement.

6.4. **Payment for OPEX Charges:**

(a) ITS System Integrator shall submit invoice to JSCL on a quarterly basis as described on Payment Milestones as per Section 4 of RFP Volume 1.

(b) Within 30 days of receiving invoice from the ITS System Integrator, JSCL shall release payment to the ITS System Integrator after deduction of Default Charges, if any.

7.   Article 7 - Performance Security

7.1.   ITS System Integrator has, for due and faithful performance of its obligations under this Agreement, provided to JSCL, a Performance Security in the form of bank guarantee from a Bank for a sum of Rs. _____ (Rupees _____) [equal to 10% of the contract value], valid from the date of issue of such bank guarantee till 6 months beyond the Expiry Date.

7.2.   A copy of Performance Security bank guarantee is provided in Schedule D of this Agreement.

7.3.   JSCL shall release the Performance Security bank guarantee to ITS System Integrator upon expiry of the bank guarantee or within six months after the Termination Date, as the case may be.

7.4.   JSCL shall have the right to invoke the Performance Security bank guarantee in case of Termination of the Contract due to an ITS System Integrator's Event of Default, as agreed pre-estimated liquidated damages.

8.   Article 8 – Events of Default & Termination

8.1.   ITS System Integrator's Events of Default

The following event(s) shall constitute an event of default of ITS System Integrator (an "ITS System Integrator's Event of Default"):

(a) ITS System Integrator fails to adhere to the Standards of Performance as provided for in Schedule E hereof and that results in an event which has been termed as an ITS System Integrator's Event of Default therein; or

(b) ITS System Integrator is in breach of this Agreement and such breach has a Material Adverse Effect on JSCL; or

(c) The transfer of all or material part of the assets or undertaking of ITS System Integrator except where such transfer, in the reasonable opinion of JSCL, does not materially affect the financial and technical capability of ITS System Integrator to perform its obligations under this Agreement; or

(d) ITS System Integrator is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for ITS System Integrator or for any of its property that, in the opinion of JSCL, has a material bearing on its ability to discharge its Scope of Work as contemplated in the Agreement; or

(e) ITS System Integrator is ordered to be wound up by a court of law, except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of ITS System Integrator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of ITS System Integrator under this Agreement and the amalgamated or reconstructed entity in the reasonable opinion of JSCL has the technical capability, operating

experience and financial standing necessary for the substantial performance of its obligations under this Agreement and this Agreement remains in full force and effect: or

(f) ITS System Integrator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement; or

(g) ITS System Integrator suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect and allows it to be continued for a period of 30 (thirty) days; or

(h) Any other event or occurrence which is referred to as ITS System Integrator's Event of Default, in the Agreement.

8.2. JSCL's Event of Default

The following event(s) shall constitute an event of default of JSCL (an "JSCL's Event of Default") unless such JSCL's Event of Default has occurred as a result of ITS System Integrator's Event of Default or a Force Majeure Event:

(a) JSCL is in breach of this Agreement and such breach has a material impact on the performance of obligations by the ITS System Integrator under this agreement; or

(b) JSCL fails to make the payment to the ITS System Integrator, as per provisions of this Agreement, for a continuous period of six months; or

(c) JSCL repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement.

8.3. Upon occurrence of an ITS System Integrator's Event of Default (as provided in Article 8.1) or JSCL's Event of Default (as provided in Article 8.2), the Parties agree that JSCL or ITS System Integrator, whosoever is not in default ("Non-Defaulting Party") shall, following the Cure Period and subject to Article 8.4, be entitled to terminate this Agreement forthwith by issuing a 30 (Thirty) days' notice ("Termination Notice") to the party in default ("Defaulting Party") and upon expiry of such notice period, this Agreement shall stand terminated.

8.4. Prior to issuing a Termination Notice, the Non-Defaulting Party will, by a notice in writing inform the Defaulting Party of its intention to issue the Termination Notice (the "Preliminary Notice") and provide a Cure Period to the Defaulting Party to make its representation, if any, against such intended Termination Notice and/or take corrective action, if any. After the expiry of Cure Period, Non-Defaulting Party may issue the Termination Notice after giving due consideration to any representation made by Defaulting Party along with evidence thereof and/or corrective action taken by Defaulting Party, prior to issuing any such Termination Notice.

8.5. Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to Article 8.3, it shall issue Termination Notice setting out:

(a) in sufficient detail the underlying Event of Default;

(b) the Termination Date, in accordance with Article 10.3; and

(c) any other relevant information.

8.6. Obligation of Parties

Following the issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;

In case of termination of the Agreement, if so desired by JSCL, ITS System Integrator shall provide any or all the services envisaged under this Agreement for a period of 6 (six) months from the date of such Termination or till a suitably experienced agency, or any other alternate arrangement replaces ITS System Integrator, whichever is earlier, or as may be mutually agreed by the Parties. Payments shall be duly paid to ITS System Integrator in accordance with and at the rates prescribed in this Agreement by JSCL, for the work performed by the ITS System Integrator.

8.7. Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Defaulting Party which has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the Non-defaulting Party at any time before the Termination occurs, the Termination Notice may be withdrawn by the Party which had issued the same.

8.8. Upon Termination of this Agreement for any reason whatsoever by any of the Parties:

(a) Notwithstanding anything to the contrary contained in this Agreement, any Termination, pursuant to the provisions of this Agreement, shall be without prejudice to accrued rights of any of the Parties including payments for periods prior to the effectiveness of the Termination, each Party's right to claim and recover damages and other rights and remedies which a Party may have under the Agreement or in law. All rights and obligations of each Party under this Agreement shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

(b) On Termination of this Agreement, notwithstanding anything to the contrary contained in this Agreement, JSCL shall be within its rights to appoint any other agency to replace ITS System Integrator and provide the services on such terms and conditions as JSCL may decide, at its sole discretion.

8.9.   Upon Termination of the Agreement or upon its expiry due to efflux of time, the ITS System Integrator shall hand over hosting infrastructure/any other project assets in the possession of ITS System Integrator and project related operational and transaction records and documentation and other service-related data (collectively, the "Project Data") to JSCL. ITS System Integrator may, as requested by JSCL, also provide maintenance support for ITS components on mutually agreed terms. Additionally, the following shall be applicable:

(a) Upon Termination due to ITS System Integrator's Event of Default: JSCL shall have a right to forfeit the Performance Guarantee amount as mutually agreed pre-estimated liquidated damages.

(b) Upon Termination due to JSCL's Event of Default: JSCL shall return the Performance Guarantee to the ITS System Integrator.

(c) Upon Termination due to Force Majeure: JSCL shall return the Performance Guarantee to the ITS System Integrator.

9.   Article 9 – Indemnity

9.1.   ITS System Integrator shall indemnify, defend and hold JSCL, including their officers, servants and agents (the "Indemnified Persons") harmless against any and all proceedings, actions and third party claims for loss, damage and expense of whatever kind and nature arising out of a breach by the ITS System Integrator of any of its service obligations under this Agreement.

9.2.   Without limiting the generality of Article 9.1, the ITS System Integrator shall fully indemnify and defend the Indemnified Persons from and against any and all loss and damages arising out of or with respect to

(a) failure of the ITS System Integrator to comply with Applicable Laws and Applicable Permits,

(b) payments of taxes relating to the ITS System Integrator, its contractors, suppliers and representatives, income or other taxes required to be paid by the ITS System Integrator without reimbursement hereunder,

(c) non-payment of amounts payable by ITS System Integrator to its employees or sub-contractors as a result of materials or services furnished to the ITS System Integrator, or

(d) any claim or action to the extent such action is based on a claim that the ITS System Integrator infringes a patent, copyright or trademark, and ITS System Integrator shall pay those damages and costs finally awarded against the Indemnified Persons in such action attributable to such claim.

9.3.   Notwithstanding anything to the contrary contained in this Agreement, a Party hereto shall not be liable to the other Party for any exemplary, special, indirect, consequential or incidental damages of any kind (including without limitation loss of revenues or loss of profits), even if such Party has been advised of the possibility of such damages.

10.   Article 10 - Force Majeure

10.1.   As used in this Agreement, a Force Majeure Event shall mean occurrence of any or all of the events defined in Article 10.2 hereinafter which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

(a) Is beyond the reasonable control and not arising out of the fault of the Affected Party;

(b) The Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money; and

(c) Leads to a Material Adverse Effect.

10.2.   Force Majeure Events

For purposes of this Article, and subject to Articles 10.1 (a), (b) and (c) herein, Force Majeure Event(s) shall mean one or more of the following acts or events:

(a) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire or landslide;

(b) Radioactive contamination or ionizing radiation;

(c) Strikes or boycotts (other than those involving a Party or its employees or representatives or attributable to any act or omission of any of them) interrupting supplies and services relating to the Project for a period exceeding a continuous period of 15 (fifteen) days;

(d) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents discharging of its obligations by a Party for a period exceeding a continuous period of 15 (fifteen) days;

(e) Any public agitation which prevents discharging of its obligations by a Party for a period exceeding a continuous period of 15 (fifteen) days.

10.3.   Effect of Force Majeure Event

Upon the occurrence of any Force Majeure Event, the following shall apply:

(a) There shall be no Termination except when a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, JSCL may in its sole discretion terminate this

Agreement by giving Termination Notice in writing to the ITS System Integrator without being liable in any manner whatsoever;

(b) The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event;

(c) JSCL will not be liable for making payments to the ITS System Integrator for the period and for such services that could not be rendered by the ITS System Integrator due to such Force Majeure Event;

(d) ITS System Integrator will not be liable for the Default Charges during the periods in which the Force Majeure events persist.

10.4. **Liability for other losses, damages etc**.

Save and except as expressly provided under this Article 10, no Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to the Article 10.

10.5. **Excuse from performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations and to the extent it is unable to perform on account of such Force Majeure Event provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence, and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall immediately and promptly resume performance of its obligations hereunder.

11. **Article 11 – Confidentiality**

11.1. **Mutual Confidentiality Obligations**

(a) All information, data, legacy information, and any other information, provided by a Party hereto, including without limitation the proprietary materials, software and documentation, specifications, etc. in connection with the Project or otherwise during the Contract Period, shall be treated as confidential ("Confidential Information") by the receiving Party.

Unless otherwise expressly authorized in writing by the disclosing Party of Confidential Information, the receiving Party shall maintain in strict confidence all Confidential Information, shall use Confidential Information only for the purpose of this Agreement, and shall restrict disclosure of Confidential Information to only those of its directors,

officers, employees, consultants, or advisors who require access to the Confidential Information for carrying out the work relating to the Agreement and who are bound not to disclose the same.

(b) The restrictions set forth in sub-article (a) above herein shall not apply to any part of the Confidential Information which:

    i. is at the time of disclosure to the receiving Party, or thereafter, becomes part of the public domain, other than as a result of a disclosure by the receiving Party, their directors, officers or employees; or

    ii. was, at the time of disclosure to the receiving Party, already in the possession of such Party on a lawful basis; or

    iii. is required to be disclosed by the receiving Party by judicial, administrative process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by Applicable Laws or by any Governmental Agency, provided that the receiving Party shall promptly advise the disclosing Party of any expected disclosure hereunder so as to enable the disclosing Party to take appropriate steps as it may so desire.

12. Article 12 - Dispute Resolution

12.1. Conciliation

(a) Any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement and so notified in writing by any Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure provided in sub-article (b) under.

(b) In the event of any Dispute between the Parties, such Dispute shall be referred to the Executive Director, JSCL (or his/her nominee) and the CEO/Managing Director of the ITS System Integrator (or his/her nominee) for amicable settlement. Upon such reference, the said individuals shall meet not later than 7 (seven) days of the date of such request or such longer period as may be mutually agreed by the Parties to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said individuals, any Party may refer the dispute to arbitration in accordance with the provisions of Article 12.2.

(c) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Article 12.2 shall apply.

12.2. Arbitration

(a) Any Dispute, which is not resolved amicably as provided in Article 12.1, shall be finally decided by reference to either a single Arbitrator mutually agreed to by the Parties or if no single arbitrator is appointed within 15 days of such reference then such arbitration

shall be done by a panel of three (3) arbitrators one appointed by each party and third by the two arbitrators.

(b) Such arbitration shall be held in accordance with and be subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto (the "Act").

(c) The venue of such arbitration shall be Jabalpur and the cost of arbitration shall be borne equally by the Parties.

(d) The Parties undertake to carry out any decision or award of the arbitrator (the "Award") without delay. Subject to the Act, Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

(e) Pursuant to having exhausted the remedies, the Parties agree that an Award may be enforced against the ITS System Integrator and/or JSCL, as the case may be and their respective assets wherever situated.

(f) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

13.   Article 13 – Language

13.1.   All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

14.   Article 14 – Assignment and Charges

14.1.   The ITS System Integrator shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of JSCL, which consent JSCL shall be entitled to decline without assigning any reason whatsoever.

15.   Article 15 – Governing Law and Jurisdiction

15.1.   This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Jabalpur shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

16.   Article 16 – Relation Between Parties

16.1.   Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership, joint venture or agency between the Parties. No Party shall have any right or authority to represent on behalf of the other nor shall any such representation to third party (ies) bind the other in any manner whatsoever. This Agreement is being entered into on a principal to principal basis. The ITS System Integrator shall be an independent

contractor and is fully independent in performing any or all its Scope of Work. The ITS System Integrator shall not act or hold itself out as a servant or employee of JSCL.

16.2. This Agreement is being entered into by the Parties on a non-exclusive basis. The Parties shall be free to work or associate with any third party and enter into any agreement, contract, joint venture, partnership or an arrangement of whatsoever nature with respect to the matters covered in the Agreement.

17. Article 17 – Notices

17.1. Any payment, notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered by hand/ registered post/ courier at the following address:

If to ITS System Integrator:	If to JSCL:
	Jabalpur Smart City Limited Manas Bhawan, Wright Town, Jabalpur , Madhya Pradesh, 482002
Attention:	Attention: Executive Director (JSCL)
Phone:	Phone: 0712-2567035
Fax:	Fax: 0712-2561584
Email:	Email:

17.2. Copies of all notices may also be sent by facsimile and/or email.

18. Article 18 – Waiver

18.1. Waiver by a Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement: -

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

18.2. Neither the failure by a Party to insist, on any occasion, upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

19. Article 19 – Survival

19.1. Termination of this Agreement:

(a) shall not relieve any Party of its obligations hereunder which expressly or by implication survives Termination hereof, and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of any Party, shall not relieve such Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such termination.

20. Article 20 – Severability

20.1. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise and the invalid, illegal or unenforceable part shall stand deleted and the rest of the Contract shall be enforced.

21. Article 21 – Representations and Warranties

21.1. Representations and Warranties of the ITS System Integrator:

ITS System Integrator represents and warrants that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;

(b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) It has taken all necessary corporate and other action under applicable laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

(d) It has the necessary capabilities essential to undertake the obligations contemplated hereunder;

(e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(f) It is subject to civil and commercial laws of India with respect to this Agreement;

(g) There are no actions, suits, proceedings, or investigations pending or, to ITS System Integrator's knowledge, threatened against it at law or in equity before any court or

before any other judicial, quasi-judicial or other authority, the probable outcome of which may result in the breach of or constitute a default of ITS System Integrator under this Agreement or which may result in any impairment of its ability to perform its obligations and duties under this Agreement;

(h) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any impairment of ITS System Integrator's ability to perform its obligations and duties under this Agreement;

(i) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which may result in any impairment of its ability to perform its obligations and duties under this Agreement;

(j) No representation or warranty by ITS System Integrator contained herein or in any other document furnished by it to JSCL in relation to Applicable Certificates, permits, permissions, licenses and other such necessary approvals and sanctions required under the Contract contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

(k) No sums, in cash or kind, have been paid or will be paid by or on behalf of ITS System Integrator, to any person by way of price, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of JSCL in connection therewith.

21.2.   Representations and Warranties of JSCL:

JSCL represents and warrants that:

(a) JSCL, through its authorized representative, has full power and authority to execute, deliver and perform its obligations under this Agreement;

(b) JSCL has taken all necessary action to authorise the execution, delivery and performance of this Agreement; and

(c) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

21.3.   Any of the Representations and Warranties herein contained, if found to be untrue shall constitute breach of this Agreement.

22. Article 22 – Standard of Care

22.1. The ITS System Integrator acknowledges the relationship of trust and confidence established between the ITS System Integrator and JSCL by this Agreement. Accordingly, all acts of the ITS System Integrator shall be consistent with this relationship. The ITS System Integrator shall always act, in respect of any matter relating to this Agreement, as an honest and faithful adviser/ service provider to JSCL. The ITS System Integrator shall at all times support and safeguard JSCL's legitimate interests in any dealings with third parties.

23. Article 23 – No Additional Remuneration

23.1. The remuneration of the ITS System Integrator set out in this Agreement shall constitute its sole remuneration in connection with this Agreement. The ITS System Integrator shall not accept for its own benefit any trade commission, discount or similar payment in the discharge of its obligations hereunder and the ITS System Integrator shall ensure that its personnel, agents, etc. similarly shall not receive any such additional remuneration. The ITS System Integrator shall at all times perform its responsibilities hereunder in furtherance of the best interest of the Project.

24. Article 24 – The ITS System Integrator Not To Engage In Certain Activities

24.1. The ITS System Integrator shall not engage and shall cause its personnel as well as sub-contractors and their personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict, with the activities assigned to them under or pursuant to this Agreement.

25. Article 25 – Ownership of Project and Intellectual Property Rights

25.1. Ownership of the Project

With exceptions of proprietary hardware or software required for functioning of such Hardware, the ownership of all Hardware and or such Software forming part of the Project shall be transferred to JSCL at the time of delivery and installation.

In cases where the customized hardware/software is developed and installed exclusively for JSCL, the ownership of all such shall rest exclusively with JSCL upon delivery and installation.

The ownership of all data created as part of the project, including but not limited to cards' brand, logos, graphics, design, keys etc. shall rest exclusively with JSCL.

The Software Licenses and Licenses for other proprietary, all third party software license and standard Hardware shall be transferred to JSCL upon delivery and installation. The License Period of proprietary software of the ITS System Integrator shall be perpetual and irrevocable.

25.2. Intellectual Property Rights

(a) The Intellectual Property Rights (IPR) in all Standard and Proprietary Hardware and or software required for operation of Hardware shall remain vested in the owner of such rights. JSCL shall have rights to possess and use the same exclusively for the purposes of effective implementation, operation and maintenance of the Project. JSCL shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party without approval from the ITS System Integrator unless such assignment is required for performance of the Project.

(b) The Intellectual Property Rights of customized hardware/software which is developed and installed exclusively for JSCL shall remain vested with JSCL. The ITS System Integrator shall hand over the complete updated source code of all software (other than 3rd party COTS) to JSCL:

   i. At the time of Go-Live of the Project

   ii. At the end of each year of during the Contract Period

   iii. 3 months prior to prior to the expiry of Contract Period and

   iv. Immediately in case of issuance of Termination notice by either party

The ITS System Integrator shall handover the source code for all customized software correspond 100% to the operational module to JSCL which may be verified and certified by an independent agency as identified by JSCL. The ITS System Integrator shall have the right to possess and use the same during the Contract Period exclusively for purposes of effective implementation, operation and maintenance of the Project and shall not assign license, or otherwise voluntarily transfer its contractual rights to any other third party without approval from JSCL.

(c) After the expiry or termination of the Master Service Agreement, the ITS System Integrator shall have no right, title or interest in or to any work including without limitation the designs, software, programs, modifications or derivative works developed and customized for JSCL by ITS System Integrator for the Project for any purpose whatsoever.

(d) The Software License for the ITS System Integrator's Proprietary Software as well the Software Licenses for Standard Software procured from third party shall be perpetual and irrevocable.

(e) In case(s) where pre-existing software or hardware are customized/modified for JSCL use by the ITS System Integrator, the IPR for the same shall rest with the ITS System Integrator only. In such cases ITS System Integrator agrees to provide JSCL the rights to use this product even beyond the Master Service Agreement at terms no costlier than those at which such products are available to similar customers in the market. JSCL may demand evidence of pre-existence of any such product.

(f) For purposes of this Agreement and the Master Service Agreement the terms "software", and "software programs/ Software License " shall include without limitation

the source code, object code, any and all related design concepts and ideas, specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided to JSCL by the ITS System Integrator in relation to the Project pursuant to the ITS System Integrator Agreement. The terms "firmware" and "hardware" shall include without limitation the designs, drawings, specifications, custom designed electronic devices, documentation, technical information and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided to JSCL by ITS System Integrator in relation to the Project pursuant to the Master Service Agreement.

26. Article 26 – Insurance

26.1. Insurance during the Contract Period

The ITS System Integrator shall, at its cost and expense, purchase and maintain during the Contract Period, such insurances as are necessary including but not limited to the following:

(a) Hardware delivered and installed to the extent possible at the replacement value with JSCL as beneficiary.

(b) ITS System Integrator 's all risk insurance with JSCL as co-beneficiary;

(c) Comprehensive third party liability insurance with the JSCL as co-beneficiary;

(d) Workmen's compensation insurance with the JSCL as co-beneficiary;

(e) Any other insurance that may be necessary to protect the ITS System Integrator, its employees and the Project against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d) with JSCL as beneficiary/co-beneficiary;

26.2. Evidence of Insurance Cover

(a) The ITS System Integrator shall, from time to time, provide to JSCL copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with Master Service Agreement.

(b) If ITS System Integrator shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto , JSCL shall have the option to take or keep in force any such insurance, and pay such premium and recover all costs thereof from Service

(c) Provider or to forfeit deposit/ Performance guarantee from the ITS System Integrator and pay or restoration for the same.

26.3. Application of Insurance Proceeds

(a) All moneys received under insurance policies shall be promptly applied by the ITS System Integrator towards repair or renovation or restoration or substitution of the Project or any hardware/equipment/device thereof which may have been damaged or required repair/modification.

(b) The ITS System Integrator shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project, or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(c) For insurance policies where JSCL is the beneficiary and where it received the insurance proceeds, only such sums are required from the insurance proceeds for restoration, repair and renovation of the Project

26.4. Validity of Insurance Cover

The ITS System Integrator shall pay the premium payable on such insurance Policy/Policies so as to keep the insurance in force and valid throughout the Contract Period and furnish copies of the same to JSCL for each year/policy period. If at any time the ITS System Integrator fails to purchase, renew and maintain in full force and effect, any and all of the Insurances required under this Master Service Agreement, JSCL may at its option purchase and maintain such insurance and all sums incurred by JSCL therefore shall be reimbursed by the ITS System Integrator forthwith on demand, failing which the same shall be recovered by JSCL by encashment of Performance Security, exercising right of set off or otherwise.

27. Article 27 – Execution of Agreement

27.1. This Agreement may be executed in two originals, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

JSCL	ITS System Integrator
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Volume 3 – Draft Master Service Agreement

Witness 1	Witness 2
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Schedule A : Scope of Work

Schedule B : Technical Specifications of ITS Components

To be included (As per RFP and ITS System Integrator's Proposal, as accepted by JSCL)

Schedule C : Payments to ITS System Integrator

To be included (As per RFP and ITS System Integrator's Proposal, as accepted by JSCL)

Schedule D : Performance Security Bank Guarantee

Copy of Performance Security Bank Guarantee

[Refer Article 7 of the Agreement]

To,

Executive Director
Jabalpur Smart City Limited,
Manas Bhawan, Wright Town,
Jabalpur, Madhya Pradesh - 482002

THIS DEED OF GUARANTEE executed on this the _____day of _____at _____ by _____ _____ (Name of the Bank) having its Head/Registered office at _____ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

Executive Director, Jabalpur Smart City Limited having its office at Manas Bhawan, Wright Town, Jabalpur, Madhya Pradesh - 482002, hereinafter referred to as "JSCL", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

A. By the Agreement entered into between Jabalpur Smart City Limited, Manas Bhawan, Wright Town, Jabalpur, Madhya Pradesh - 482002 and _____, a company incorporated under the provisions of the Companies Act, 1956/2013, having its registered office/permanent address at [insert address] ("ITS System Integrator"), the Company has been authorised for Implementation of Intelligent Transit System solutions in Jabalpur, in accordance with the Agreement mentioned hereinabove ("Master Service Agreement").

B. In terms of the Master Service Agreement, the ITS System Integrator is required to furnish to JSCL, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ [insert amount in figures and words] as Performance Security for due performance/discharge of its obligations under the Master Service Agreement.

At the request of the ITS System Integrator, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the ITS System Integrator of its obligations under the Master Service Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s._____ (hereinafter called the "ITS System Integrator") of all its obligations under the Master Service Agreement.

3. The Guarantor shall, without demur, pay to JSCL sums not exceeding in aggregate Rs. _____ [insert amount in figures and words], within five (5) calendar days of receipt of a written demand therefor from JSCL stating that the ITS System Integrator has failed to meet its performance obligations under the Master Service Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the ITS System Integrator or validity of demand so made by JSCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the ITS System Integrator or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

4. In order to give effect to this Guarantee, JSCL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Master Service Agreement or other documents or by the extension of time for performance granted to the ITS System Integrator or postponement/ non exercise/ delayed exercise of any of its rights by JSCL or any indulgence shown by JSCL to the ITS System Integrator and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by JSCL or any indulgence shown by JSCL, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____unless discharged/released earlier by JSCL in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs_____ [insert amount in figures and words].

6. This Guarantee shall not be affected by any change in the constitution or winding up of the ITS System Integrator/the Guarantor or any absorption, merger or amalgamation of the ITS System Integrator /the Guarantor with any other Person.

7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

8. The expressions "JSCL", "the Bank" and "ITS System Integrator" hereinbefore used shall include their respective successors and assignees.

In witness whereof I/We of the Bank have signed and sealed this guarantee on the _____day of _____2018_____ being herewith duly authorised.

For and on behalf of the _____Bank

Signature of authorised Bank official

Name:_____

Designation:_____

Stamp/Seal of the Bank:_____

Signed, sealed and delivered

for and on behalf of the Bank

by the above named _____

in the presence of :

Witness 1.

Signature_____

Name: _____

Address: _____

Witness 2.

Signature:_____

Name:_____

Address: _____

Schedule E : Liquidated Damages, Standards of Performance & Default Charges

Time is the essence of the Agreement and the delivery dates for Deliverables are binding on the ITS System Integrator. In the event of delay for causes attributable to the ITS System Integrator in meeting the timelines for the Deliverables, JSCL shall be entitled at its option to recover from the ITS System Integrator as agreed liquidated damages a sum of 0.1% of the corresponding deliverable cost for every week of delay or part thereof, subject to maximum cumulative value of the Liquidated Damages being not more than 10% of the project cost. Any delay beyond 20 weeks in meeting any of the Deliverables timelines for causes attributable to the ITS System Integrator shall be deemed to be an Implementation Agency's Event of Default. In addition, the ITS System Integrator shall also be subject to imposition of liquidated damages, as provided elsewhere in the RFP.

(Standard of Performance & Default Charges to be included as per RFP Volume 2.)

Schedule F: ITS System Integrator's Technical & Price Proposal

To be attached

---- End of Document ----